Republic of Korea

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Issues of 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 Peace 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.
Treaty Ratification and 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 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, 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