

Exchange of national practices on possibilities for the Ministry of Foreign Affairs to raise public international law issues in procedures pending before national tribunals and related to States' or international organizations' immunities

Republic of Korea

1. Delegations are invited to provide information on any domestic legislation existing on this particular issue.

There is no domestic legislation that explicitly allows the Ministry of Foreign Affairs to raise public international law issues in cases pending before domestic courts concerning the immunities of States or international organizations.

However, under Article 134-2 of the Korean Civil Procedure Rules, "State agencies and local governments may submit opinions to the Supreme Court on matters related to the public interest, and the Supreme Court may request that they do so."

2. Delegations are invited to inform the Committee as to whether there are any other means for the Ministry of Foreign Affairs of communicating information to national courts and how the Ministry of Foreign Affairs perceives the scope of international legal obligations in [this] field.

For example:

- Are there any information related to international legal obligations contained in the legislative preparatory works of domestic laws on immunities?**
- Are there any directives, guidelines or circulars that have been issued on this subject?**

In cases pending before the Supreme Court, the Ministry of Foreign Affairs may submit an opinion pursuant to Article 134-2 of the Korean Civil Procedure Rules. Furthermore, in legal proceedings concerning the immunities of States or international organizations, the court may, either sua sponte or upon a party's request, seek factual clarification from the Ministry of Foreign Affairs. In response to such an inquiry, the Ministry provides a written statement regarding the relevant matters.

The Republic of Korea has not enacted any specific legislation on the immunities of States and international organizations but recognizes the doctrine of State immunity as part of customary international law. The Korean judiciary has consistently applied the principle of restrictive sovereign immunity in its rulings.

3. Delegations are invited to precise whether there are any prohibitions or stated limits in domestic law, which would prevent the transmission of information to national courts by the Ministry of Foreign Affairs. In this regard, are there, in your domestic legal order, any relevant legislation or national practices (any reference of case-law would be appreciated)?

There is no domestic legislation that prohibits or restricts the Ministry of Foreign Affairs from providing information to domestic courts.

4. From a broader perspective, delegations are called upon to express their views as to whether the Ministry of Foreign Affairs can communicate with the Parties engaged in procedures before national courts and, if so, as to how it can proceed. In particular with regard to:

- the principle of equality of arms (e.g. does the communication with one Party imply informing the others about the content of that communication?).
- the scope of the communication (e.g. communication of possible factual elements or communication restricted to a single point of law).
- the principle of independence of the Judiciary.
- any other related issue.

The Ministry of Foreign Affairs generally communicates with the court through the measures outlined in the response to Question 2. However, the Ministry rarely engages with the parties, while direct communication with them is not entirely prohibited.