慶祝釋憲七十週年

司法院大法官 107 年度國際學術研討會

開幕式 總統致詞

司法院許宗力院長、各位大法官、最高法院鄭玉山院長、法官學院周占春院長、法務部蔡清祥部長，遠道而來的各國嘉賓、各位與會的學者、專家、各位女士、先生，大家早安、大家好！

今年是我國憲法法庭成立七十週年，司法院舉辦今天的「憲法法院與人權保障」國際研討會，這是我國民主憲政發展史上深具意義的日子，能參與這場盛會，我感到非常榮幸。司法院也邀請了許多國際知名的憲法學者專家與會，非常歡迎大家。

我國憲法法庭是依憲法的規定而成立，但憲法對此機構只有極為簡略的規定，憲法法庭的整體樣貌與具體功能，特別是憲法法庭的權限、組織形式及行使職權的程序，均有賴之後法庭自訂的規則及決定或立法機關通過的法規進一步規範。

臺灣歷經漫長的戒嚴時期，憲法上的權利因此受到嚴重的限制。1987 年解嚴後，臺灣歷經多年的民主化。在這段時間裡，憲法法庭致力保障人民憲法上的權利，並維護臺灣民主化轉型期間和之後的民主憲政秩序。

憲法法庭的諸多解釋也為臺灣現在穩定的憲政秩序以及全面的人權保障奠定了基礎。在每個憲政秩序面臨挑戰的關鍵時刻，憲法法庭肩負著憲法守護者的角色，適時挺身維護憲法，穩定國家憲政秩序，引領我國的民主憲政發展。

過去七十年，憲法法庭已發展成為一個行使廣泛權力的成熟機關，包括審查法律規定是否合乎憲法、解決不同政府機關爭議的權力，以及獨特的憲法疑義解釋權，相較於世界各國其他憲法法院，我國憲法法庭被賦予了全面性的司法權。

為了改革臺灣司法制度，憲法法庭進一步發現了在現行制度下憲法保障人民基本權利之問題。到目前為止，憲法法庭僅能檢視法令合憲性，無法檢視法院判決的合憲性。有鑑於此，司法院引進德國聯邦憲法法院有關「憲法訴願」之制度，讓民眾得以對法院判決的合憲性提出異議。此外，司法院也提出大法官審理案件法修正草案，並將更名為「憲法訴訟法」，一旦通

過，將賦予憲法法庭審查終審法院之確定終局裁判的合憲性，高於所有法規位階。這項革新另須強化憲法法庭組織才能完成，是憲法法庭的重大發展。在此新法之下，憲法法庭將得以檢視及平衡行政權與立法權，以及一般法院判決。憲法法庭在擴大審理範疇之後，將更能全面有效保障人民憲法上的權利。

依憲法及憲法增修條文規定，憲法法庭負責解釋憲法，統一解釋法律及命令，裁定違憲政黨的解散案件，以及總統、副總統彈劾案。憲法法庭在釋憲歷史中，我國的大法官，透過修憲、立法與司法院大法官解釋本身，無論在釋憲的聲請要件、審理程序或釋憲方式，正由會議形式的大法官會議轉型真正的法庭。

如果立法院可以在今年底通過「憲法訴訟法」，前開新制將在法律公布後二年施行。屆時憲法法庭將審理並決定所有案件，包括請求抽象審查及以法院形式和程序進行憲法訴願，而不是當前的會議型式，釋憲也會改為決定或判決。

從憲法法庭的形成與發展過程中，可以看出機關形塑的軌跡，綜合參考外國制度，並兼顧我國本土的發展。

就憲法法庭而言，我們毋須爭辯何種類型的法院制度符合憲法原意，更重要的是，應聚焦在 70 年來的法庭實務歷史脈絡，關注憲法法庭的演變及發展。在憲法的每個關鍵時刻，憲法法庭已發揮功能，維護國家安全和社會秩序，鞏固民主憲政秩序的基礎，履行保護憲法權利的承諾。

換言之，我國憲法法庭的現狀，並非制憲者於七十年前立憲當時所能預見，而是歷經半個世紀以來在國會立法層面與大法官所做出的解釋層面，以及其釋憲實務操作上，有意或無意繼受了外國憲法法院法制，並堅持了我國特有的法制，堅持本土化的結果。

無論大法官釋憲制度如何演變，憲法法庭已經為我們守護憲法七十年，在每一關鍵時刻，做出了正確的判斷，促進臺灣民主化轉型，也滿足了人民對於憲法的需求。期盼在我們的司法改革之後，特別是通過「憲法訴訟法」後，大法官將繼續引領我國民主憲政秩序的穩定發展，更有效而周延的保障人民憲法上的權利。

最後，預祝為期兩天的國際研討會圓滿成功。也期盼遠道而來的外國貴賓，在臺期間除了參與研討會分享卓見之外，也能體驗我國的風土人文、熱情好客。祝福各位嘉賓身體健康、萬事如意。

謝謝大家。

In Celebration of the 70th Anniversary of Constitutional Interpretation

2018 International Conference, Taiwan Constitutional Court, Judicial Yuan Opening Remarks by President Tsai, Ing-Wen

President HSU of the Judicial Yuan, Grand Justices of the Constitutional Court, President Cheng of the Supreme Court, President Chou of Judges Academy, Minister Tsai of the Ministry of Justice, distinguished guests from abroad, scholars and experts, ladies and gentlemen, good morning.

In celebration of the seventieth anniversary of the Constitutional Court, the Judicial Yuan holds today's international conference on "Constitutional Court and the Protection of Human Rights". This is a special day in the history of our democratic and constitutional development. I am very honored to be part of this event. The Judicial Yuan also invites many internationally renowned constitutional scholars and experts, to participate in this international conference. I would like to extend the warmest welcome to you all. Thank you for coming.

We all know that the Constitutional Court was established by the Constitution. However, the Constitution only contains rather simple provisions on this institution.

The overall picture and the specific functions of the Constitutional Court, particularly regarding jurisdictions, organizational arrangements, and the procedures of the Constitutional Court were further specified either by the rules and decisions of the Court or by the statutes enacted by the legislature afterwards.

As Taiwan was under martial law for a long time, the constitutional rights were severely limited then. After the lifting of the martial-law rule in 1987, Taiwan went through a decade-long democratization. At the same time, the Court has devoted itself to the protection of the people's constitutional rights and to the maintenance of the democratic constitutional order during and after Taiwan's democratic transition.

Many Interpretations made by the court also laid the foundations for Taiwan's current stable constitutional order and comprehensive protection of human rights.

At every critical moment of our history when the constitutional order was faced with challenges, the Constitutional Court, as the guardian of the Constitution, has stood up in due time to protect the Constitution, to stabilize the constitutional order of the nation, and to lead the development of constitutional democracy of our country.

Over the last seventy years, the Constitutional Court has developed into a mature institution exercising a wide spectrum of powers, including the power to review the constitutionality of laws and regulations, the power to settle the disputes between different governmental branches, and even the unique power to clarify the doubts arising from any Constitutional text. As compared to its counterparts around the world, Constitutional Court of ours is an institution entrusted with comprehensive jurisdictions.

As part of our effort to reform Taiwan's judicial system, the Constitutional Court has further identified a problem with the protection of the constitutional rights of the people under the current system. So far, the Constitutional Court would only review the constitutionality of laws or regulations, and not that of court decisions.

Against this backdrop, the Judicial Yuan has proposed to introduce the idea of "Constitutional Complaints", modelled after the system established by the Federal Constitutional Court of Germany, in order to allow the people to challenge the constitutionality of the court decisions here. The Constitutional Court has introduced a legislative bill to amend the current Constitutional Interpretation Procedure Act and to rename it to be "Constitutional Litigation Law". Once passed, this new Act will empower the Constitutional Court to review the constitutionality of the final decisions of the courts of last resort, on top of the law and regulations. The organization of the Constitutional Court will also be reinforced to support this reform.

It will be a watershed development of the Constitutional Court. Under this new Law, the Constitutional Court will be able to check and balance not only the executive and legislative powers, but also the decisions of ordinary courts. With the extension of such jurisdiction, the Constitutional Court will be able to provide a more complete and effective protection of the constitutional rights of the people.

Under the Constitution and its Amendments, the Constitutional Court is entrusted with the powers to interpret the Constitution, to make uniform interpretations of statutes and regulations, to adjudicate the cases on the dissolution of unconstitutional political parties, and to try the impeachment cases of

the President and Vice President. By virtue of constitutional amendments, legislation and its own Interpretations, the Constitutional Court is actually transforming itself from a "Council of Justices" to a real court, in terms of either petition requirements, court procedures or the format of interpretations.

If the legislative bill of the Constitutional Litigation Law can be adopted by the Legislative Yuan by the end of this year, the above-mentioned new systems will be implemented two years after the enactment of this new Law. At that time, the Constitutional Court will hear and decide all the case, including the petitions for abstract review and for constitutional complaints in the form and procedures of a real court, instead of the current conference module. Even the name of Interpretation will be changed to Decisions or Judgments then.

Along the formation and development of our Constitutional Court, we can see the trajectory that our institution gradually took shape. It has been a combination of borrowing from abroad and growing from soils at home.

As far as the Constitutional Court is concerned, we need not debate on which type of court system is consistent with original intent of the Constitution. More importantly, we should focus on the historical context of the court practice over such a long period of seventy years.

We shall be mindful of the evolution of our Constitutional Court and pay attention to its development. Moving through each critical constitutional moment, the Constitutional Court has functioned to safeguard the national security and the social order, to consolidate the foundation for democratic constitutional order, and to fulfill the promise to protect the constitutional rights.

In other words, the status quo of our Constitutional Court is not what could have been foreseen by the constitutional framers seventy years ago.

Instead, it has been the result of dynamic interactions between the congressional legislation, on one hand, and the Interpretations and practice of the Constitutional Court, on the other, after more than half a century's development. Intentionally or accidentally, we have borrowed many important ideas from constitutional courts abroad, while we insisted on developing our Court based on our indigenous contexts and needs.

Regardless of the evolution of the constitutional interpretation system, the Justices of the Constitutional Court have served to protect our Constitution for seventy years. At each critical moment, they

have made their proper judgments to facilitate Taiwan's democratic transition and to meet the needs of the people toward the Constitution. It is my sincere hope that, after our judicial reform, especially the adoption of Constitutional Litigation Law, the Justices of the Constitutional Court will continue to guide the stable development of our democratic constitutional order and to protect the constitutional rights of our people in a more effective and comprehensive manner.

Finally, I wish this two-day international conference a great success. I hope our distinguished guests from abroad enjoy our culture, society, and hospitality during your visit, in addition to participating in the conference and sharing your valuable insights. I would also like to extend my best wishes to all participants. I wish all of you good health and best lucks. Thank you everyone.