

The Role of the Parliament in the Area of Foreign Affairs: A Comparative Study of Germany and Taiwan

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Abstract

For the past several centuries, the national executive has played the principal role in the area of foreign affairs. The parliament has mainly confined to approval or rejection of engagements proposed by the executive. With the advent of international society and globalization there is an apparent trend in the international community toward intensified democratic participation in government, since the treaty and other forms of international cooperation may often have major impact on internal affairs. This trend toward democratization usually presents itself in a more active role for the parliament. The purpose of this article is to address the issue: To what extent the movement toward increased parliamentary participation is adequate in the area of foreign affairs? The author investigated this question by comparing the Executive-Legislative relationship in the field of foreign affairs on the Germany's and Taiwan's Constitutions. The paper is divided into five main sections. Section 1 provides some background information about the beginning of the project. Section 2 outlines the German constitutional framework for the foreign relations power with relevant decisions of the German Federal Constitutional Court. Section 3 explores position and interplay of the parliament and executive branch in foreign affairs on Taiwan's constitutional system. The author analyzes Judicial Yuan Interpretation No. 329 and some selected Taiwan's practice relating to foreign relations power to find out features of the Legislative Yuan's role in foreign affairs. This Section also addresses the issue concerning applicability of essentiality theory

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(Wesentlichkeitstheorie), which is a concept originated in Germany and used by Judicial Yuan to define which international agreement should be sent to the Legislative Yuan for deliberation, in the field of foreign affairs. Section 4 discusses the role of the Legislative Yuan in the making and operation of Cross-Strait policy and agreement. The author comments on several versions of a Cross-strait Agreement Supervisory Act. Finally, Section 5 outlines some suggestions for future development.

Keywords: foreign affairs, separation of powers, functional approach, principle of loyalty of constitutional organs, essentiality theory (Wesentlichkeitstheorie), parliamentary supervision, treaty, agreements between Taiwan and mainland China