

Dialogue and Bargain: Mapping the International Human Rights Law to Understand the Implementation of Universal Human Rights Conventions in Taiwan

*Vivianne Yen-Ching Weng**

United Nations core human rights treaties are successively implemented in Taiwan. While their effect within the national legal order has been accepted, in principle, by both supreme courts, their direct application in individual cases is still pending. However, a legal order based on independent pyramid hierarchy can no longer explain the contemporary functioning of human rights law. This paper aims at drawing and interpreting the dynamic map of international human rights law, using the example of Europe where the mechanisms are relatively developed. On the one hand, the universal values are merely temporary conclusion drawn from conflicting views, without being frozen in time or fixed in space. On the other hand, the relative views are being penetrated by the universal values and being renewed through dialogue and bargain process. Implement human rights treaties consists of active dialogue and bargaining. Before a consensus can be reached, there are disputes and fragments around a same concept, constituting an “orderly plurality”.

Implementation of human rights treaties creates a chance for Taiwan to develop its bottom-up consensus-building along with its yet monopolized judicial review. The experiences of France can well demonstrate how the conventionality review has contributed to a dialogue on human rights between different national and international institutions. On this map of dialogue, national courts do not have to sacrifice crucial national principles or specificity based on historical factors. Taiwan can hardly find a place in the international community, but its rapid evolution in rule of law and human rights protection can well position it there, for

* Assistant Professor, Department of Political Science, National Chengchi University.
E-mail: vycweng@nccu.edu.tw

judges are the most “internationalizable” power. The future of human rights treaties resides in national practices, and Taiwan should effectively participate in the shaping of universal human rights norms. It is not a constitutionalized list of rights nor a real accession to a treaty that matters, but a judicial power involved in this dialogue map does.

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