

B. Identification of customary international law

(a) Official statements before legislatures, courts and international organizations

Not available

(b) Decisions of national, regional and sub-regional courts

The followings are cases in which customary international law were asserted in courts of Korea. Courts of Korea have determined the existence of customary international law, but these judgments do not specify the method to identify the rules of customary international law and the types of evidence for establishing such law in detail. However, when reviewing the following judgments, Korean Judges presumably refer to relevant treaty provisions or legislation, and rulings of other states

① Supreme Court Decision 97Da39216 Sentenced on Dec. 17, 1998 / Seoul High Court Decision 2004Na43604 Sentenced on Jan. 21, 2009

In determining the rule of customary international law on judicial jurisdiction over commercial activities of a foreign State in the Korean territory, Supreme Court of Korea ruled as follows

According to the rule of customary international law, sovereign acts of States are exempted from the jurisdiction of other States in principle, but it cannot be regarded as international law or international customs that judicial acts of States are exempted from the jurisdiction of other States

② Busan District Court Decision 2000GaHap7960 Sentenced on Feb. 2, 2007

In determining whether Mitsubishi has responsibility under international law to compensate for the damage from the forced labor mobilized for the Japanese corporation during the Japanese rule in Korea, Busan District Court ruled as follows.

The Plaintiff claimed that Mitsubishi violated the anti-slavery norm under the customary international law, the ILO Forced Labor Convention of 1930 (No. 29), and the Nurnberg Principles. Therefore, Mitsubishi is responsible for the damages from these breaches of international law.

In the ILO Forced Labor Convention of 1930 (No. 29) and Nurnberg Principles, there is no provision on whether an individual can claim compensation directly against the State responsible for crimes against humanity or the companies responsible for forced labor. The prohibition of slavery is generally accepted as jus cogens. Nevertheless, there is no evidence to identify the existence of the customary international law under which victims of slavery can file compensation claims directly with violators.

③ Seoul Civil District Court Decision 84GaHap5303 Sentenced on Sep. 25, 1985

In determining whether a State can have civil jurisdiction over foreign States, Busan District Court ruled as follows:

A State is not subject to foreign jurisdiction in international customs. Therefore, a State cannot exercise its jurisdiction over a foreign state unless the diplomatic privileges are exempted under the relevant treaties or the foreign state waives its privileges. Even if there is willingness or likelihood of relaxing the principle of state sovereign immunity, recently, the domestic laws or judgments of many States do not recognize jurisdictional immunities of States in certain cases exercising their judicial jurisdictions, but such tendencies cannot be the evidence to prove the status of the customary international law.

C. Information about digests and surveys on State Practice in the field of international law

Not available