

A 'Chinese' affair: scrutiny needed

Written by Chen Rong-jye 陳榮吉

Tuesday, 23 July 2013 08:58

The recent signing of a cross-strait service trade agreement, following closed-door negotiations has caused an uproar in Taiwan. President Ma Ying-jeou (馬英九) says that if the agreement falls through, it will have a big negative impact on Taiwan's credibility in the international community.

In making such a threat, Ma is either taking the public for fools, or he is fooling himself. Ma is in the habit of saying that both sides of the Taiwan Strait belong to the same country. If that is so, any cross-strait agreement must be a domestic "Chinese" affair, and in that case, what does it have to do with "credibility in the international community?"

In its annual reports to the US Congress in recent years, the US-China Economic and Security Review Commission says that Taiwan has become economically reliant on China, and that this reliance is desirable from China's point of view.

While the US views trade relations across the Taiwan Strait from a strategic height, Ma is more concerned with the idea that China is offering concessions for Taiwan's benefit and with establishing a historic legacy for his presidency.

To this end, he is not shy of pushing the legislature around by telling lawmakers to approve the service trade pact in its entirety, without making any amendments.

Ma deserves to be condemned for abusing his authority in this way.

According to Article 63 of the Constitution of the Republic of China, "The Legislative Yuan shall have the power to decide by resolution upon ... bills concerning ... treaties and other important affairs of the State."

Article 5 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area (兩岸人民關係條例) says: "Where the content of the agreement requires any amendment to laws or any new legislation, the administration authorities of the agreement shall

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submit the agreement through the Executive Yuan to the Legislative Yuan for consideration.”

Given that the legislature has constitutional and statutory powers to scrutinize, consider and vote on the service trade agreement, what mandate does Ma have to say that lawmakers can express their opinions about the agreement, but cannot amend it?

Most people in Taiwan agree that Ma is an incompetent leader. While some might forgive a nation's leader for being incapable, if he leads the country off in the wrong direction, with disastrous consequences, that is definitely not forgivable.

Let us remember how Ma flashed victory Vs and shouted: “We've won” when the results of the presidential election came out.

From then on, he has been headed in the wrong direction, and he has forgotten that a president only has authority because the public entrust him with it.

To make matters worse, Ma's close associates showed their “loyalty to the leader” by parroting his claim that it is not accepted international practice for legislators to scrutinize an international agreement clause by clause. However, a quick look at well-established practices in other countries shows that this claim is completely false.

There are dozens of names for international agreements. With regard to how they are considered by legislatures, they are divided into executive agreements and treaties. Treaties, in the broad sense, no matter what they are called, come under the category of “bills concerning treaties,” referred to in Article 36 of the Constitution, and, as the article says, they have to be submitted to the legislature for consideration.

In some countries, the constitution even requires a two-thirds majority in the legislature for treaties to be approved.

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Executive agreements, on the other hand, do not have to be considered by the legislature, but this does require authorization through an enabling act. In Taiwan, air transport agreements and tax exemption agreements, for example, are classed as executive agreements. In general, executive agreements come into force the day they are signed.

After treaties are signed, they are still subject to ratification — a process involving close scrutiny and final approval by the legislature. For the most formal treaties, after they have been approved by the legislature, the head of state is required to issue an instrument of ratification as a mark of solemnity.

This is the accepted procedure for concluding treaties in the international community, which has evolved from state practices over the centuries.

If a legislature examines a treaty or agreement and finds it not to be in the nation's interest, it may reject it altogether.

Examples of this include the US Senate's rejection of two treaties — the Treaty of Versailles and the UN Convention on the Law of the Sea.

If the legislature does not reject a treaty in its totality, it may approve it with conditions attached.

In some countries, the legislature may choose to set a treaty bill aside by delaying its consideration indefinitely, leaving it up to the executive branch to withdraw it. In the US, the executive has withdrawn at least 85 treaty bills up till now.

Approval with conditions attached includes amendments, reservations, understandings, interpretations and declarations.

In the case of multilateral treaties, reservations are most commonly applied. Then the executive has to decide whether to accept the conditions attached by the legislature. If it

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accepts them, it will reopen negotiations on the provisions of the treaty, or, if it rejects them, the treaty will automatically become null and void.

In 2002, the US Congress passed the bipartisan Trade Promotion Authority Act, authorizing the president to negotiate trade agreements. On condition that Congress would set the objectives of the negotiations, and that the executive would consult fully with Congress and the business community during the course of negotiations, Congress agreed to give treaty bills speedy consideration and vote them up or down in their entirety.

Later on, the impact that trade agreements have on US domestic businesses and the nation's employment market led to this authorizing act expiring in 2007.

Given that no authority such as that previously delegated by the US Trade Promotion Authority Act is applicable in the case of the cross-strait service trade agreement, and that the government departments responsible for negotiating the agreement did not fully consult with the legislature, business and other interested parties, the agreement must undergo close scrutiny in the Legislative Yuan.

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Translated by Julian Clegg

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