

Plenary Session II

An Isolated Nation with Global-minded Citizens: Bottom-up Transnational Constitutionalism in Taiwan

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ABSTRACT

The emergence of transnational constitutionalism, particularly regarding the convergence of international human rights and domestic constitutions, has taken place in many national or transnational jurisdictions. This paper attempts at examining whether and to what extent this trend has occurred in Taiwan. This paper finds that not much constitutional codification of international human rights laws has been undertaken in the Constitution or subsequent constitutional revisions, and that the judicial reference to international human rights laws was very moderate: 1% in holdings or majority opinions and 3.25% in separate opinions. However, this paper discerns that a stronger trend in statutory incorporation of international human rights laws has taken place in Taiwan. By examining the roles of NGOs in their respective rights advocacies, this paper finds that NGOs and citizens have played pivotal roles in mediating transnational/constitutional norms, defined as a rather distinctive model of “bottom-up transnational constitutionalism.” With their domestic/transnational natures of agency, these global-minded citizens and NGOs have built an intermediating transnational/constitutional regime where both international and domestic human rights laws meet with each other.

Keywords: *Transnational Constitutionalism, International Human Rights, Transnational Judicial Dialogues, Transnational Civil Society, NGOs*

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CONTENTS

I. FORWARD	205
II. THE DOMESTICATED CONSTITUTION WITH LIMITED CODIFICATION OF INTERNATIONAL HUMAN RIGHTS LAWS	207
III. THE MODERATE JUDICIAL ADOPTION OF INTERNATIONAL HUMAN RIGHTS LAWS.....	212
A. <i>The Limited Number of Judicial Reference to International Human Rights Laws</i>	212
B. <i>The Functions of Judicial Reference to International Human Rights Laws</i>	215
IV. PROGRESSIVE NGOS MOVEMENTS TOWARDS STATUTORY INCORPORATION OF INTERNATIONAL HUMAN RIGHTS LAWS.....	220
A. <i>NGOs and the CRC Movement</i>	222
B. <i>NGOs and the CEDAW Movement</i>	224
C. <i>NGOs, the Anti-tobacco Movement and the FCTC</i>	226
D. <i>Global-minded NGOs and Citizens Leading the Change</i>	228
V. CONCLUSION.....	229
REFERENCE	231

I. FORWARD

The recent development in transnational constitutionalism that includes at least internationalization of constitutional laws and constitutionalization of international laws has spread to the world.¹ In some unprecedented ways, international norms are penetrating into sovereign borders of nation states while at the same time domestic norms—particularly constitutional norms—are becoming more than ever internationalized. One of the most pronounced aspects in this development is the convergence of international human rights laws and domestic constitutions.² Even in the United States, a country perhaps most resistant to this global trend, there have been recent landmark Supreme Court cases that referred to international human rights laws as at least persuasive, if not binding, authority.³

Rather than examining the aforementioned global phenomenon, this paper is attempted only to inquire whether such a phenomenon has taken place in Taiwan, a country with a much troubled statehood and a difficult relationship with the People's Republic of China (PRC). Taiwan has since 1971 been blocked with the opportunity to participate international treaty

1. For the definition of transnational constitutionalism and its systematic and theoretical discussions, see, for example, Jiunn-Rong Yeh & Wen-Chen Chang, *The Emergence of Transnational Constitutionalism: Its Features, Challenges and Solutions*, 27 PENN ST. INT'L L. REV. 89 (2008); and also TRANSNATIONAL CONSTITUTIONALISM: INTERNATIONAL AND EUROPEAN MODELS (Nicholas Tsagourias ed., 2007) (discussing transnational constitutional features as well as the development of the European constitutional regime). See also Tom Ginsburg et al., *Commitment and Diffusion: How and Why National Constitutions Incorporate International Law*, 2008 U. ILL. L. REV. 201 (2008) (providing empirical accounts for constitutionalization of international laws); and V. S. Vereshchetin, *Some Reflections on the Relationship Between International Law and National Law in the Light of New Constitutions*, in CONSTITUTIONAL REFORM AND INTERNATIONAL LAW IN CENTRAL AND EASTERN EUROPE 5 (Rein Müllerson et al. eds., 1998) (illustrating ways of internationalization of new constitutions); and Vicki C. Jackson, *Constitutional Dialogue and Human Dignity: States and Transnational Constitutional Discourse*, 65 MONT. L. REV. 15 (2004) (arguing that the international human rights developments after World War II have influenced over many postwar constitutions).

2. See, e.g., John O. McGinnis & Ilya Somin, *Democracy and International Human Rights Law*, 84 NOTRE DAME L. REV. 1739 (2008-2009); and Melissa A. Waters, *Creeping Monism: The Judicial Trend Toward Interpretative Incorporation of Human Rights Treaties*, 107 COLUM. L. REV. 628 (2007); and Harold Koh, *The Ninth Annual John W. Hager Lecture, The 2004 Term: The Supreme Court Meets International Law*, 12 TULSA J. COMP. & INT'L L. 1 (2004-2005) (arguing that we should take a transnational perspective particularly in the world of human rights).

3. See, e.g., *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006); *Roper v. Simmons*, 543 U.S. 551 (2005); *Lawrence v. Texas*, 539 U.S. 558 (2003). For comments on this case law development, see, for example, Harold Koh, *International Law as Part of Our Law*, 98 AM. J. INT'L L. 43 (2004); and Peter J. Spiro, *Treaties, International Law, and Constitutional Rights*, 55 STAN. L. REV. 1999 (2002-2003) (arguing that the supremacy of constitutional hegemony should be reexamined as a single community with a shared set of core values). For criticisms, see, for example, Joan L. Larsen, *Importing Constitutional Norms from a "Wider Civilization": Lawrence and the Rehnquist Court's Use of Foreign and International Law in Domestic Constitutional Interpretation*, 65 OHIO ST. L.J. 1283 (2004); and Ernest A. Young, *The Trouble with Global Constitutionalism*, 38 TEX. INT'L L.J. 527 (2003) (cautioning that a direct recognition of international laws may change the status of the American Constitution in governing and making American law).

regimes, particularly those associated with the United Nations (UN).⁴ As a result, Taiwan has held almost no membership to major international human rights treaties particularly those developed since the 1970s. This however should not be any significant impediment as the recent convergence has never limited to legally binding international human rights treaties formally ratified by and/or incorporated into domestic constitutional and legal regimes.⁵ For example, the Universal Declaration of Human Rights (UDHR), passed only through a resolution by the UN General Assembly in 1948 and not legally binding, has become the most authoritative international document in convergence with the majority of domestic constitutions.⁶ The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) has become a most observed international bill of rights outside the Council of Europe.⁷ Nevertheless, it remains intriguing to see whether the disconnectedness with the international human rights regime may create any special difficulties –or engender any particular patterns or features– for Taiwan to partake such converging efforts.

The convergence of international human rights law and domestic constitutions at the domestic level has proceeded primarily in the following ways.⁸ First is a direct or indirect constitutional codification of international human rights laws. Many new democracies in the 1990s particularly in Eastern Europe opted for this way.⁹ Second is statutory enactment to

4. On October 25, 1971, the UN General Assembly passed the resolution, No. 2758, to restore all lawful rights of the PRC to the UN and expel the representatives of Chiang, Kai-Shek from their seat that they unlawfully occupied in the UN.

5. See, e.g., Yeh & Chang, *supra* note 1; and Waters, *supra* note 2. Precisely because the recent use (judicial or non-judicial) of international human rights treaties has not been limited to legally binding documents in domestic regimes, major criticisms have been raised, and solutions sought, on the issue of democratic deficit. See, e.g., Ernest A. Young, *Supranational Rulings as Judgments and Precedents*, 18 DUKE J. COMP. & INT'L L. 477 (2007-2008); and McGinnis & Somin, *supra* note 2.

6. Some scholars however argue that the UDHR is legally binding for its partaking of the character of the UN Charter or as customary international law. See, e.g., LOUIS HENKIN, *THE AGE OF RIGHTS* 19 (1990); and Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 319 (1995-1996); and Edward D. Re, *The Universal Declaration of Human Rights: Effective Remedies and the Domestic Courts*, 33 CAL. W. INT'L L.J. 137, 144-45 (2002-2003). For the debate on the legal status of the UDHR, HENRY J. STEINER ET AL., *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS & MORALS* 139-48 (3d ed. 2008).

7. See, e.g., Tsagourias, *supra* note 1.

8. It should be noted that the convergence of international human rights and domestic constitutions may very well be undertaken at the transnational level. For example, the direct and primary binding effects of the EU laws have made the EU more like a constitutional regime and the European Court of Justice more like a constitutional court. See, e.g., MONICA CLAES, *THE NATIONAL COURTS' MANDATE IN THE EUROPEAN CONSTITUTION* 452-63 (2006) (discussing the direct effects and the supremacy of EU laws upon its member states, transforming the EU into a "constitutional" regime); and Wen-Chen Chang, *Constructing Federalism: The EU and US Models in Comparison*, 35 EURAMERICA 733, 752-66 (2005).

9. See, e.g., Vereshchetin, *supra* note 1.

incorporate human rights laws. The enactment of a human rights act that incorporates for example International Covenant on Civil and Political Rights (ICCPR) or ECHR has been popular to certain jurisdictions that may not have a list of constitutionally protected rights.¹⁰ Last but definitely not the least is judicial adoption of –binding or nonbinding– international human rights laws. Domestic courts increasingly apply, refer to or cite international human rights laws in their cases or simply read and interpret their domestic laws and regulations in light of international human rights laws.¹¹

This paper examines whether the convergence of international human rights law and domestic constitutions has taken place in Taiwan and by which particular way or ways discussed above. The second part of this paper analyzes the Constitution of the Republic of China (ROC Constitution or Constitution) that became effective in Taiwan since 1947. It finds that the Constitution is rather “domesticated” and not much constitutional codification of international human rights laws has been undertaken in the Constitution or subsequent constitutional revisions in the 1990s and 2000s. It then examines judicial adoption of international human rights laws in the course of constitutional interpretations by the Constitutional Court, also known as the Council of Grand Justices. While there are a few judicial references to international human rights laws in constitutional interpretations, they have not yet become significant or pivotal in terms of decision-making.

Next, this paper moves to inquire if and the extent to which statutory incorporation of international human rights laws has taken place in Taiwan. It not only confirms the occurrence –and even the increase– of statutory incorporation of various human rights treaties but also finds that the key actor behind this has been nongovernmental organizations (NGOs) in the course of their rights advocacy. In conclusion, this paper terms what has taken place in Taiwan regarding the convergence of international human rights law and domestic constitutions as a rather distinctive model of “bottom-up transnational constitutionalism.”

II. THE DOMESTICATED CONSTITUTION WITH LIMITED CODIFICATION OF INTERNATIONAL HUMAN RIGHTS LAWS

Unlike most postwar constitutions, the ROC Constitution was not particularly reflective of the international spirits that prevailed in the postwar

10. Britain’s Human Rights Act that incorporates ECHR is a typical example. *See, e.g.*, Douglas W. Vick, *The Human Rights Act and the British Constitution*, 37 *TEX. INT’L L.J.* 329, 351-361 (2002).

11. *See, e.g.*, Yeh & Chang, *supra* note 1, at 95-97; and Jackson, *supra* note 1; Waters, *supra* note 2.

environment.¹² It was enacted in December 1946 and became effective a year later. The civil war between the Nationalist Party (Kuomintang, KMT) and the rising Communist Party broke up almost immediately after World War II was put to an end. Faced with hostile situations, the Constitution was made in haste and the draft it was based on had been written in the 1920s, having drawn no lessons from the creation of the United Nations in 1945 and the international spirit that came with it.

The only provision in the ROC Constitution mentions international laws or world peace is Article 141.¹³ It stipulates that the foreign policy of the ROC shall cultivate good-neighborliness with other nations, and respect treaties and the Charter of the United Nations, in order to promote international cooperation, advance international justice and ensure world peace. As this provision appears in the Chapter regarding basic national policies, it is at most of advisory nature if not merely decorative.¹⁴ Like standard arrangements in separation of powers, the ROC Constitution prescribes treaty-making powers between the president, cabinet and parliament. According to Articles 38, 57, 58, and 63, the President is vested with the power of concluding treaties, declaring wars or making peace, and the Executive Yuan (functional equivalent to a cabinet) send treaty bills to the Legislative Yuan (functional equivalent to a parliament) for consideration and approval.¹⁵

The Constitution addresses no legal status of international treaties and gives no privilege to customary international norms or human rights conventions. Nor does it require courts or any other institutions to take special consideration into international human rights norms in interpreting

12. The experiences of and reflections upon the two world wars, particularly World War II, have had a great impact on several constitutions in Europe and in America. One primary response is that human dignity or a set of dignity-based rights were adopted in the majority of postwar constitutions enacted immediately after World War II. Jackson, *supra* note 1, at 15-16. The ROC Constitution however exhibited no such direction.

13. Art. 141 of ZHONGHUA MINGUO XIANFA [CONSTITUTION OF THE REPUBLIC OF CHINA] [hereinafter CONSTITUTION] stipulates that:

The foreign policy of the Republic of China shall, in a spirit of independence and initiative and on the basis of the principles of equality and reciprocity, cultivate good-neighborliness with other nations, and respect treaties and the Charter of the United Nations, and the interests of Chinese citizens residing abroad, promote international cooperation, advance international justice and ensure world peace.

The English text of the ROC Constitution is available at Justices of the Constitutional Court, Judicial Yuan, http://www.judicial.gov.tw/CONSTITUTIONALCOURT/en/p07_2.asp?lawno=36 (last visited Nov. 27, 2009).

14. However, more and more scholars in recent years contend that art. 141 should nevertheless been interpreted as giving international treaties a privileged status and primary effects upon domestic statutes. One of the dissenting opinions in J.Y. Interpretation No. 329 by Justice Li, Chih-Peng was a typical example. See J.Y. Interpretation No. 329 (1993) (Li, Chih-Peng, J., dissenting).

15. CONSTITUTION, arts. 38, 57-58, & 63, and Additional Articles, art. 2(4), available at http://www.judicial.gov.tw/CONSTITUTIONALCOURT/en/p07_2.asp?lawno=36 (last visited Nov. 27, 2009).

the Constitution and relevant laws. The empty space of international law makes clear that the ROC Constitution is a rather domesticated document with no particular international vision. The lack of internationally-minded provisions in the Constitution ironically rendered no serious problems as the KMT government was soon defeated by the Communist Party, relocated to Taiwan in 1949, lost of its international influence and eventually driven out of the United Nations in 1971.

It became an issue only after the lift of the Martial Decree in 1987 when the cross-strait relationship was opened up. In the early 1990s, a number of “administrative agreements” were concluded between the two cross-strait Foundations, the Taiwan side of which was delegated by Mainland Affairs Council, Executive Yuan. Deprived of decision-making powers, the Legislative Yuan requested a constitutional interpretation from the Constitutional Court, also known as the Council of Grand Justices, regarding whether like treaties these “administrative agreements” should also be sent for legislative approval. The Constitutional Court rendered *J.Y. Interpretation No. 329* in December 1993, requiring international agreements be sent for legislative deliberation. It held that international agreement whose:

“ . . . 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,’ ‘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 Legislative Yuan, should also be sent to the Legislative Yuan for deliberation.”¹⁶

In the reasoning, the Constitutional Court addressed for the first time the legal status of treaties. It discussed Articles 38, 58 and 63 of the ROC Constitution and declared that “treaties concluded according to the above procedures hold the same status as laws.”¹⁷ The Court did not touch upon the classic debate on monism v. dualism regarding how international treaties –duly concluded upon such procedures– would be made domestically applicable.¹⁸ Based upon the reasoning and the criticism offered by one of the dissenting opinions, it is reasonable to contend that the Court adopted the monist view, giving the domestic legal effect to treaties

16. J.Y. Interpretation No. 329 (1993), available at http://www.judicial.gov.tw/constitutional-court/en/p03_01.asp?expno=329.

17. *Id.* para. 1 of the reasoning.

18. For a comparative discussion on monism v. dualism, see, for example, George Slyz, *International Law in National Courts*, 28 N.Y.U.J. INT'L L. & POL. 65, 67-71 (1995-1996).

upon legislative approval.¹⁹

The adoption of the monist view was welcome by scholars.²⁰ Unfortunately however, it has not changed much practice. Prior to 1971, the year when the KMT government was expelled out from the UN, most treaties became effective with the enactment of their transforming domestic laws.²¹ The Genocide Convention was a good example. It was ratified in 1951, and the domestic statute was also enacted in 1953.²² Since 1971, Taiwan has been blocked by most treaty regimes especially those associated with the UN. The only way that Taiwan can make any treaties domestically effective without formal accessions to them is to enact domestic incorporating statutes. The most recent example was the enactment of the Enforcement Law of the two International Covenants (International Covenant on Civil and Political Rights, ICCPR; International Covenants on Economic, Social and Cultural Rights, ICESCR).²³ (See Table 1)

In new democracies, if the original Constitution is not written in a much internationally-spirited way, subsequent constitutional revisions may undertake certain efforts to change it. Rewriting the list of constitutionally protected rights in accordance with major international human rights documents such as UDHR, ICCPR or ECHR has been a typical in the constitutional revisions of the many new democracies.²⁴ In Taiwan, however, the seven rounds of constitutional revisions throughout the 1990s and 2000s did not touch upon issues concerning international human rights nor did it involve with rewriting the list of constitutionally protected rights.²⁵ Nearly all constitutional revisions addressed issues concerning powers of constitutional institutions and separation of powers among these institutions.²⁶ Evidently, constitutional codification of international human

19. J.Y. Interpretation No. 329 (1993) (Chang, Te-Sheng, J., dissenting in part). It should be noted that some scholars maintain that J.Y. Interpretation No. 329 may still take a dualist view or that both views might be possibly inferred from the quoted paragraph.

20. See, e.g., FORT FU-TE LIAO, *Yin Chin Kuo Chi Jen Chuan Chun Tse [Incorporating International Human Rights Standard]*, in KUO CHI JEN CHUAN FA: YI TI FEN HSI YU KUO NEI SHIH CHIEN [INTERNATIONAL HUMAN RIGHTS LAWS: ISSUES AND PRACTICES] 5, 52-53 (2005); and CHANG-FA LO, *Li Fa Chi Kuan Tsan Yu Ti Yueh Kuo Cheng Chih Yen Chiu [Research on Legislative Participation in Treaty-Making]*, in MAO YI KUAN HSI CHIH FA LU WEN TI [LEGAL ISSUES OF TRADE RELATIONS] 95, 156-58 (1994).

21. See HUNGDAH CHIU, HSIEN TAI KUO CHI FA [MODERN INTERNATIONAL LAW] 128-35 (2d ed. 2006).

22. *Id.* at 134.

23. The press release issued by the Government Information Office with regard to President Ma's signing of the two Covenants, Press Release, Government Information Office, President Ma Signs Instruments of Ratification of Two Covenants on Human Rights (May 20, 2005), <http://www.taiwanembassy.org/ct.asp?xItem=92536&ctNode=463>.

24. See, e.g., Vereshchetin, *supra* note 1, and Duc V. Trang, *Beyond the Historical Justice Debate: The Incorporation of International Law and the Impact on Constitutional Structures and Rights in Hungary*, 28 VAND. J. TRANSNAT'L L. 1, 11-12 (1995).

25. See, e.g., Liao, *supra* note 20, at 50-1.

26. The function of protecting rights has hence left primarily to the Constitutional Court. See,

rights laws has been considerably limited in Taiwan even after the democratization began in the 1990s. This left Taiwan only the two other options for developing transnational constitutionalism: judicial adoption and statutory incorporation.

Table 1 Adoptions of International Human Rights Treaties in Taiwan

Int'l Human Rights Treaties	Date of Signing	Date of Ratifying	Note
UN Charter	1945.06.26	1945.09.28	1947/Art. 141 of the Constitution provides the respect for the UN Charter
UDHR	1948.12.10		1998/re-declaration of full compliance
Genocide Convention	1949.07.20	1951.05.05	1953/Genocide Punishment Act passed
ICCPR	1967.10.05	2009.03.31 (Legislature) 2009.05.14 (President)	2009.03.31 Enforcement Act passed
ICESCR	1967.10.05	2009.03.31 (Legislature) 2009.05.14 (President)	2009.03.31 Enforcement Act passed
1971			
CEDAW (Women's Convention)		2007.01.05 (Legislature) 2007.02.09 (President)	2009.03.27 release of the first state compliance report
CRC (Children's Convention)			1990.06.14 Amendments of the Children Welfare Act ²⁷
FCTC (Framework Convention on Tobacco Control)		2005.01.14 (Legislature) 2005.03.30 (President)	2007.07.11/2008.01.23 Amendments of Tobacco Harm Prevention Act

Source: by Author.

e.g., Wen-Chen Chang, *The Role of Judicial Review in Consolidating Democracy: The Case of Taiwan*, 2(2) ASIA L. REV. 73 (2005).

27. The author included the CRC into this table notwithstanding the fact that the government had not passed its accession. As the following discussion in Part IV.A. would explain, the government intended to access to the CRC and made an initial inquiry to the UN. Having received a quite discouraging reply, however, the government decided not to take any further actions but merely revised domestic laws in accordance with the CRC.

III. THE MODERATE JUDICIAL ADOPTION OF INTERNATIONAL HUMAN RIGHTS LAWS

Judicial adoption of international human rights laws has been the primary way leading to the current development of transnational constitutionalism.²⁸ But it has not been very observable in Taiwan. The Constitutional Court began referring to some international human rights laws that were not binding to Taiwan amid the 1990s, and the number of such references has since very moderately increased. The reference to international human rights laws occurs much less than the reference to foreign laws or foreign precedents.

A. *The Limited Number of Judicial Reference to International Human Rights Laws*

As of September 1, 2009, the Constitutional Court rendered altogether 664 interpretations.²⁹ Among them, only 7 interpretations in the holdings and/or majority opinions referred to international human rights treaties or other documents. (See Table 2) The ratio is about 1%. With regard to 554 separate opinions, 18 referred to international human rights treaties or documents. (See Table 3) The ratio is 3.25%, significantly higher than the reference in the holdings and majority opinions.

In all 7 interpretations where international human rights laws are referred to in the holdings or majority opinions, three categories can be discerned. First is concerned with due process rights of criminal defendants, and in this category, the ECHR, ICCPR, or the American Convention on Human Rights Convention (ACHR) is mostly referred documents. The second category involves with labor rights, and not surprisingly, International Labor Conventions associated with International Labor Organizations (ILO) are the body of international labor rights laws that majority opinions mostly refer to. Even more noteworthy is that the ILO Conventions are directly referred to in the holding and taken as models for further policy reexamination or legislative revisions.³⁰ The last category involves with rights of the child, and specific rights in the Convention on the Rights of the Child (CRC) are being referred to by the majority opinions.

Noticeably, none of these international human rights laws referred to by the majority opinions are binding to the Court at the time of the reference. As

28. See e.g., Yeh & Chang, *supra* note 1, at 95-97; and Jackson, *supra* note 1; Waters, *supra* note 2.

29. All published interpretations of the Constitutional Court are available at <http://www.judicial.gov.tw/CONSTITUTIONALCOURT/en/p03.asp>.

30. J.Y. Interpretation No. 549 (2002), available at http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=549.

indicated earlier, the KMT government signed the ICCPR before it was expelled from the UN, but it never had a chance to send its ratification to the Secretary General.³¹ The way that the Constitutional Court referred to the ICCPR is similar to the way it referred to the ECHR or ACHR. The Court has taken these international human rights laws notwithstanding their binding (or nonbinding) nature, but rather as persuasive, or at times even compelling international legal authority.³²

Table 2 shows that no single international document drew particular attentions from the Court. The ICCPR, ECHR, CRC or International Labor Conventions was referred to in similar frequency. The UDHR was cited only once without specific provisions mentioned.³³ Interestingly however, in separate opinions, the UDHR was the most frequently cited international document. The variety of rights such as human dignity, right to be free from arbitrary arrest or detention, right to marriage and family, right to freedom of movement, right to conscience and religion, and right to equality appeared in many opinions by individual justices. The ICCPR, ECHR and International Labor Conventions came together as the second most cited international documents in separate opinions. The last one was the ACHR. (See Table 2 & Table 3)

The citation timing of these international human rights documents is another issue worthy of noting. Although the Constitutional Court began working as early as in 1948, the first reference of international human rights laws in the majority opinions came as late as in 1995, nearly fifty years after its establishment. It seems that the Constitutional Court has been influenced by the rather “domesticated” nature of the ROC Constitution as its most authoritative interpreter as well as the isolated situation of the KMT government in Taiwan. Most citations of international human rights laws came in the 2000s, which coincided with the period when NGOs and citizens movements advocated most strongly for accession to various international human rights treaties and for incorporating them into domestically statutes.³⁴

31. The government nevertheless passed its ratification in 2009. See *supra* note 23.

32. This is however the standard way that domestic courts refer to international legal documents. See, e.g., McGinnis & Somin, *supra* note 2, at 1747-51; and Richard B. Lillich, *Invoking International Human Rights Law in Domestic Courts*, 54 U. CIN. L. REV. 367, 385-93, 408-12 (1985); and Brun-Otto Bryde, *The Constitutional Judge and the International Constitutionalist Dialogue*, 80 TUL. L. REV. 203 (2005).

33. However the UDHR has been mostly frequently cited or referred to international document notwithstanding its nonbinding nature. See, e.g., Hannum, *supra* note 6; and Re, *supra* note 6, at 144.

34. See *infra* notes 51-93 and text accompanied.

Table 2 The Reference of International Human Rights Norms in Majority Opinions of Interpretations by the Constitutional Court

Interpretation (Issue Date)	Place of Reference	Referred International Human Rights Documents	Concerned Rights
No. 372 (1995.02.24)	Reasoning	UDHR/concept of human dignity and personal security	Women's equal right to dignity and safety
No. 392 (1995.12.22)	Reasoning	Article 5 of the ECHR Article 9 of the ICCPR Article 7 of the ACHR	Rights of Criminal Defendants (detention power)
No. 549 (2002.08.02)	Holding/ Reasoning	International Labor Conventions	Labor rights
No. 578 (2004.05.21)	Holding/ Reasoning	International Labor Conventions	Labor rights (pension program)
No. 582 (2004.07.23)	Reasoning	Article 6-III(iv) of the ECHR Article 14-III(v) of the ICCPR	Rights of Criminal Defendants
No. 587 (2004.12.30)	Reasoning	Article 7, Section 1, of the CRC	Children's right to identify his/her blood filiations
No. 623 (2007.01.26)	Reasoning	Articles 19 and 34 of the CRC	Children's right to be free from sexual exploitation

Source: by Author (Calculated as of Sept. 1, 2009).

Table 3 The Reference of International Human Rights Norms in Separate Opinions

Interpretation	Separate Opinion & Justice	Referred Documents
No. 372 (1995.02.24)	Concurring opinion (dissenting in part)/Justice Jyun-Hsiung Su	UDHR
No. 392 (1995.12.22)	Dissenting in part/Justice Ho-Hsiung Wang	ECHR/ICCPR/ACHR
	Dissenting in part/Justice Sen-Yen Sun	ECHR/ICCPR/ACHR
No. 514 (2000.10.13)	Dissenting opinion/Justice Yueh-Chin Hwang,	ECHR/European Social Charter
No. 547 (2002.06.28)	Concurring opinion (dissenting in part)/Justice Yueh-Chin Hwang	ILO Convention No. 1, 2, 5, 21, 26, 31, 34, 87, 98, 99, 100, 111, 168, 169, 173, 174, 175, 181

Interpretation	Separate Opinion & Justice	Referred Documents
No. 549 (2002.08.02)	Concurring opinion/Justice Chi-Nan Chen	ILO Convention No.102
	Concurring opinion/Justice Yueh-Chin Hwang	ILO Convention No.102; other WTO, ILO documents
No. 550 (2002.10.04)	Concurring opinion/Justice Jyun-Hsiung Su	ILO Convention No.144
	Dissenting in part/Justice Yueh-Chin Hwang	ILO Convention No. 24
No. 552 (2002.12.31)	Dissenting opinion/Justice Hua-Sun Tseng	UDHR
	Dissenting opinion/Justice Tieh-Cheng Liu	UDHR/ECHR
No. 558 (2003.04.18)	Dissenting opinion/Justice Tieh-Cheng Liu	UDHR/ICCPR
No. 571 (2004.01.02)	Dissenting opinion/Justice Jen-Shou Yang	UDHR/ICCPR
No. 573 (2004.02.27)	Concurring opinion/Justice Ho-Hsiung Wang	UDHR
No. 582 (2004.07.23)	Concurring opinion/Justice Yu-Hsiu Hsu	ECHR
No. 603 (2005.09.28)	Concurring in part and dissenting in part/Justice Syue-Ming Yu	Directive 95/46/EC
No. 617 (2006.10.26)	Dissenting opinion/Justice Yu-Hsiu Hsu	Declaration of Sexual Rights by the World Association for Sexology in 1999
No. 636 (2008.02.01)	Concurring in part/Justices Tzong-Li Hsu, Tzu-Yi Lin and Yu-Hsiu Hsu	ICCPR

Source: by Author (data collected as of Sept. 1, 2009).

B. *The Functions of Judicial Reference to International Human Rights Laws*

Notwithstanding limited frequency, when the Constitutional Court referred to international human rights laws in the holdings or majority opinions, it often came with the ruling to invalidate challenged statutes, rules or precedents.³⁵ The judicial reference to international human rights laws has thus to a certain extent indicated, as evidenced elsewhere, a strong

35. For instance, J.Y. Interpretations No. 392 (1995), No. 582 (2004), & No. 587 (2004).

protection of individual rights.³⁶ However, the functions that such judicial reference may provide certainly extend beyond mere rights protection.

At least four primary functions in judicial reference to international human rights laws have been discerned: first, adding new rights or new contents of rights to the existing list of constitutionally protected rights; second, providing for arguments for protection of the existing rights; third, setting as the benchmark for domestic legal change; and last but not the least, providing reasons for limiting other rights that are equally protected by domestic constitutions.³⁷ These four functions have also been observable in the practice of the Constitutional Court.

As already discussed, the ROC Constitution was enacted in 1946 and subsequent constitutional revisions in the 1990s have not focused upon the creation or revision of the existing list of rights. This makes all more prominent the judicial function to add new rights or new contents of rights to the existing list. International human rights laws provide abundant legal sources for such judicial purposes. The first example is *J.Y. Interpretation No. 372*.³⁸ Unlike other postwar constitutions, the ROC Constitution does not specifically mention the right of human dignity. In the 1992 constitutional revisions, a declarative provision was added in to assert the state responsibility to ensure the protection of personal dignity of women and their personal safety.³⁹ In *J.Y. Interpretation No. 372*, in order to ensure human dignity and personal security the status of constitutionally protected rights—rather than merely some constitutional policies—the Constitutional Court referred to the UDHR in the beginning of its reasoning. It said: “The maintenance of personal dignity and the protection of personal safety are contained in the Universal Declaration of Human Rights, and are also two of the fundamental concepts underlying our constitutional protection of the people’s freedoms and rights.”⁴⁰

Similarly, children’s right to identify her/his parents is not specified in the Constitution, nor is any general right of personality. In *J.Y. Interpretation No. 587*, the Constitutional Court added it into the list of constitutionally protected rights by resorting to the CRC as well as to the general provision, Article 22, of the Chapter concerning rights and duties of the people.⁴¹ The Court said in the beginning of the reasoning:

36. See, e.g., Jackson, *supra* note 1; and Waters, *supra* note 2; and McGinnis & Somin, *supra* note 2, at 1747-51.

37. See, e.g., Hannum, *supra* note 6, at 292-312; McGinnis & Somin, *supra* note 2, at 1747-51.

38. J.Y. Interpretation No. 372 (1995), available at http://www.judicial.gov.tw/constitutional_court/en/p03_01.asp?expno=372.

39. ZHONGHUA MINGUO XIANFA TSENGHSIU TIAOWEN [THE ADDITIONAL ARTICLES OF THE CONSTITUTION OF THE REPUBLIC OF CHINA] art. 10, sec. 6.

40. J.Y. Interpretation No. 372 (1995), *supra* note 38.

41. CONSTITUTION, art. 22: “All other freedoms and rights of the people that are not detrimental to social order or public welfare shall be guaranteed under the Constitution.”

A child's right to identify his/her blood filiations was declared by Article 7, Section 1, of the UN Convention on the Rights of the Child, validated on September 2, 1990. The right to establish paternity is concerned with a child's right to personality and shall be protected under Article 22 of the Constitution.⁴²

The second function for referring to international human rights laws is to provide additional arguments for protection of the existing list of constitutional rights. The most evident example is *J.Y. Interpretation No. 582* regarding the right to cross-examine witness for criminal defendants. In this interpretation, while the right to a fair trial and subsequently the right of cross examination are clearly ensured by Article 16 of the ROC Constitution, the Court nevertheless felt the need to rely further on foreign laws as well as international human rights documents for additional support. The reference to international human rights documents for the Court is evident of the universal nature of such rights. It said:

Article 16 of the Constitution provides for the people's right to sue. As far as a criminal defendant is concerned, he should enjoy the right to adequately defend himself under a confrontational system, according to adversarial rules, so as to ensure a fair trial. . . . The right of an accused to examine a witness is a corollary of such right. . . . Such right of a criminal defendant is universally provided—whether in a civil law country or a common law jurisdiction, and whether an adversarial system or an inquisitorial setting is adopted in administering a state's criminal justice. (*See, e.g.,* 6th Amendment to the United States Constitution, Article 37-II of the Japanese Constitution, Article 304 of the Code of Criminal Procedure of Japan, and Article 239 of the Code of Criminal Procedure of Germany) Article 6-III(iv) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, effective on November 4, 1950, and Article 14-III(v) of the International Covenant on Civil and Political Rights, passed by the United Nations on December 16, 1966 and put into force on March 23, 1976, both provide, "everyone charged with a crime shall be entitled to the following minimum guarantees: . . . to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him . . ."⁴³

42. *J.Y. Interpretation No. 587* (2004), available at http://www.judicial.gov.tw/constitutional-court/en/p03_01.asp?expno=587.

43. *J.Y. Interpretation No. 582* (2004), available at <http://www.judicial.gov.tw/constitutional>

The third function of referring to international human rights laws is to provide the benchmark for change of domestic legislation or policies.⁴⁴ For example, in both *J.Y. Interpretation No. 549* and *J.Y. Interpretation No. 578*, the Constitutional Court examined respectively the Labor Insurance Act and the Labor Standards Act, and having found the reviewed statutes constitutional, it nevertheless advised the government to overhaul the entire statutory regime with relevant international labor conventions. In *J.Y. Interpretation No. 549*, the Court requested: “Moreover, an overall examination and arrangement, regarding the survivor allowance, insurance benefits and other relevant matters, should be conducted in accordance with the principles of this Interpretation, international labor conventions and the pension plan of the social security system.”⁴⁵

Similarly in *J.Y. Interpretation No. 578*, the Court advised the government conduct a comprehensive examination of the current scheme regarding labor retirement payment and stress that “the provisions of international labor conventions and the overall development of the nation shall also be taken into account.”⁴⁶

Lastly and perhaps least noticeably, the reference to international human rights laws may provide for reasons to infringe other rights that are equally protected in the domestic constitutions.⁴⁷ For example, in *J.Y. Interpretation No. 623*, the Court referred to children’s right to be free from sexual exploitation guaranteed by the CRC to trump against free speech. It said:

Article 11 of the Constitution guarantees the people’s freedom of speech for the purposes of ensuring the free flow of opinions and giving the people the opportunities to acquire sufficient information and to attain self-fulfillment. . . . Nevertheless, the constitutional guarantee is not absolute. To the extent that Article 23 of the Constitution is complied with, the lawmakers may impose adequate restrictions by enacting clear and unambiguous laws. . . . [T]o protect a child or juvenile from engaging in any unlawful sexual

court/en/p03_01.asp?expno=582.

44. See, e.g., Hannum, *supra* note 6, at 292-312.

45. *J.Y. Interpretation No. 549* (2002), available at http://www.judicial.gov.tw/constitutional/court/en/p03_01.asp?expno=549.

46. *J.Y. Interpretation No. 578* (2004), available at http://www.judicial.gov.tw/constitutional/court/en/p03_01.asp?expno=578.

47. For instance, the Canadian Supreme Court, a court with high reputation for its respect and reference to international human rights laws, has had quite a few cases where the reference to international human rights laws was provided for justification for limiting rights. See, e.g., *Lavoie v. Canada*, [2002] 1 S.C.R. 769 (Can.) (referring to the right of citizens to have the opportunity to public service in his country in Article 25 of the ICCPR to justify the limitation of such rights enjoyed by noncitizens); *R. v. Lucas*, [1998] 1 S.C.R. 439 (Can.) (referring to the right to reputation guaranteed in Article 17 of the ICCPR to justify the limitation to freedom of speech).

activity is a universally recognized fundamental right (see Articles 19 and 34 of the United Nations Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989, and implemented on September 2, 1990) and thus a significant public interest. . . . [T]he Child and Juvenile Sexual Transaction Prevention Act . . . is enacted for the purpose of preventing and eliminating the events where children and juveniles are treated as sexual objects, and [t]he purpose of the law is rational and legitimate.⁴⁸

Using international human rights documents as legal bases for conservative or even limiting interpretations of constitutionally protected rights is not the privilege for majority opinions. It is often the strategy taken by government representatives in defense of the constitutionally challenged statutes. For example, in *J.Y. Interpretation No. 392*, to defend for prosecutor's –rather than judge's– power to detain criminal defendant, the Ministry of Justice relied upon the conservative readings of relevant provisions in the ICCPR and ECHR, arguing:

This concept was reflected in Article 5 of “the European Convention for the Protection of Human Rights” and Fundamental Freedom effective on September 3, 1953; in Article 9 of the United Nations’ “International Covenant on Civil and Political Rights” effective on March 23, 1976; and in Article 7 of “the Continental American Human Rights Convention” effective in June, 1978. They required that an arrested criminal suspect be promptly surrendered to “a judge or an official exercising judicial power prescribed by law.” Apparently, the abovementioned international conventions and treaties have determined that the organ accepting the surrender of a detainee shall not be limited to a judge.⁴⁹

Interestingly however, the majority opinion in *J.Y. Interpretation No. 392* did not agree with such a reading that allowed prosecutorial detention. It referred to a decision by the European Court of Human Rights that interpreted the same provision in the ECHR and rebutted the reading by the Ministry of Justice. It said:

[T]he judgment rendered by the European Human Rights Court in

48. *J.Y. Interpretation No. 623* (2007), available at http://www.judicial.gov.tw/constitutional-court/en/p03_01.asp?expno=623.

49. *J.Y. Interpretation No. 392* (1995), available at http://www.judicial.gov.tw/constitutional-court/en/p03_01.asp?expno=392.

the Pauwels Case (1988) indicated that, if the law confers the authority of criminal investigation and indictment on the same officer, even though the officer exercises powers independently, his neutrality in carrying out his duties should be considered highly suspect, hence, it violates the provision “other officer authorised by law to exercise judicial power” referred to in Article 5, Paragraph 3, of said Convention. (G. Pauwels Case, Judgment of May 26, 1988, COUNCIL OF EUROPE YEARBOOK OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS, 148-150 [1988]). That is, not to confer on the officer the right to detain people . . .⁵⁰

Undeniably, the reference to international human rights laws often adds up to the domestic list of constitutionally protected rights and thus provides better rights protection. However a possibility –perhaps quite high– still exists that courts may use international human rights laws as a way to limit domestic constitutional protections for the existing rights. It is certainly a double-edged sword.

However for now, since the Constitutional Court in Taiwan has not yet relied upon much of international human rights laws, the existence of such risk is merely speculative. Nor shall we be concerned with democratic deficit that has often been raised in other judicial contexts where the reference to international human rights laws is not only frequent but also substantial.⁵¹ As the following discussion demonstrates, given the rather “domesticated” nature of the Constitution and the isolated status of Taiwan, citizens and NGOs have begun advocating domestic incorporation of international human rights laws. Much opened judicial reference to international human rights laws is expected and welcomed.

IV. PROGRESSIVE NGOS MOVEMENTS TOWARDS STATUTORY INCORPORATION OF INTERNATIONAL HUMAN RIGHTS LAWS

Because of the statehood issue, the government in Taiwan has since the 1970s stood in no chance in acceding to any international human rights treaties particularly those associated with the UN. Interestingly however, the last decade has witnessed a series of unilateral declarations in accession to major international treaties by the Taiwanese government. The most recent example was the ratification of both covenants, ICCPR and ICESCR, in May

50. *Id.*

51. The concerns with democratic deficits are typically associated with judicial reference to nonbinding international laws in that decision-making powers of political branches would be bypassed. *See, e.g.,* Young, *supra* note 5; McGinnis & Somin, *supra* note 2; Larsen, *supra* note 3.

2009.⁵² Even much earlier, in 1993, for example, without having been invited by any other states or international organizations, the Taiwanese government voluntarily announced its full compliance to the Convention on the Rights of the Child (CRC) that just entered into force in 1990 and became the largest treaty with 193 member states among all human rights treaties.⁵³ In 1995, the government even wrote to the UN to inquire the possibility of its accession into the treaty. Not surprisingly, the answer was no.

Similarly in 2005, the Taiwanese legislature agreed to accede to the World Health Organization Framework Convention on Tobacco Control (FCTC), and the official announcement of accession was made by President in March. But the instrument of accession that was sent to UN Secretary General Kofi Annan has never heard any answer back.⁵⁴ In 2007, the accession into the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) was passed by an overwhelming parliamentary majority and formally announced by President.⁵⁵ The instrument of accession was again rejected by the UN on the ground that Taiwan (ROC) was not a state recognized by it. Notwithstanding the rejection, the government released its first state report on its compliance in March 2009,⁵⁶ and invited three experts, all of whom were ex-CEDAW committee members, for review.⁵⁷

Given that Taiwan has been blocked from its participation in the UN treaty regimes, for what reasons has the government kept trying to join these international human rights treaties and even vowed its unilateral compliance? What is to be gained and who will be the beneficiary? As the following illustrates, it has been primarily the strategy of rights advocacies by domestic NGOs in pushing the government to incorporate international human rights laws into domestic constitutional and legal regime.⁵⁸

52. See *supra* note 23. It should be noted here that there has also been a very strong NGOs movement towards the ratification and statutory incorporation of the two Covenants. Due to the research schedule, however, this paper has not included them into the discussion.

53. As of December 2008, 193 countries have ratified CRC, including every member of the United Nations except the United States and Somalia.

54. See Committee Record, 95 [LEGISLATIVE YUAN GAZETTE] 267, 271 (2005).

55. Press Release, Ministry of Foreign Affairs, Ministry of Foreign Affairs Proactively Promotes Taiwan's Participation in the "Convention on the Elimination of All Forms of Discrimination against Women" (Apr. 30, 2007), <http://www.mofa.gov.tw/webapp/content.asp?cultem=25857&mp=6>.

56. Art. 18 requires state parties submit a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention within one year after entry. Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13, art. 18.

57. The three experts are Hanna Beate Schöpp-Schilling from Germany, Anamah Tan from Singapore, and Heisoo Shin from South Korea. The review session held on March 27, 2009 and open to public.

58. The significance of NGOs rights advocacies in spreading, implementing and incorporating international human rights laws has been long noticed and recorded. See, e.g., Harold Hongju Koh,

A. *NGOs and the CRC Movement*

The CRC was first mentioned in 1992 by an alliance of NGOs whose mission at the time was to end child prostitution in Taiwan.⁵⁹ These NGOs began their campaign to end child prostitution, particularly child prostitutes from indigenous tribes, around 1985-86. The leading NGO was the Presbyterian Church that organized the first international conference on “prostitution and Asian tourism” joined by NGOs from thirteen countries in 1985. What followed was a series of local protests and rescues for child prostitutes.⁶⁰ Despite these local NGO efforts, child prostitution was still in sharp increase.

The beginning of 1990s saw a growing international concern with child prostitution in Asia. The United Nations Children’s Fund (UNICEF), for instance, published a report in 1993, indicating a number of 100,000 child prostitutes in Taiwan.⁶¹ The Reader’s Digest also reported that the problem of child prostitution in Taiwan was as equally serious as that of Thailand, Philippine, and Sri Lanka. At about the same time, the International Campaign to End Child Prostitution in Asian Tourism (ECPAT) was formed in 1990 in conjunction with an international conference in Bangkok, and the next year, the ECPAT Taiwan was established. It was through this international collaboration as well as what followed that the Taiwanese NGOs learned about the CRC and the related strategies to end child prostitution.⁶²

In the late 1980s, the NGOs called for enacting the Youth Welfare Act and for amending the Child Welfare Act to lend legal protection for child prostitutes.⁶³ Having experienced in transnational collaborations with NGOs of other countries, the NGOs in Taiwan, particularly under the leadership of the ECPAT Taiwan, began advocating the CRC and utilizing its rhetoric and

The 1998 Frankel Lecture: Bringing International Law Home, 35 HOUS. L. REV. 623 (1998-1999); and Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms into Domestic Practice: Introduction*, in THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE 1, 17-22 (Thomas Risse et al eds., 1999); and Steve Charnovitz, *Nongovernmental Organizations and International Law*, 100 AM. J. INT’L L. 348 (2006).

59. These NGOs include primary ones such as the Garden of Hope Foundation, Taiwan Branch of the International Campaign to End Child Prostitution in Asian Tourism (ECPAT Taiwan), Taipei Women’s Rescue Foundation (TWRF), and the Rainbow Project of the Presbyterian Church in Taiwan and many other nongovernmental organizations.

60. Two local NGOs, the Garden of Hope Foundation and the Taipei Women’s Rescue Foundation (TWRF), were established as a result of these events.

61. Although the number was proved inaccurate afterwards, it awakened many local NGO’s to respond to such a serious issue.

62. The relevant historical events and actions were documented in the website of the ECPAT Taiwan, Rigin & History, <http://www.ecpat.org.tw/english/history.htm> (last visited Nov. 28, 2009).

63. The Youth Welfare Act was enacted in 1989, and the amendment to the Child Welfare Act which was influenced by subsequent CRC-related movement was passed in 1993.

norms as a key strategy in their legal mobilization. In a statement released in 1992, they made three requests to the government: first, they asked the government to help them join in the international mechanism in ending child prostitutes; second, they asked the government to formally announce its respect to the CRC and to accede into it; and lastly, they asked the government to enact or revise domestic laws in accordance with the CRC.⁶⁴ In response to these demands, the government seriously contemplated the possibility of accession to the CRC and made a quite low-profiled inquiry to the UN. Having received a quite discouraging reply,⁶⁵ however, the government decided not to take any further actions. As a result, the focus of both the government and the NGOs was turned back to domestic incorporation of the relevant laws in accordance with the CRC.

The NGOs were very active in participating legislative process, and the 1993 amendment of the Child Welfare Act incorporated significant parts of the CRC rights and principles. Meanwhile, the government announced its full compliance to the CRC in 1993 and sought ways to accede to it. The answer from the UN, however, was not positive. Despite the failure, the NGOs continued to push forward Taiwan's accession, and the CRC has since occupied a prominent normative status regarding rights of the child. In all subsequent legal processes, whenever relevant laws were to be made or amended, the CRC has been always referred to and even served as a firm ground for such legal change.⁶⁶ Even the Constitutional Court referred to it twice in constitutional interpretations related to children's rights.⁶⁷

In 2000, the Taiwan Civil League of Promoting CRC that included more than twenty important NGOs particularly related to children's rights, women's rights and human rights in general was formed. It held the first summit of children's rights in 2001,⁶⁸ and continued incorporating the CRC into all legal discussions and participating, whenever possible, in the international meetings regarding the rights of the child.⁶⁹

64. Pei-Ling Chuang, *Chiu Yuan Chu Chi, Yung Pao Yang Kuang, Wu, Po-Hsiung Chiang Chou Mu Pai Wan Yuan Chih Yuan Pai Ho Chi Hua* [Rescue Child Prostitutes, Embrace the Sun, Wu, Po Hsiung Will Raise Millions to Support the Lily Program], UNITED DAILY NEWS, June 10, 1992, at 6.

65. The reply indicated that PRC would be the only legitimate member to join in the Convention.

66. For instance, in the legislative sessions, legislators often referred to the CRC in their discussions. See, e.g., 89(55) [LEGISLATIVE YUAN GAZETTE] 259, 277 (2000).

67. J.Y. Interpretation No. 587 (2004) (concerning the right of child to know his/her parents), and Interpretation No. 623 (2007) (concerning the constitutionality of prohibition of dissemination of sex-related materials to minor).

68. The details and agenda of the first summit are available at Erh Tung Jen Chuan Kao Feng Hui Yuan Chi [The Launch of the Summit of Children's Rights], <http://163.30.117.129/menlaw/ritdy.htm> (last visited Nov. 28, 2009).

69. The reports and details of Taiwan's NGOs participations in these international meetings are available at Erh Tung Jen Chuan Kao Feng Hui [The Summit of Children's Rights], <http://www.children-rights.org.tw/summit.php> (last visited Nov. 29, 2009).

B. *NGOs and the CEDAW Movement*

The CEDAW, also known as the Women's Convention, first caught the eyes of women activists in 1988 when they were busy with drafting the Act of the Equal Treatment of Both Sexes at Work.⁷⁰ Through researching foreign legal materials concerning equal rights of men and women in employment, research staffs and affiliated lawyers at the Awakening Foundation, the leading feminist organization in Taiwan, learned about the existence of the CEDAW.⁷¹ Intriguingly however, they paid no special attention to the Convention. Rather, they were more interested in borrowing specific equal rights provisions from many different national jurisdictions. Garnered by many women organizations, many pieces of equal rights legislation between sexes were enacted in the last two decades.⁷² Nevertheless, unlike the situation of children's rights, these legislative enactments on women's rights seldom mentioned nor referred to the CEDAW as one of the legal, moral or even policy grounds.

After the new millennium, women organizations began referring to the CEDAW. They did not, however, directly refer to any of its provisions or principles. Instead, "gender mainstreaming," a key platform adopted in the fourth World Conference on Women in 1995, was most discussed and referred to.⁷³ At the time, the government was pushing for government restructuring reforms, and women organizations utilized this concept in their advocacy for establishing an independent commission on gender equality.⁷⁴ In the course of this policy advocacy, many women activists, particularly feminist scholars who were familiar with or individually participated in the 1995 Conference, began extending relevant issues beyond gender mainstreaming.⁷⁵ By inviting their overseas feminist colleagues to the

70. It was adopted by the UN General Assembly on December 18, 1979, and entered into force on September 3, 1981. CEDAW is a widely signed human rights document, and by the end of 2008, the number of its member states reached 185.

71. The purpose of the Awakening Foundation and how it was involved with legislative drafting on the equal rights bills are available at Jen Shih Fu Nu Hsin Chih Chi Chin Hui [To Know Awakening Foundation] (Aug. 11, 2009), <http://blog.roodo.com/awakeningfoundation/archives/9728249.html>.

72. The aforementioned Hsingpie Kungtso Pintengfa [Act on Equal Treatment of Both Sexes at Work] (Taiwan) was a perfect example. Other acts such as Chiating Paoli Fangchihfa [Anti-Domestic Violence Act] (Taiwan), Hsingsaojao Fangchihfa [Act on Prevention of Sexual Harassment] (Taiwan), and Hsingpie Pinteng Chiaoyufa [Act on Equal Treatment of Both Sexes at School] (Taiwan).

73. For details of the platforms, see Fourth World Conference on Women, Sept. 4-15, 1995, *Beijing Declaration and Platform for Action*, U.N. Doc. A/CONF.177/20/Rev.1, available at <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>.

74. They also requested that all ministries and government agencies adopt the idea of "gender mainstreaming" to take gender as a factor seriously in their respective government functions. While the commission on gender equality is yet to be established now as of 2009, the idea of "gender mainstreaming" has been accepted into part of government operation, and every ministry and agency has one staff responsible for gender-specific matters such as gender statistics.

75. Particularly those in the Taiwanese Feminist Scholars Association, see Taiwanese Feminist

discussions, they further realized the primary status of the CEDAW regarding women's rights, and met with renowned women activists who also served as members to the CEDAW committee or the UN Commission on the Status of Women (CSW).⁷⁶

In April 2004, women organizations held a workshop to call for NGOs' participation to CSW meetings, and most importantly, to advocating the CEDAW incorporation into Taiwan.⁷⁷ In that summer, the National Alliance of Taiwan Women Associations (NATWA), a primary network organization that links to almost all women organizations in Taiwan took the lead in the advocacy of the CEDAW and other related mechanisms. An international conference was held among women organizations and scholars to discuss ways for Taiwan's accession to the CEDAW and its incorporation into the domestic legal regime.⁷⁸ By end of August, the Taiwan Civil League for promoting CEDAW (the League for CEDAW) was formed among major NGOs concerning women's rights, children's rights and human rights in general.⁷⁹

The League for CEDAW successfully put the CEDAW accession into the government's agenda. Several key activists in the League served as advisors for women's rights and human rights to the Executive Yuan, the cabinet office in Taiwan.⁸⁰ They worked to win the government's endorsement on acceding to the CEDAW. It should be noted that between 2000 and 2008, the Democratic Progressive Party, a formerly opposition party, led the government with a special focus on the protection of human rights. As part of the policy, a wide array of human rights organizations and activists were given consultative status and invited to policy discussions in the government. This made easier the advocacy for CEDAW accession. In order to broaden the support for legislative ratification, the League for CEDAW took a strategic step to expand its alliance to other NGOs.⁸¹

Scholars Association, *Li Nien Tui Tung Cheng Kuo [The Achievements over the Years]*, <http://www.feminist.sinica.edu.tw/pusha.htm> (last visited Nov. 28, 2009).

76. Some of those previous members of the CEDAW committee were invited to Taiwan more than once. Hanna Beate Schöpp-Schilling from Germany was a key actor among others.

77. More details for how this alliance was created and began the advocacy for the CEDAW are available at Pi-Chen Ho, *Tui Tung Wo Kuo Chia Ju CEDAW Te Tse Lueh Yu Nu Li [Strategies and Efforts for Promoting Our Accession to CEDAW]* (Oct. 6, 2009), <http://www.natwa.org.tw/about3.php>.

78. *See id.*

79. They include: NATWA, the Awakening Foundation, the Taipei Chapter of the Awakening Foundation, Chang Fo-Chuan Center for the Study of Human Right, Human Rights Program Center at Soochow University, Women's Research Program Center at National Taiwan University, ECPAT Taiwan, Taiwan Women's Film Association, the Garden of Hope Foundation, and the Taiwanese Feminist Scholars Association.

80. A key person was Professor Chen, Jau-Hwa, a human rights activist and a professor of philosophy at Human Rights Program Center at Soochow University.

81. They included: the YWCA of Taiwan, the National Council of Women of Taiwan R.O.C., the Collective of Sex Workers and Supporters (COSWAS), and the Press Statement Alliance for Human Rights Legislation for Immigrants and Migrants. It is interested to note here that the ways that these

The victory came in the beginning of 2007. On January 5, the Legislative Yuan passed the accession, followed by presidential signature. On February 27, the Ministry of Foreign Affairs attempted to submit the accession to the Secretary-General of the United Nations for deposition. Regrettably however, the government's request was denied by Secretary-General Ban Ki-moon. Based upon the UN Resolution 2758 that recognized the PRC as the only legitimate representative of China to the UN, Mr. Ban contended that Taiwan was not qualified for being a state party to the CEDAW.⁸² Notwithstanding the defeat, the League for CEDAW continued its advocacy and further pressed for the government's draft on its initial state report. The first official report was published in March 2009 and covered all of substantial articles (Arts. 1-16) in the CEDAW. An international symposium was held with invited ex-CEDAW committee members to examine such a report.⁸³

C. *NGOs, the Anti-tobacco Movement and the FCTC*⁸⁴

Social movements emerged in Taiwan in tandem with political reforms in the 1980s. Anti-tobacco movement has never been strong, let alone health rights or patient's rights movement. In 1984, the John Tung Foundation (JTF), the first anti-tobacco nongovernmental organization was established in Taiwan and headed by Mr. David Yen who had a trained Juris Doctor from the United States and became an extremely successful businessman.⁸⁵ A

NGOs discussed about CEDAW were quite different from the earlier primary groups in the League. They were more specific in referring to particular rights and provisions in the CEDAW with conflicts of rights to other women in mind rather than promoting the Convention as a whole.

82. The news about this rejection was never formally released by the government. However, the women organizations have spread the news out and organized among themselves to urge the government for self compliance. Relevant information is available at CEDAW Taiwan Kuo Chia Pao Kao Chi Chuan Chia Tzu Hsun Hui Yi [CEDAW Taiwan Initial Report Symposium] (Mar. 26-27, 2009), http://wrp.womenweb.org.tw/Func02_Show.asp?pid=8.

83. For the details of the report and the expert meeting, see *id.*

84. The WHO Framework Convention on Tobacco Control (FCTC) is the first treaty negotiated under the treaty regime of the World Health Organization. It was adopted by the World Health Assembly on 21 May 2003 and entered into force on 27 February 2005. As of now, it has 167 parties. Further information is available at About WHO Framework Convention on Tobacco Control, <http://www.who.int/fctc/about/en/index.html> (last visited Nov. 28, 2009). Although the FCTC is often not defined as part of core international human rights treaties, it is included into the discussion primarily because citizens' advocacy for this treaty's accession was perhaps among some of the strongest in Taiwan and the transnational nature of its advocacy was also most apparent.

85. Mr. David Yen was born in Shanghai, China in 1921. After World War II, he went to the United States for a law degree and later moved to Hong Kong as well as Brazil for his business in trade. In the 1960s, in response to a call for overseas Chinese to return by the Nationalist government led by Chiang, Kai-Shek, Mr. Yen and his family moved back to Taiwan. He died in September 2002. For more information on Mr. Yen, see HUI-CHUNG CHANG & CHING-HENG LIU, KUNG YI TE KUEI CHI [THE WAY OF THE PUBLIC SPIRIT] (2002), and JTF's Introduction, <http://www.jtf.org.tw/JTF01/01-04.asp> (last visited Nov. 28, 2009).

victim of tobacco, Mr. Yen already in his mid-60s became devoted in the JTF's pro bono works.

In the mid 1980s, the U.S. government under the pressure of tobacco companies began a series of negotiations with Asian countries, particularly Japan, Taiwan and South Korea to open their respective tobacco markets. Japan opened its market in 1986, Taiwan in 1987 and South Korea in 1988.⁸⁶ Mr. Yen attended a first international anti-tobacco conference in 1987 and realized that only through international collaborative efforts would bring victory to anti-tobacco movements.⁸⁷ Mostly out of his own pocket, an international workshop with participants from major Asian countries was held in June 1989, followed by the establishment of the Asia Pacific Association for the Control of Tobacco (APACT), the first regional anti-tobacco NGO in the region. In the word of Mr. Yen, the APACT's "main objective was to unite Asian anti-tobacco strengths to fight together the international tobacco's invasion to Asia."⁸⁸

The first draft on the Tobacco Control Act was researched and released by the JPF in 1988. It took almost ten years to pass in the Legislative Yuan. The Act became effective in 1997 and the taxation on tobacco was put into realization in 2002. Meanwhile, the APACT took the lead in anti-tobacco movement in Asia and held regional conferences every two or three years. In 1999, it organized a major international symposium on transnational litigation on tobacco torts.⁸⁹ In the same year, the World Health Assembly began a work group on the drafting of the Framework Convention on Tobacco Control (FCTC).⁹⁰ Before the FCTC was adopted in 2003 and came into force in 2005, the World Health Organization held many particularly regional negotiations.⁹¹ The APACT under the JTF leadership took this process very seriously and actively sought effective ways of engagement. In 2004, the JTF invited regional leading anti-tobacco organizations to discuss how to make Asian states accede to and comply with the FCTC.⁹² On the part of Taiwan, the JTF labored tirelessly to seek official accession to the FCTC even before its coming into effect. In January 2005, the Legislative Yuan passed the accession to the FCTC. In that May,

86. See WEN-CHUN LIN & CHIEN-FU CHAN, YEN TSAO CHAN CHENG [THE TOBACCO WAR OF TAIWAN] 98-114 (2002).

87. *Id.* at 99.

88. A direct quotation from the JTF's Introduction, *supra* note 85.

89. LIN & CHAN, *supra* note 86, at 109.

90. For further elaboration of the FCTC and how it came into being, see Chang-fa Lo, *Establishing Global Governance in the Implementation of FCTC: Some Reflections on the Current Two-Pillar and One-Roof Framework*, 1 ASIAN J. WTO & INT'L HEALTH L. & POL'Y 569 (2006).

91. *Id.* at 572-74.

92. The details of this advocacy are available at John Tung Foundation, *Yen Hai Fang Chih Fa Te Chu* [*Special Zone for the Tobacco Control Act*], <http://www.jtf.org.tw/JTF03/New91/03-08.asp> (last visited Nov. 28, 2009) [hereinafter *Special Zone*].

the government sent the instrument to UN Secretary General Kofi Annan, but has never received any reply.⁹³

Notwithstanding the setback to the accession, the JTF continued its domestic anti-tobacco movement with the FCTC, now an even stronger legal ground. Soon after the legislative approval of accession, the JTF complained to the government that the existing Tobacco Control Act was not met with the FCTC, thus requiring an immediate large-scale revision. It advocated for a huge expansion of smoke-free zone and stricter regulations on tobacco advertisement. Despite relentlessly counter-lobbying by tobacco companies, the JTF stood firm with the FCTC and finally succeeded in getting the revision in June 2006.⁹⁴ Beginning in 2009, Taiwan has entered into a new era with most smoke-free places and strongly tobacco-controlled.

D. *Global-minded NGOs and Citizens Leading the Change*

The dominant roles played by NGOs and citizens illustrated in the aforementioned three movements are evident. These NGOs and citizens preceded the government in learning about international treaties and advocated much more strongly for treaty accessions as well as domestic statutory incorporation. Even after the attempts at accession failed, these NGOs continued pressing the government to voluntary compliance with the treaties and incorporation into domestic laws. In the course of their rights advocacies, these NGOs and citizens have become much more informed, more transnational in their knowledge and connections, and last but not the least, pivotal in mediating transnational/constitutional norms.

As a result of its international isolation, the Taiwanese government has stood in no better position than NGOs and citizens in accessing information about current or emerging international treaties. In the three cases illustrate above, it was clear that the NGOs learned about international treaties and transnational collaborations not by way of the government but mainly through their transnational connections. For instance, in the CRC movement, the ECPAT international campaign played a pivotal role in disseminating relevant information particularly regarding the CRC that was still in the very early stage. In the case of the CEDAW, active members of women organizations were able to participate in the 1995 World Conference on their own and became associated with transnational women networks. These women NGOs then utilized their connections to international women organizations to enhance their knowledge on relevant CEDAW developments and agendas.

93. See Committee Record, *supra* note 54.

94. Further details are available at *Special Zone*, *supra* note 92.

In addition, the transnational nature of these NGOs' rights advocacies has been quite pronounced.⁹⁵ Their international networking is much superior and efficient in many ways. For example, the international campaign of ECPAT and its affiliated Taiwan ECPAT were pivotal to the introduction of the CRC to Taiwan. In the CEDAW movement, women activists utilized their personal and professional connections to gain access to transnational collaborations, and this strategy was key to the successful introduction of the CEDAW into Taiwan. Similarly, the JTF helped establish the APACT, the first anti-tobacco regional organization in Asia, which later became indispensable in keeping the JTF staying influential in the regional alliance and being informed of international updates.

Last but not the least, in all three movements, the NGOs worked not only for treaty accession but also for domestic statutory incorporation. Their rights advocacies have not focused only on one side but rather have been trying to mediate the interfaces of both international human rights laws and domestic constitutional/legal rights protections. In both CEDAW and FCTC moments, despite the rejection, the NGOs continued their efforts in treaty accession and even more importantly, persisted in incorporating relevant Convention provisions into domestic statutes and policies. The same pattern is observable in the CRC movement. Even without official accession, relevant laws have been made or revised pursuant to the CRC.

It is clear that NGOs and citizens have been pivotal in mediating international human rights and domestic constitutional/legal rights. In the course of their rights advocacies, they have taken commitments as well as responsibilities to make Taiwan into part of international human rights community and incorporating these international human rights laws firmly into the domestic legal soil. What these NGOs have built is not merely a domestic constitutional regime providing only domestic constitutional protections for individual rights. Rather, with their domestic/transnational natures of agency, they have built an intermediating transnational/constitutional regime where both international and domestic human rights laws meet with each other.

V. CONCLUSION

This paper has examined whether and to what extent, transnational constitutionalism—particularly regarding to the convergence of domestic constitutional norms and international human rights—has taken place in Taiwan. It finds that the ROC Constitution was rather “domesticated” and

95. The transnational nature of domestic NGOs has become quite common, and certainly not only in Taiwan. Steve Charnovitz called these domestic NGOs as international-minded NGOs. See Charnovitz, *supra* note 58, at 363.

not much constitutional codification of international human rights laws has been undertaken in the Constitution or subsequent constitutional revisions in the 1990s and 2000s.

It then examines judicial adoption of international human rights laws in the course of constitutional interpretations by the Constitutional Court. However the empirical research shows that judicial reference to international human rights laws was very moderate: 1% in holdings or majority opinions and 3.25% in separate opinions. Notwithstanding limited frequency, when the Constitutional Court referred to international human rights laws in the holdings or majority opinions, it often came with the ruling to invalidate challenged statutes, rules or precedents. Judicial reference to international human rights laws have functioned to create new rights, provide further arguments for rights protection, set the benchmark for legal change, and at times limit other rights.

The paper also moves to inquire if and the extent to which statutory incorporation of international human rights laws has taken place in Taiwan. It not only confirms the occurrence –and even the increase– of statutory incorporation of various human rights treaties but also finds that the key actor behind this has been NGOs in the course of their rights advocacy. By examining NGOs' roles in the three movements regarding CRC, CEDAW and FCTC, this paper finds that the NGOs and citizens have become much more informed, more transnational in their knowledge and connections, and even playing pivotal roles in mediating transnational/constitutional norms.

What has been taken place in Taiwan regarding the convergence of international human rights law and domestic constitutions should be defined as a rather distinctive model of “bottom-up transnational constitutionalism.” What these NGOs have built is not merely a domestic constitutional regime providing only domestic constitutional protections for individual rights. Rather, with their domestic/transnational natures of agency, they have built an intermediating transnational/constitutional regime where both international and domestic human rights laws meet with each other. It is uncontested that a constitutional regime spirited by international human rights has been headed for a good start in Taiwan. Much effort to ensure actual and detailed implementation of these specific rights certainly await for further and even more enthusiastic citizen engagements.

REFERENCES

- About WHO Framework Convention on Tobacco Control. (n.d.). Retrieved from <http://www.who.int/fctc/about/en/index.html>
- Atkins v. Virginia, 536 U.S. 304 (2002).
- Bryde, B.-O. (2005). The constitutional judge and the international constitutionalist dialogue. *Tulane Law Review*, 80, 203-220.
- CEDAW Taiwan Kuo Chia Pao Kao Chi Chuan Chia Tzu Hsun Hui Yi [CEDAW Taiwan Initial Report Symposium]. (2009, March 26-27). Retrieved from http://wrp.womenweb.org.tw/Func02_Show.asp?pid=8
- Chang, H.-C. & Liu, C.-H. (2002). *Kung Yi Te Kuei Chi [The way of the public spirit]*. Taipei, Taiwan: JTF.
- Chang, W.-C. (2005). Constructing federalism: The EU and US models in comparison. *EurAmerica*, 35, 733-773.
- Chang, W.-C. (2005). The role of judicial review in consolidating democracy: The case of Taiwan. *Asia Law Review*, 2(2), 73-88.
- Charnovitz, S. (2006). Nongovernmental organizations and international law. *American Journal of International Law*, 100, 348-372.
- Chiating Paoli Fangchihfa [Anti-Domestic Violence Act] (Taiwan).
- Chiu, H. (2006). *Hsien Tai Kuo Chi Fa [Modern international law]* (2nd ed.). Taipei, Taiwan: Sanmin.
- Claes, M. (2006). *The national courts' mandate in the European Constitution*. Portland, OR: Hart.
- Committee record. (2000). *Legislative Yuan Gazette*, 89(55), 259-297.
- Committee record. (2005). *Legislative Yuan Gazette*, 95(13), 267-288.
- Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 13, art. 18.
- Chuang, P.-L. (1992, June 10). Chiu Yuan Chu Chi, Yung Pao Yang Kuang, Wu, Po Hsiung Chiang Chou Mu Pai Wan Yuan Chih Yuan Pai Ho Chi Hua [Rescue child prostitutes, embrace the sun, Wu, Po-Hsiung will raise millions to support the Lily Program]. *The United Daily News*, p. 6.
- Erh Tung Jen Chuan Kao Feng Hui [The Summit of Children's Rights]. (n.d.). Retrieved from <http://www.children-rights.org.tw/summit.php>
- Erh Tung Jen Chuan Kao Feng Hui Yuan Chi [The launch of the Summit of Children's Rights]. (n.d.). Retrieved from <http://163.30.117.129/menlaw/ritdy.htm>

- Fourth World Conference on Women, Sep. 4-15, 1995, *Beijing Declaration and Platform for Action*, U.N. Doc. A/CONF.177/20/Rev.1, available at <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>
- G.A. Res. 2758 (XXVI), U.N. Doc. A/8429 (Oct. 25, 1971).
- Ginsburg, T., Chernykh, S., & Elkins, Z. (2008). Commitment and diffusion: How and why national constitutions incorporate international law. *University of Illinois Law Review*, 2008, 201-238.
- Hamdan v. Rumsfeld, 548 U.S. 557 (2006).
- Hannum, H. (1995-1996). The status of the Universal Declaration of Human Rights in national and international law. *Georgia Journal of International and Comparative Law*, 25, 287-397.
- Henkin, L. (1990). *The age of rights*. New York, NY: Columbia University Press.
- Ho, P.-C. (2009, October 6). *Tui Tung Wo Kuo Chia Ju CEDAW Te Tse Lueh Yu Nu Li* [Strategies and efforts for promoting our accession to CEDAW]. Retrieved from <http://www.natwa.org.tw/about3.php>
- Hsingpie Kungtsu Pintengfa [Act on Equal Treatment of Both Sexes at Work] (Taiwan).
- Hsingpie Pinteng Chiaoyufa [Act on Equal Treatment of Both Sexes at School] (Taiwan).
- Hsingsaojao Fangchihfa [Act on Prevention of Sexual Harassment] (Taiwan).
- International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171, art. 17.
- Jackson, V. C. (2004). Constitutional dialogue and human dignity: States and transnational constitutional discourse. *Montana Law Review*, 65, 15-40.
- Jen Shih Fu Nu Hsin Chih Chi Chin Hui [To know Awakening Foundation]. (2009, August 11). Retrieved from http://blog.roodo.com/awakening_foundation/archives/9728249.html
- JTF's introduction. (n.d.). Retrieved from <http://www.jtf.org.tw/JTF01/01-04.asp>
- J.Y. Interpretation No. 329 (1993), available at http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=329
- J.Y. Interpretation No. 329 (1993) (Chang, Te-Sheng, J., dissenting in part).
- J.Y. Interpretation No. 329 (1993) (Li, Chih-Peng, J., dissenting).
- J.Y. Interpretation No. 372 (1995), available at http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=372

- J.Y. Interpretation No. 392 (1995), available at http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=392
- J.Y. Interpretation No. 549 (2002), available at http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=549
- J.Y. Interpretation No. 578 (2004), available at http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=578
- J.Y. Interpretation No. 582 (2004), available at http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=582
- J.Y. Interpretation No. 587 (2004), available at http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=587
- J.Y. Interpretation No. 623 (2007), available at http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=623
- Koh, H. H. (1998-1999). The 1998 Frankel Lecture: Bringing international law home. *Houston Law Review*, 35, 623-681.
- Koh, H. H. (2004). International law as part of our law. *American Journal of International Law*, 98, 43-56.
- Koh, H. H. (2004-2005). The ninth annual John W. Hager Lecture, the 2004 term: The Supreme Court meets international law. *Tulsa Journal of Comparative & International Law*, 12, 1-22.
- Larsen, J. L. (2004). Importing constitutional norms from a "wider civilization": Lawrence and the Rehnquist Court's use of foreign and international law in domestic constitutional interpretation. *Ohio State Law Journal*, 65, 1283-1327.
- Lavoie v. Canada, [2002] 1 S.C.R. 769 (Can.).
- Lawrence v. Texas, 539 U.S. 558 (2003).
- Li Nien Tui Tung Cheng Kuo [The achievements over the years]. (n.d.). Retrieved from <http://www.feminist.sinica.edu.tw/pusha.htm>
- Liao, F. F.-T. (2005). *Kuo Chi Jen Chuan Fa: Yi Ti Fen Hsi Yu Kuo Nei Shih Chien* [International human rights laws: Issues and practices]. Taipei, Taiwan: Angle.
- Lillich, R. B. (1985-1986). Invoking international human rights law in domestic courts. *University of Cincinnati Law Review*, 54, 367-415.
- Lin, W.-C., & Chan, C.-F. (2002). *Yen Tsao Chan Cheng* [The tobacco war of Taiwan]. Taipei, Taiwan: JTF.
- Lo, C.-f. (1994). *Mao Yi Kuan Hsi Chih Fa Lu Wen Ti* [Legal issues of trade relations]. Taipei, Taiwan: Yuehtan.

- Lo, C.-f. (2006). Establishing global governance in the implementation of FCTC: Some reflections on the current two-pillar and one-roof framework. *Asian Journal of WTO & International Health Law and Policy*, 1, 569-587.
- McGinnis, J. O., & Somin, I. (2008-2009). Democracy and international human rights law. *Notre Dame Law Review*, 84, 1739-1798.
- Ministry of Foreign Affairs. (2007, April 30). Ministry of Foreign Affairs proactively promotes Taiwan's participation in the "Convention on the Elimination of All Forms of Discrimination against Women" [Press release]. Retrieved from <http://www.mofa.gov.tw/webapp/content.asp?cuItem=25857&mp=6>
- R. v. Lucas* [1998], 1 S.C.R. 439 (Can.).
- Re, E. D. (2002-2003). The Universal Declaration of Human Rights: Effective remedies and the domestic courts. *California Western International Law Journal*, 33, 137-170.
- Republic of China (Taiwan), Government Information Office. (2005, May 20). President Ma signs instruments of ratification of two covenants on human rights [Press release]. Retrieved from <http://www.taiwanembassy.org/ct.asp?xItem=92536&ctNode=463>
- Rigin & history. (n.d.). Retrieved from <http://www.ecpat.org.tw/english/history.htm>
- Risse, T., & Sikkink, K. (1999). The socialization of international human rights norms into domestic practice: Introduction. In T. Risse, S. C. Ropp, & K. Sikkink (Eds.), *The power of human rights: International norms and domestic change* (pp. 1-38). Cambridge, England: Cambridge University Press.
- Roper v. Simmons*, 543 U.S. 551 (2005).
- Slyz, G. (1995-1996). International law in national courts. *New York University Journal of International Law and Politics*, 28, 65-113.
- Spiro, P. J. (2002-2003). Treaties, international law, and constitutional rights. *Stanford Law Review*, 55, 1999-2028.
- Steiner, H. J., Alston, P., & Goodman, R. (2007). *International human rights in context: Law, politics & morals* (3rd ed.). New York, NY: Oxford University Press.
- Trang, D. V. (1995). Beyond the historical justice debate: The incorporation of international law and the impact on constitutional structures and rights in Hungary. *Vanderbilt Journal of Transnational Law*, 28, 1-43.

- Tsagourias, N. (Ed.). (2007). *Transnational constitutionalism: International and European models*. Cambridge, England: Cambridge University Press.
- Vereshchetin, V. S. (1998). Some reflections on the relationship between international law and national law in the light of new constitutions. In R. Müllerson, M. Fitzmaurice & M. Andenas (Eds.), *Constitutional reform and international law in central and eastern Europe* (pp. 5-13). The Hague: The Netherlands: Kluwer Law International.
- Vick, D. W. (2002). The Human Rights Act and the British Constitution. *Texas International Law Journal*, 37, 329-372.
- Waters, M. A. (2007). Creeping monism: The judicial trend toward interpretative incorporation of human rights treaties. *Columbia Law Review*, 107, 628-705.
- John Tung Foundation, Yen Hai Fang Chih Fa Te Chu [Special zone for the Tobacco Control Act]. (n.d.). Retrieved from <http://www.jtf.org.tw/JTF03/New91/03-08.asp>
- Yeh, J.-R., & Chang, W.-C. (2008). The emergence of transnational constitutionalism: Its features, challenges and solutions. *Penn State International Law Review*, 27, 89-124.
- Young, E. A. (2003). The trouble with global constitutionalism. *Texas International Law Journal*, 38, 527-546.
- Young, E. A. (2007-2008). Supranational rulings as judgments and precedents. *Duke Journal of Comparative & International Law*, 18, 477-519.
- ZHONGHUA MINGUO XIANFA [CONSTITUTION OF THE REPUBLIC OF CHINA], arts. 22, 38, 57-58, 63, 141, available at http://www.judicial.gov.tw/CONSTITUTIONALCOURT/en/p07_2.asp?lawno=36 (last visited Nov. 27, 2009).
- ZHONGHUA MINGUO XIANFA TSENGHSIU TIAOWEN [THE ADDITIONAL ARTICLES OF THE CONSTITUTION OF THE REPUBLIC OF CHINA] art. 10, sec. 6.

