

## TREATIES

Conduct of foreign affairs and the implementation of international agreements are properly left to the non-judicial branches of government. The judicial branch has the power to interpret treaties. In re Extradition of Jano, 6 FSM R. 93, 103 (App. 1993).

Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. In re Extradition of Jano, 6 FSM R. 93, 103 (App. 1993).

The ordinary or usual meaning shall be given to words, phrases, and terms in a treaty. Terms are to be considered in their context and a contrary meaning may be indicated by the context. Preparatory documents and subsequent conduct of the parties can be used to determine the parties' intentions. Alep v. United States, 6 FSM R. 214, 218 (Chk. 1993).

Although the FSM Supreme Court has the power to interpret treaties, it should not do so if the issue may be decided on other grounds. Louis v. Kutta, 8 FSM R. 228, 229-30 (Chk. 1998).

The imposition of community service on a juvenile offender would not violate the provisions or spirit of the United Nations Convention on the Rights of the Child since community service, could be considered as guidance, supervision, counseling, education and vocational training, which are all preferred alternatives to institutional care (detention), which is also explicitly permitted under the Convention. Kosrae v. Ned, 13 FSM R. 351, 354 (Kos. S. Ct. Tr. 2005).

Extradition treaties are to be liberally construed to effect their purpose of surrender of the persons sought to be tried for their alleged crimes. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 372 (Yap 2005).

An "access agreement" is a treaty, agreement or arrangement entered into by the Authority pursuant to Title 24 in relation to access to the exclusive economic zone for fishing by foreign fishing vessels. But a fishing access agreement is usually not a treaty because treaties are compacts or agreements between sovereign nations and most fishing access agreements are commercial agreements between the FSM national government and a commercial enterprise. They are business deals – not treaties. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

A treaty is a compact made between two or more independent nations with a view to the public welfare. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189-90 (Pon. 2010).

Since the Constitution specifically delegates to Congress the power to ratify treaties but does not grant Congress the power to approve or reject fishing access agreements, ruling unconstitutional the statute that requires congressional approval for fishing access agreements for more than nine vessels would not impair Congress's ability to ratify treaties and to advise and consent to presidential appointments. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

Since approval of commercial fishing agreements is not a power that the Constitution confers on Congress, but a power that Congress has conferred upon itself by statute, the court's conclusion that that statute is unconstitutional does not have any effect on access agreements

that are actually negotiated and concluded as treaties between sovereign nations because, just like any other treaty, the President would continue to submit those to Congress for ratification. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

Article 15 of the 1944 Convention on International Aviation, which bars fees, dues, or other charges being imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons thereon, does not bar a tax only on outgoing passengers, freight, or cargo from Chuuk. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533-34 (Chk. 2011).

In order to ratify a treaty, two-thirds of the members of Congress must vote in favor of ratification. Ratification may not be done by the resolution process where only eight votes are necessary. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 547 & n.1 (App. 2011).

A treaty is an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. FSM v. Ezra, 19 FSM R. 486, 490 n.2 (Pon. 2014).

Pacta sunt servanda ("agreements must be kept"), is the rule of law that applies to all agreements made within the framework of the international legal system, and is the basis of the law of treaties, and once in force treaties are binding on the parties to them and must be performed in good faith. FSM v. Ezra, 19 FSM R. 486, 492 & n.5 (Pon. 2014).

A treaty signed by the President, and ratified by Congress, is our law. FSM v. Ezra, 19 FSM R. 486, 497 (Pon. 2014).

Only those fisheries management agreements that require the FSM to enforce, on a reciprocal basis, the fisheries laws of foreign countries against persons who have violated the fisheries law of that foreign country, must, under 24 F.S.M.C. 120(2), implemented by National Oceanic Resource Management Authority regulation. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

A fisheries management agreement is any agreement, arrangement, or treaty in force to which the FSM is a party, not including any access agreement, which has as its primary purpose cooperation in or coordination of fisheries management measures in all or part of the region. Such an agreement, by its nature, would not be self-executing. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

In determining whether a treaty is self-executing, a court looks to the text, the negotiation and drafting history, and the postratification understanding of the signatory nations. Preparatory documents and the parties' subsequent conduct can be used to determine the parties' intentions. Additionally, the executive branch's interpretation of a treaty is entitled to great weight. Estate of Gallen v. Governor, 21 FSM R. 457, 461 n.1 (Pon. 2018).