Sources of State Practice in International Law:
Republic of Korea

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I. Treaty Succession

The Constitutional Court of the Republic of Korea (South Korea, hereinafter “Korea”) defines a treaty as an agreement between more than two states, creating, amending, and expiring rights and duties. Korea did not succeed any treaties concluded before August 15, 1948, when the government of the Republic of Korea was newly established. In 1876 with the unequal Kwanghwado Treaty [강화도조약], Chosun—a former Korea existed between 1392 and 1897—opened its door to Japan. Since then, Japanese and Western powers began to demolish a Korean imperial system and its tradition that was over 1500 years old. Finally, by series of illegal treaties, Japan deprived Korea of its diplomatic power in 1905 and ended Korea in 1910. Then, from 1910 until 1945, Korea was devastated under the Japanese rule, and the colonial time ended in 1945 by the loss of Japan in World War II. On September 8, 1951, World War II officially ended, and Japan officially recognized the independence of Korea and renounced all rights and claims to Korea by the San Francisco Treaty of Peach with Japan.

After its new establishment, Korea concluded 2,663 treaties—2077 multilateral treaties and 586 bilateral treaties—by 2009. The number of treaties increased recently—
especially treaties dealing with free trade, prevention of double-taxation, social security, investment protection, extradition, and judicial assistance.  

II. Treaty Implementation

Treaties are primary sources of law in Korea. Korea signed the 1969 Vienna Convention on the Law of Treaties on November 27, 1969 and later ratified it on April 27, 1977. Article 7 of the 1969 Vienna Convention on the Law of Treaties states that (1) Heads of State, Heads of Government and Ministers for Foreign Affairs can negotiate for a treaty; (2) heads of diplomatic missions can perform all acts relating to a conclusion of treaty; and (3) representatives accredited by States to an international conference or an international organizations can adopt the text of a treaty in that conference or that organizations. Otherwise, a person needs full powers to adopt or authenticate the text of a treaty or to express the consent to be bound by a treaty. In Korea, the President of Korea is the head of state, and ministers are heads of governments. The Minister of Foreign Affairs and Trade is the head of the Ministry of Foreign Affairs and Trade. Korea also sends ambassadors as heads of diplomatic missions to most of countries in the world.

While the President has the ultimate power for foreign relations, the Minister of Foreign Affairs and Trade is mainly responsible for negotiating with foreign governments or international organizations, or signing or initialing treaties according to the Act on the Appointment and Powers of Government Delegates and Special Envoys. The Minister of Foreign Affairs and Trade does not need full powers to sign a treaty. The Bureau (조약과) of the Ministry of Foreign Affairs and Trade does the actual work of negotiating and drafting of a particular treaty.

Under Article 73 of the Constitution of the Republic of Korea (대한민국헌법; hereinafter "Constitution"), the President has the authority to adopt and ratify treaties. Similar to the democratic treaty-making practice of most states, however, this power of the President to ratify is checked by the National Assembly for a democratic purpose. While treaties must be consented to by the National Assembly, under Article 60(1) of the Constitution, the National Assembly's authority to consent to the adoption and ratification is limited to important treaties such as treaties relating to mutual assistance or mutual security, international organizations, friendship, trade and navigation, any restriction in

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5 * Id.
6 Korea also signed 1986 Vienna Convention the Law of treaties between States and International Organizations or between International Organizations, but did not ratify it yet.
8 * Id.
9 The Act on the Appointment and Powers of Government Delegates and Special Envoys, art. 3.
11 Daehanminguk Hunbeob [대한민국헌법][Constitution] (Oct. 29, 1987) art. 73 (S. Kor.).
sovereignty, legislative matters, peace treaties, and treaties that give important financial burdens to citizens or Korea.12

According to Article 6(1) of the Constitution, treaties are treated as domestic laws of Korea.13 Unlike the United States which distinguish treaties from executive agreements in terms of the weight of authority, under the Korean Constitution, the Korean treaties which are subject to the consent to the ratification by the National Assembly are treated same as the treaties which must go through the consent procedure by the National Assembly. This is because Article 6(1) of the Constitution does not break down treaties by its designation and treaty-making process and consider all treaties equally as domestic law. This may raise a concern that the President and the administrative body of the government has a broad, ambiguous, and unregulated authority to make treaties in too many areas of law not enumerated under Article 60(1) of the Constitution. Pursuant to the Case-Zablocki Act,14 the United States strengthened the oversight by the Congress of the treaty-making process, requiring the Secretary of State to send all executive agreements to the Congress within 60 days from the entry into force. In contrast, Korea has not established such an oversight mechanism yet.15

There is no established principle to distinguish self-executing treaties from non-self-executing treaties. If a treaty expressly requires implementing legislation, this triggers the Article 60 procedure which requires the treaty pertaining to legislative matters to be consented to by the National Assembly. However, there is no law out there clearly answering whether and when the National Assembly must pass implementing legislation even after giving consent to the treaty. A recent bill in 2012 suggests that the administrative branch report to the National Assembly when it begins negotiation and concludes a treaty. It also suggests that the administrative branch must transmit all the treaties, even if they are not subject to the consent of the National Assembly.

Procedures for concluding treaties are well summarized and visually represented at the website of the Ministry of Foreign Affairs and Trade.16 Internally, procedures for multilateral treaties and bilateral treaties are distinguished. A bilateral treaty is (1)

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12 Daehanminguk Hunbeob [대한민국 헌법][Constitution] (Oct. 29, 1987) art. 60(1) (S. Kor.). This limitation of treaties which are subject to the consent by the National Assembly started from the 1948 Constitution while the types of treaties enumerated has been changed. If there is a conflict between the President and the National Assembly regarding what treaties are subject to the consent, the Constitutional Court of the Republic of Korea has the jurisdiction.

13 Daehanminguk Hunbeob [대한민국 헌법][Constitution] (Oct. 29, 1987) art. 6(1) (S. Kor.).

14 1 U.S.C. 112b

15 A recent bill suggests that the administrative branch of the government report to the National Assembly its beginning of negotiation and conclusion of a treaty. It also suggests that the administrative branch must transmit all the treaties even if those are not subject to the consent by the National Assembly. 조약의 체결 · 비준 등에 관한 법률안 (Bill regarding the Conclusion and Consent by the National Assembly, no.1900626 , THE NATIONAL ASSEMBLY OF THE REPUBLIC OF KOREA (July 11, 2012), http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_R1B2S0Q7X1B11J5J1O8A4S4W7F1K3 (last visited May 22, 2012).

negotiated by the Bureau of Treaty Affairs (조약국) under the supervision of the Minister of Foreign Affairs; (2) drafted in consultation with the Director-General for Treaties of the Ministry of Foreign Affairs;17 (3) reviewed by the Ministry of Government Legislation; (4) referred to and deliberated by the State Council;18 (5) approved by the President with countersignatures by the Prime Minister and the Foreign Minister; (6) signed; (7) approved by the National Assembly if required; (8) ratified and exchanged; (9) Promulgated and published in the official gazette; and (10) registered with the United Nations Secretariat under Article 102 of the United Nations Charter. For a multilateral treaty, the Korean government either makes an accession to the exiting treaty, or participates in the drafting process and adopts the text of the treaty. Unlike bilateral treaties, a multilateral treaty initially reviewed by the Director of General for Treaties under the Minister of Foreign Affairs and Trade before being reviewed by the Ministry of Government Legislation and the State Council. Furthermore, unlike bilateral treaties, instruments of ratification, accession, approval, and acceptance pertaining to a multilateral treaty will be deposited in a country or an international organization. Declaration and reservation may be accompanied.

At the request by the Director-General for Treaties, new treaties are published in the official gazette, Gwanbo (관보).19 In addition to the official gazette, the treaty version(s) in an official language(s) and the Korean texts of the multilateral treaties are also officially available on the website of the Ministry of Foreign Affairs and Trade.20 The website covers 2,280 treaties as of 2013. Status information on the recent treaties since 2008 is separately listed in the reverse-chronological order.21 It provides the date and place of adoption, the date of entry-into-force, depository, the date of publication on the official gazette, the summary of the contents of a treaty, etc.

The Ministry of Government Legislation also provides a treaty database which is included under the general legal database, called KukgaBeobryungJungboCenter (National Legal Information Center, 국가법령정보센터).22 In the database, users can browse treaties by clicking the Joyak (treaty, 조약) button or do an advanced search by clicking the Sansegunsaek (advanced search, 상세검색). The advanced search function allows users to choose a country(ies), to search by treaty title, date of entry-into-force and treaty number, and to search full text by key words. The database covers most Korean

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17 The domestic process of making a treaty begins with the initiation of the Director-General for Treaties who send the agreed text to the Ministry of Government Legislation.
18 Daehanminguk Hunbeob [대한민국 헌법][Constitution] (Oct. 29, 1987) art. 89(3) (S. Kor.).
treaties: 2,090 treaties as of 2013. Instead of official languages, Korean and English versions are available from this database.

III. Evidence of State Practice

As mentioned before, in Korea, the President of Korea is the head of state, and ministers are heads of governments. The Minister of Foreign Affairs and Trade is the head of the Ministry of Foreign Affairs and Trade. Korea also sends ambassadors as heads of diplomatic missions to most of countries in the world. The powers to negotiate with foreign governments or international organizations, to attend international conferences and important ceremonies held in foreign countries, and to convey the positions and ideas of the government to foreign governments are provided in the Act on the Appointment and Powers of Government Delegates and Special Envoys.23

Korea not only has a civil law system that is influenced by the French and German legal system, but also follows customary law and sound reasoning. Furthermore, American legal principles have affected Korean law since Korea’s liberation from Japan by American forces in 1945. Primary sources of law in Korea are its constitution and acts, treaties, emergency executive orders, emergency financial and economic executive orders, presidential decrees, rules of the national assembly, rules of the Supreme Court, rules of the Constitutional Court, rules of the National Election Commission, ordinances of the prime minister and ministries, enforcement decrees, administrative rules, and municipal ordinances and rules. Excellent summaries and graphics of the Korean legislative system, categories of acts and subordinate statutes, and a hierarchy of authorities are provided by the Korea Legislation Research Institute (KLRI) at its Statutes of the Republic of Korea web site.24

Primary sources of law, including the amendments to the constitution, proposed amendments to the constitution, acts, treaties, decrees, notices, and important government policies are published daily in the Gwanbo (Official Gazette, 관보) by the Ministry of Public Administration and Security.25 The Law Information Service under the Ministry of Government Legislation later compiles and publishes the laws in Daehanminguk HyunhaengBobryeongjip [대한민국현행법령집](Statutes of Current Korean Laws). Treaties are separately published by the Bureau of Treaty Affairs in Daehanminguk Joyakjip [대한민국조약집].

Resources

A more comprehensive list of print publications in English, including *Current Laws of the Republic of Korea* and *Statutes of the Republic of Korea*, and other U.S. and western databases containing Korean primary sources are bibliographically organized in *A Research Guide and a Bibliography for Korean Legal Resources in English*.26

Prints

   **Summary:** This print compilation consists of fifty volumes arranged by (1) types of law, such as the constitution, civil law, criminal law, treaties, and administrative law; (2) institutions, such as courts and the National Assembly; and (3) subjects, such as military, education and scholarship, science and technology, customs, commerce, trade, and industry, labor, etc. As of February 2013, it included 1,287 acts, 1,497 presidential decrees and prime minister decrees, 1,107 ministry decrees, and 317 administrative rules.
   **Index:** Volume 50 provides an alphabetical index and the table of contents of each volume.
   **Note:** In Korean.

   **Summary:** This 132 page report by Korean international scholars for the Ministry of Government Legislation comprehensively discusses international treaties, legal basis and issues of the consent to the treaties by the National Assembly, types and number of treaties made, case studies relating to the consent procedure, etc.
   **Index:** Each volume has a table of contents, but does not provide an index.
   **Note:** In Korean.

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**Summary:** These case reports provide a comprehensive collection of cases since September 1, 1888 when it was first created. The first volume covers 109 cases, and the second volume covers 97 cases by 2008. From 2010, yearly volumes are published.

**Index:** Each volume has a table of contents in the front and an index at the end.

**Note:** In English.


**Summary:** This book published by the Korean National Commission for UNESCO provides important human rights instruments including the international bill of human rights, treaties relating to protection from discrimination, prevention against torture, children and women's rights, and regional human rights treaties. It is useful to see how Korean texts are translated into English.

**Index:** It provides a table of contents, but does not provide an index.

**Note:** In Korean and English.

5. **Daehanminguk Joyakjip** [대한민국조약집 (Korea treaty collection)]: **Yangja Joyak** [양자조약] (Seoul, The Ministry of Foreign Affairs and Trade [외교통상부], 1978-).

**Summary:** This is the serial publication published yearly by the Ministry of Foreign Affairs and Trade which officially compiles bilateral treaties to which Korea is a party. This is arranged in the English alphabetical order of the names of the other party. It covers treaties from 1948.

**Index:** It has the table of contents in the front and does not contain an index.

**Note:** In Korean and official language.

6. **Daehanminguk Joyakjip** [대한민국조약집 (Korea treaty collection)]: **Daja Joyak** [다자조약] (Seoul, The Ministry of Foreign Affairs and Trade [외교통상부], 1969-).

**Summary:** This is the serial published by the Ministry of Foreign Affairs and Trade which officially compiles multilateral treaties to which Korea is a party. It covers treaties from 1948.

**Note:** In Korean and official language.

7. **Treaty Law and Practice of the Republic of Korea** [헌법과 조약체결: 한국의 조약체결 권한과 절차], **Bae, JongIn** [배종인] (Seoul, Samusa [삼우사], 2009).

**Summary:** This treatise comprehensive deals with law of treaty, treaty implementation in Korea, various interpretation of Constitutional provisions, and theoretical backgrounds on various aspects of treaty.
Index: It has the table of contents in the front and does not contain an index. An annex in the back provides treaty-related Korean provisions.

Note: In Korean.

Databases


   Summary: The Korean website of the National Assembly provides more information than the English website. The Assembly Information System provides recent laws, legislative history, information on budget and its proposal and report, information on audit, bills and various drafts which go through the committees and floors, meeting minutes, notices of hearings for proposed bills, etc. Documents relating to the consent of treaties are also available here.

   Note: In Korean and English.


   Summary: This official treaty database has the most comprehensive treaty collection which covers 2,280 treaties as of 2013. When a conflict happens between the database version and the print version, the database version is more reliable because it takes one to two years to correct mistakes in print. Status information on the recent treaties since 2008 is separately listed in the reverse-chronological order.

   Note: In Korean and official language.


   Summary: This website is useful to see the legislation and regulation practice of the Korean government. This database maintained by the Ministry of Government Legislation provides a free English legal database: Korean Laws in English. As of 2013, the database contains 912 current Korean Acts in English and allows search by keywords and title.

   Note: In English.


   Summary: This English website is a government-funded national policy research institute, and it provides a free English legal database, Statutes of the Republic of Korea. The Statutes of the Republic of Korea allows researchers to search for

constitutions, current statutes, old statutes, decrees, and rules by statute name in English. It does not cover treaties.

Note: When users type words in the search box, suggested titles of acts appear under the box. Users can do more advanced searching according to type of law, date, and registration number. Under the "Legal Glossary" menu, users can also search for the statute name by keyword; search results lead to the text of the statute.

Note: In English.


Summary: This is the most popular, comprehensive commercial database, containing statutes, decrees, rules and ordinances, cases, and treatises in Korean. However, it does not provide English translations and does not cover treaties. LAWnB was acquired by Thomson Reuters on March 30, 2012. Westlaw began providing Korean cases, legislation, and law review and journals articles in English from 2013; the Korea Reports database covers cases from the Supreme Court, appellate and trial courts from 2000, and the Korea Legislation database provides selected legislation including the current Constitution provided by the Korean Ministry of Government Legislation.

Note: LAWnB in Korean, Westlaw in English.


Summary: The English website of the Constitutional Court of Korea provides a database which allows users to find recent decisions and major decisions since its establishment on September 1, 1988. The dispute between the National Assembly and the administrative branch of the government, including the President, will appear before the Constitutional Court. Case statistics and English translations of the Constitution of the Republic of Korea and the Constitutional Court Act are also available here.

Note: In English.


Summary: The English website of the National Assembly provides, under the "Laws & Bills" heading, English translations of the Constitution of the Republic of Korea, current statutes, old statutes, decrees, and rules by statute name in English. It does not cover treaties.

Note: In English.

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30 LAWnB is a fee-based subscription database that contains approximately 74,000 laws, 150,000 cases, 130,000 administrative materials, 90,000 treaties, articles, and periodicals, 85,000 tax cases, 20,000 lawyers information, 4500 corporations legal information, and 70,000 legal news articles. See LAWnB, http://www.lawnb.com/ (last visited May 2, 2013).
of Korea, the National Assembly Act, foreigner-related laws,\textsuperscript{34} and more than 500 recently passed bills since 2005.\textsuperscript{35}

\textit{Note: In English.}

\textsuperscript{34} The page includes full-texts of Foreigner's Land Acquisition Act, Immigration Control Act, Foreign Exchange Transactions Act, Registration of Korean Nationals Residing Abroad Act, Act on Special Cases Concerning the Acquisition, Correction and Adjustment of the Family Register for Korean Nationals Residing Abroad, Foreign Investment Promotion Act, Passport Act, Act on the Immigration and Legal Status of Overseas Koreans, Foreign Non-governmental Aid Organizations Act, Overseas Korea Foundation Act, and Act on the Employment, etc. of Foreign Workers.