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The Convergence of Constitutions and International Human Rights: Taiwan and South Korea in Comparison

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The Convergence of Constitutions and International Human Rights: Taiwan and South Korea in Comparison

Cover Page Footnote

International Law; Commercial Law; Law

The Convergence of Constitutions and International Human Rights: Taiwan and South Korea in Comparison

Wen-Chen Chang†

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I. Introduction

The development of global or transnational constitutionalism has created a significant convergence of domestic constitutions and international human rights laws. This trend, celebrated as a triumph of universalism, is often characterized by the “internationalization of constitutional laws” and “constitutionalization of international laws.”¹ However this celebration, and even criticism, is centered upon what has occurred in the West, primarily in Europe and North America. East Asia is either being outright ignored in this discourse or is criticized as being against the trend. As University of Chicago Law School Professor Tom Ginsburg points out, “Asian countries have not been leaders in these movements. Instead, they have reacted cautiously and have emphasized the traditional concerns of sovereignty and noninterference.”² This view is also echoed by

¹ The two phrases were first discussed together in a short piece by Herman Schwartz. See Herman Schwartz, *The Internationalization of Constitutional Law*, 10 No. 2 HUM. RTS. BRIEF (2003). See, e.g., VICKI C. JACKSON, CONSTITUTIONAL ENGAGEMENT IN A TRANSNATIONAL ERA (2010) (discussing the growing trend of constitutional interpretation in an international context); TRANSNATIONAL CONSTITUTIONALISM: INTERNATIONAL AND EUROPEAN MODELS (Nicholas Tsagourias ed. 2007) (analyzing and evaluating European and other models of constitutionalism); Jiunn-Rong Yeh & Wen-Chen Chang, *The Emergence of Transnational Constitutionalism: Its Features, Challenges and Solutions*, 27 PENN ST. INT'L L. REV. 89 (2008) (discussing Transnational Constitutionalism as the emerging form of constitutionalism).

² Tom Ginsburg, *Eastphalia as the Perfection of Westphalia*, 17 IND. J. GLOBAL

several Asian scholars who point out that Asian courts have delivered very few opinions in which international human rights laws were cited. These scholars also point out that the few opinions that do reference such laws do so only for supplementary, as opposed to normative, purposes. Furthermore, these decisions have often endorsed legislative or governmental acts.³ The sharp contrast between strong resistance to international human rights laws and extreme openness to the global market in East Asia is indeed quite puzzling. As a Korean international law scholar complained: “How is one to understand this seemingly contradictory phenomenon, i.e., strong nationalistic undercurrents in a society which is fully incorporated into the world economy?”⁴ Is it really true that the convergence of domestic constitutions and international human rights laws is not happening in East Asia? Has the judicial reference of international human rights laws in domestic constitutional adjudication taken place in a great many jurisdictions worldwide, but not in East Asia?

Interestingly, however, there are a growing number of cases where East Asian courts reference international human rights laws.⁵ In what ways and to what extent are those cases indicative of a convergence between domestic constitutions and international human rights laws? Perhaps the view employed by East Asian scholars in judging judicial openness to international human rights is incomplete. Is the criticism that these courts consider international human rights laws as only supplementary to constitutional norms a legitimate one? Is it not perfectly legitimate for any domestic constitutional court to refer to

LEGAL STUD. 27, 28 (2010).

³ See, e.g., Keun-Gwan Lee, *From Monadic Sovereignty to Civitas Maxima: A Critical Perspective on the (Lack of) Interfaces between International Human Rights Law and National Constitutions in East Asia*, 5 NTU L. REV. 155 (2010) (noting the underuse of international human rights law in Japanese and Korean constitutional litigation); Suk Tae Lee, *South Korea: Implementation and Application of Human Rights Covenants*, 14 MICH. J. INT’L L. 705 (1993) (analyzing the force that various international treaties might hold in South Korean courts). Cf. Akiko Ejima, *The Enigmatic Attitude of the Supreme Court of Japan towards Foreign Precedents- Refusal at the Front Door and Admissions at the Back Door*, 16 MEIJI L. J. 19 (2009) (noting the infrequency with which the Supreme Court of Japan references foreign law).

⁴ Keun-Gwan Lee, *supra* note 3, at 159 (emphasis added).

⁵ See *infra* Part III.A.

domestic constitutional provisions first and then to any other additional norms? This brings us to a more profound question: in what ways can domestic constitutional courts make use of international human rights laws or even make them “convergent” with domestic constitutions? When a growing body of scholarship celebrates the judicial embrace of international human rights laws, what exactly are the particular methods of judicial engagement with those international human rights? Unlike Europe, where both European Union laws and the European Convention of Human Rights laws directly impact domestic legal regimes of member states,⁶ other continents do not have such quasi-constitutional international systems. Other than the European model, are there any ways that domestic constitutions and international human rights laws may converge without one trumping the other?

This article aims to closely examine cases in which international human rights laws were discussed in the two constitutional courts of South Korea and Taiwan. It hopes to provide a fair and updated account of what has been happening in these two strong democracies regarding the convergence of their domestic constitutional laws and international human rights laws. Part I discusses the status of international human rights laws in these two jurisdictions. Part II examines the ways that international human rights laws have been referenced in the constitutional adjudications of South Korea and Taiwan. Parts III and IV analyze the functions of these references and distinguish typical and alternative functions that judicial reference to international human rights laws may have in domestic constitutional adjudication. Part V concludes.

II. The Current Status of International Human Rights Law in South Korea and Taiwan

The following discussion concerns major international human rights laws that have been ratified by South Korea and Taiwan, and examines their legal status in their respective domestic regimes. Unlike some constitutions enacted during the 1990s that often provided a privileged status for international human rights law within the domestic legal regime, neither the South Korean

⁶ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S 221.

nor the Taiwanese constitutions include such provisions. Interestingly, however, both constitutional courts have given international human rights laws a direct domestic applicability by adopting a monistic view on the relationship between domestic and international laws, a view that was not popularly held in either jurisdiction.

A. Ratification of Major International Human Rights Treaties

South Korea and Taiwan have ratified most significant international human rights treaties. After the democratization in the beginning of the 1990s, South Korea acceded to two covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) [hereinafter “Covenants”].⁷ Notably, Korea also acceded to the first Protocol of ICCPR to enable its citizens to file individual communications with the Human Rights Committee.⁸ In addition, it also ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1978, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984, and the Convention on the Rights of the Child (CRC) in 1991.⁹

The situation in Taiwan is more perplexing due to its troubling status. The nationalist Chinese government, the Republic of China (ROC), was defeated by the Chinese Community Party, which later founded the People’s Republic of China (PRC), and retreated to the island of Taiwan in 1949.¹⁰ The competition for state

⁷ International Covenant on Civil and Political Rights, Oct. 5, 1967, 999

U.N.T.S. 171, *available at*

<http://law.moj.gov.tw/eng/LawClass/LawContent.aspx?PCODE=Y0000041> [hereinafter ICCPR]; International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966,

<http://www.un.org/millennium/law/iv-3.htm>, 993 U.N.T.S. 3 [hereinafter ICESCR].

⁸ *See, e.g., Suk Tae Lee, supra note 3, at 717-18.*

⁹ *See infra* Table 1; International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter ICERD]; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

¹⁰ *See, e.g., Tay-sheng Wang, The Legal Development of Taiwan in the 20th*

recognition between ROC and PRC ended in 1971 when the United Nations passed a resolution to expel the representative of Chiang Kai-Shek, then-President of ROC, and recognized PRC's representation of China.¹¹

The nationalist government in the capacity of ROC signed the ICCPR and the ICESCR in 1967.¹² However, the two instruments had not been ratified by the ROC when it was expelled from the U.N. in 1971.¹³ ROC did manage to ratify ICERD in 1970, which it had signed four years earlier in 1966.¹⁴ Since being expelled from the U.N., Taiwan has had difficulty both joining new treaties as well as ratifying treaties previously signed by the ROC.¹⁵ However, beginning in the late 1990s, several human rights organizations pressured the Government to ratify or join those treaties.¹⁶ In 1993, the Government made its first declaration of full voluntary compliance with CRC, followed by subsequent domestic legislative revisions.¹⁷ In 2007, Taiwan signed and ratified CEDAW, issuing its first state report two years later.¹⁸ In 2009, the Taiwanese legislature ratified the ICCPR and the ICESCR.¹⁹ Notably, Taiwan's ratification of the two Covenants and accession to CEDAW were all rejected by Secretary General of the U.N. in reference to the 1971 resolution that expelled Taiwan.²⁰ Notwithstanding the failed accession, domestic statutes were passed to ensure the applicability of all rights listed in the

Century: Toward a Liberal and Democratic Country, 11 PAC. RIM L. & POL'Y 531, 537 (2002).

¹¹ G.A. Res. 2758 (XXVI), U.N. GAOR, 26th Sess., Supp. No. 29, U.N.Doc A/8429, at 2 (Oct. 25, 1971).

¹² ICCPR, *supra* note 7; ICESCR, *supra* note 7.

¹³ Eric Ting-Lun Huang, *Taiwan's Status in a Changing World: United Nations Representation and Membership for Taiwan*, 9 ANN. SURV. INT'L & COMP. L. 55, 81 (2003).

¹⁴ ICERD, *supra* note 9.

¹⁵ Flora Wang, *Legislature Ratifies UN Rights Treaties*, *TAIPEI TIMES*, Apr. 1, 2009, <http://www.taipetimes.com/News/taiwan/archives/2009/04/01/2003439900/2>.

¹⁶ Wen-Chen Chang, *An Isolated Nation with Global-minded Citizens: Bottom-up Transnational Constitutionalism in Taiwan*, 4(3) NTU L. REV. 203, 222-33 (2009).

¹⁷ *Id.* at 223, n.66.

¹⁸ CEDAW, *supra* note 9, at 211.

¹⁹ Chang, *supra* note 16.

²⁰ *Id.*

two Covenants into the domestic legal system.²¹ In short, both South Korea and Taiwan have, since their respective democratizations, voluntarily acceded to major international human rights instruments.²²

Table 1: International Human Rights Laws Ratified in Taiwan and South Korea

	Taiwan	South Korea
Charter of the United Nations	26 June 1945/ 28 Sept. 1945	17 Sept. 1991
Universal Declaration of Human Rights (UDHR)	10 Dec. 1948	
International Covenant on Civil and Political Rights (ICCPR)	5 Oct. 1967 / 31 Mar. 2009	10 Mar. 1990
International Covenant on Economics, Social and Cultural Rights (ICESCR)	5 Oct. 1967 / 31 Mar. 2009	10 Mar. 1990
Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG)	20 July 1949 / 5 May 1951	14 Oct. 1950
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	31 Mar. 1966 / 14 Nov. 1970	5 May 1978 / 5 Dec. 1978
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	15 Jan. 2007 9 Feb. 2007	25 Mar. 1983 /27 Dec. 1984
Convention against Torture, and other Cruel, Inhuman, or Degrading Treatment or Punishment	N/A	9 Jan. 1995

²¹ *Id.* at 221, n.52.

²² See *infra* Table 1.

Convention on the Rights of the Child	12 Sept. 1995 (unilateral compliance declaration)	25 Sept. 1990 / 20 Nov. 1991 (*RESERVATION)
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Source: Wen-Chen Chang

B. The Domestic Status and Effects of International Human Rights Law

While civil law jurisdictions often hold a dualist view of the relationship between international and domestic laws, both South Korea and Taiwan have opted for a monist interpretation.²³ In other words, once duly ratified or acceded to, international treaties do not require any additional enactments of domestic statutes to engender domestic applicability and legal effects.

After accession in 1991, the South Korean government made it clear to the Human Rights Committee that the ICCPR would have the same effect as domestic laws without the enactment of separate domestic legislation.²⁴ This implied direct domestic applicability was later confirmed by decisions of the South Korean Constitutional Court.²⁵ The sole basis for such an open promotion of international law, stated by the Constitutional Court, is Article 6 of the Constitution.²⁶ Noted again, the direct applicability does not apply to ICESCR.

In Taiwan, the monistic attitude towards international treaties was first rendered by *J.Y. Interpretation No. 329* in 1993.²⁷ Like its counterpart in Korea, the Taiwanese Constitutional Court drew

²³ Chang, *supra* note 16, at 209; Suk Tae Lee, *supra* note 3, at 728.

²⁴ Suk Tae Lee, *supra* note 3, at 710-17. At this time, South Korea submitted its initial report to the Human Rights Committee to show what progress had been made in granting its citizens the rights recognized in the ICCPR. Consideration of Reports Submitted by State Parties under Article 40 of the Covenant: Initial Reports of the State Parties Due in 1991; Addendum, Republic of Korea, U.N. GAOR, Hum. Rts. Comm., U.N. Doc. CCPR/C/68/Add.1 (1991).

²⁵ See, e.g., Constitutional Court of Korea, 89Hun-Ma160, Apr. 1, 1991 (3 KCCR 149) (S. Kor.) [hereinafter CONST. CT.].

²⁶ DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] art. 6, §1 (S. Kor.) ("Treaties duly concluded and promulgated under the Constitution and the generally recognized rule of international law have the same effect as the domestic laws of the Republic of Korea.").

²⁷ Chang, *supra* note 16, at 209-10.

such an interpretation based upon a simple provision in the Constitution that requested the government's respect of its international treaty obligations.²⁸ The domestic applicability was also implied in the Court's reasoning in giving international treaties "the same effect as domestic laws."²⁹ For rights protected by the two Covenants, their domestic applicability is further ensured by the implementation law that Taiwan passed along with the ratification of the Covenants in 2009.³⁰

It is perhaps surprising that the two East Asian constitutional democracies have taken quite an open attitude toward the domestic applicability of international human rights laws. It particularly stands as a sharp contrast to the stance taken by the most powerful constitutional democracy in the world, the United States, which still regards the ICCPR as a non-self-executing treaty without direct domestic applicability.³¹

III. Referencing International Human Rights Law in Constitutional Adjudication of South Korea and Taiwan

The following discussions are divided into three parts. The first part discusses the reference of international human rights law in the decisions of the South Korean Constitutional Court and the Taiwanese Constitutional Court. The second and third parts closely study those cases in which international human rights laws were cited and analyze their distinctive patterns, the characteristics of affected individuals, and the categories of rights that seemed to attract the convergence between international and domestic constitutional norms.

²⁸ MINGUO XIANFA art. 141 (1947) (Taiwan) ("The foreign policy of the Republic of China shall, in a spirit of independence and initiative and on the basis of the principles of equality and reciprocity, cultivate good-neighborliness with other nations, and respect treaties and the Charter of the United Nations, and the interests of Chinese citizens residing abroad, promote international cooperation, advance international justice and ensure world peace.").

²⁹ Interpretation of the Council of Grand Justices, Judicial Yuan, No. 329 (Dec. 24, 1993).

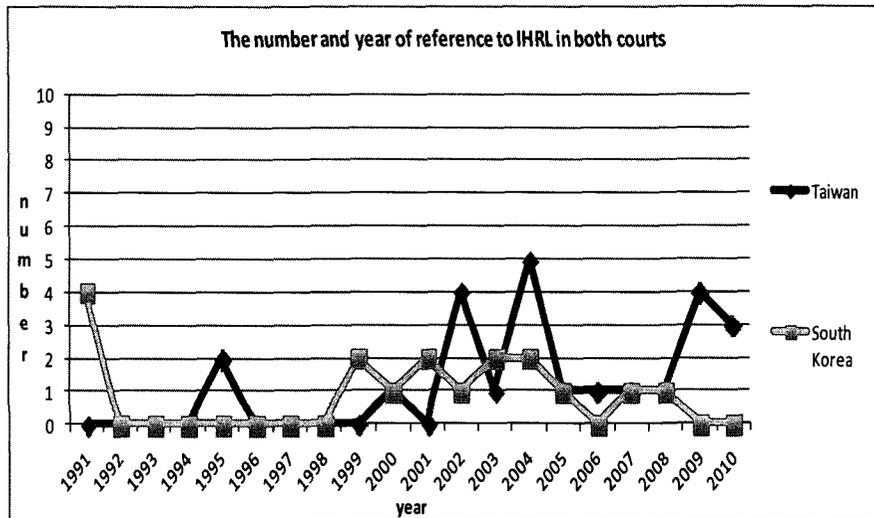
³⁰ *Taiwan Signs up for Human Rights*, AMNESTY INTERNATIONAL (Apr. 9, 2009), <http://www.amnesty.org/en/news-and-updates/good-news/taiwan-signs-human-rights-20090409>.

³¹ See Margaret Thomas, "Rogue States" Within American Borders: Remedying State Noncompliance with the International Covenant on Civil and Political Rights, 90 CALIF. L. REV. 167, 177 (2002).

A. Referencing International Human Rights Laws: Limited but Gradually Increasing

The Constitutional Court of South Korea has displayed a much more open attitude toward international human rights law in the course of constitutional adjudication. The first case appeared in 1991, a year after South Korea acceded to one of the two Covenants.³² Since then, there have been seventeen decisions in which international human rights laws were referenced.³³ There were decisions in 1991, and thirteen decisions between 1999 and 2008, illustrating a gradual increase.³⁴ In these cases, fourteen references appeared in majority opinions, one in a concurring opinion, and five in dissenting opinions.³⁵

Figure 1: The number and year of reference to international human rights laws in both courts



Source: Wen-Chen Chang

³² CONST. CT., 89Hun-Ma160, Apr. 1, 1991 (3 KCCR 149) (S. Kor.).

³³ See *infra* Appendix A.II.

³⁴ See *infra* Figure 1.

³⁵ See *infra* Table 2.

Table 2: International human rights law referenced in decisions and opinions of both courts

	The number of decisions referring to international human rights laws	The number of majority opinions referring to international human rights laws	The number of separate opinions (concurring/dissenting) referring to international human rights laws
Taiwan	24	7	18/14
South Korea	17	14	1/5

Source: Wen-Chen Chang

Table 3: Binding and non-binding international human rights laws

	Taiwan	South Korea
International human rights laws with binding effect		<ol style="list-style-type: none"> 1. ICCPR (Apr. 10, 1990) 2. ICESCR (Apr. 10, 1990) 3. CEDAW (Feb. 27, 2001) 4. Convention on the Right of the Child (Nov. 20, 1991)
International human rights laws with non-binding effect	<ol style="list-style-type: none"> 1. ICCPR 2. Universal Declaration of Human Rights 3. European Convention for Protection of Rights 	<ol style="list-style-type: none"> 1. July 31, 1957 ECOSOC Resolution 663 (XXIV). (Annex: Standard Minimum Rules for the Treatment of Prisoners.)

	and Fundamental Freedoms 4. American Convention on Human Rights 5. Treaties related to the International Labor Organization 6. Convention on the Right of the Child 7. CEDAW	2. Universal Declaration of Human Rights 3. Recommendation of UNESCO 4. The 1955 UN Crime Prevention and Criminals' Treatment Conference 5. Treaties related to the International Labor Organization
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Source: Wen-Chen Chang

Generally, the rights provisions of the ICCPR, ICESCR, CEDAW and the CRC are the majority of the references made by the South Korean Constitutional Court.³⁶ As these are treaties to which South Korea formally acceded, the referenced rights are binding and must be made domestically applicable. Noticeably the court also referred to a number of non-binding international human rights laws in their decisions, including the Universal Declaration of Human Rights (UDHR), the Economic and Social Committee (ECOSOC) Resolution, the Recommendation of the U.N. Economic Commission for Europe (UNESCE), the 1955 U.N. Crime Prevention and Criminals' Treatment Conference, and treaties related to the International Labor Organization.³⁷

The attitude of Taiwan's Constitutional Court toward international human rights law in its constitutional adjudication is as open as that of its Korean counterpart. The first reference was made in 1995, and since then there have been twenty-four decisions where the court cited international human rights laws.³⁸ Among them, two decisions appeared in the 1990s, while twenty-two appeared between 2000 and 2010.³⁹ There were seven majority opinions that referred to international human rights

³⁶ See *supra* Table 3.

³⁷ *Id.*

³⁸ See *infra* Appendix A.I.

³⁹ See *supra* Figure 1.

instruments, while there were eighteen references in concurring opinions and fourteen references in dissenting opinions.⁴⁰

As a result of Taiwan's isolation from the international community, none of these international human rights laws referred to by the majority opinions are binding to the Constitutional Court.⁴¹ Yet the number of such voluntary references has moderately and steadily increased. The international human rights laws referenced by the court include the ICCPR, ECHR, CRC or International Labor Conventions, the American Convention on Human Rights, UDHR, and CEDAW.⁴² Noticeably, the UDHR was the most frequently cited international document in separate opinions.⁴³ In spite of their nonbinding nature, these international human rights laws have been treated by the Taiwanese Constitutional Court as persuasive, and at times even compelling, international legal authority.

B. The Categories of Individuals to which International Human Rights Law Applies

Examined closely, the affected individuals in these constitutional decisions can be divided into seven categories. They include criminal defendants, laborers, children, women, foreigners, religious groups, and other individuals.⁴⁴ Of these categories, criminal defendants are most frequently referred to by the courts (nine cases in Taiwan and six in South Korea). In Taiwan, these cases concerned criminal defendants whose due process rights were compromised during criminal proceedings. In South Korea, these cases involved due process protections in addition to other fundamental rights such as the right of conscience.⁴⁵

The second largest category on the list, "other individuals," represents the cases of ordinary individuals, without further distinction, in which the international human rights laws referred to were general universal rights, such as the right to privacy (six

⁴⁰ See *supra* Table 2.

⁴¹ Chang, *supra* note 16, at 212-13.

⁴² See *supra* Table 3.

⁴³ Chang, *supra* note 16, at 213-15.

⁴⁴ See *infra* Table 4.

⁴⁵ *Id.*

cases in Taiwan and three in South Korea).⁴⁶ The third most frequently implicated group in international human rights cases involves the rights of laborers (three cases in Taiwan and four in South Korea). The Taiwanese cases primarily concerned the insurance or retirement pensions of laborers, while the South Korean cases focused on the right to form unions and other labor movement activities.⁴⁷

Children, women, foreigners, and religious groups occupy the fourth, fifth, sixth, and seventh categories, respectively.⁴⁸ The children cases in Taiwan mostly involved the right of personality, such as the right of a child to know his or her birth parents. A similar case was also brought in South Korea, but it is placed in the category of foreigners since it concerned the right to Korean nationality of a child born to a Korean father and a foreign mother. The cases of women's rights in both South Korea and Taiwan involved gender equality concerns.

Table 4: The Application of International Human Rights Laws on Select Categories Of Individuals

	Criminal Defendants	Laborers ⁴⁹	Children	Women	Foreigners	Religious Group	Other Individuals
Taiwan	9	3	3	2	0	1	6
South Korea	6	4	0	1	2	1	3

Source: Wen-Chen Chang

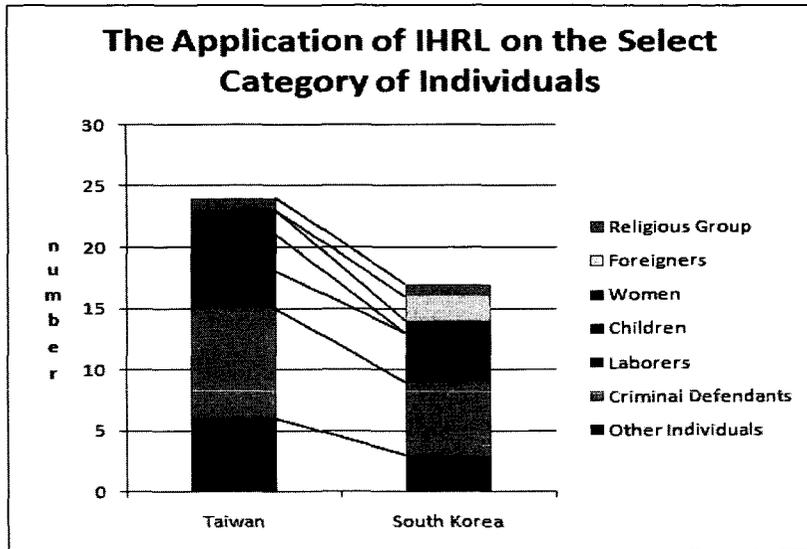
⁴⁶ See *infra* Appendix A.III.

⁴⁷ See *infra* Appendix A.IV.

⁴⁸ See *infra* Table 4 and Figure 2.

⁴⁹ Laborers include private school teachers and civil servants.

Figure 2: The Application of International Human Rights Laws on Select Categories of Individuals



C. The Convergence of Fundamental Rights with International Human Rights Law

Upon closer examination, it also becomes clear that the most commonly referred to civil right in both South Korea and Taiwan is the right of criminal defendants to due process, as guaranteed by Article 14 of the ICCPR.⁵⁰ Among the twenty-four cases that refer to international human rights laws in Taiwan, Article 14 of the ICCPR was applied three times. The decisions of Taiwan's Constitutional Court also tend to cite other civil and political individual rights of the ICCPR, and these include the right of privacy, freedom of movement, and equality. The right of association is the second most frequently cited right in South Korea, while the Court twice applied the right of conscience.⁵¹

⁵⁰ See *supra* Table 4.

⁵¹ *Id.*

IV. Typical Functions of Referencing International Human Rights Law in Constitutional Adjudication⁵²

When the Constitutional Courts in Taiwan and South Korea have referred to international human rights laws in majority opinions, the references have often come with rulings invalidating challenged statutes, administrative regulations, and even judicial precedents.⁵³ The judicial reference to international human rights laws has thus indicated, as evidenced elsewhere, a strong protection of individual rights.⁵⁴ However, the functions that such judicial reference may provide certainly extend beyond the mere protection of rights.

At least three primary functions of judicial reference to international human rights laws may be discerned: first, decisions add new rights and substance to the existing list of constitutionally-protected rights; second, the cases provide persuasive arguments for the protection of existing rights; and third, the court articulates reasons for limiting other rights that are equally protected by domestic constitutions.⁵⁵ These three

⁵² Parts IV.A-B are adapted from the author's previously published article. See Chang, *supra* note 16.

⁵³ See, e.g., Interpretation of the Council of Grand Justices, Judicial Yuan, No. 587 (Dec. 30, 2004) (overruling Supreme Court decisions regarding a right to bring an action for disavowal) [hereinafter J.Y. Interpretation No. 587]; Interpretation of the Council of Grand Justices, Judicial Yuan, No. 582 (July 23, 2004) (explaining precedent suggesting a co-defendant's statements against himself are admissible to support the crime of another co-defendant is no longer good law) [hereinafter J.Y. Interpretation No. 582]; Interpretation of the Council of Grand Justices, Judicial Yuan, No. 392 (Dec. 22, 1995) (holding provisions of the Code of Criminal Procedure and the Habeas Corpus Act to be unconstitutional).

⁵⁴ See, e.g., JACKSON, *supra* note 1, at 43-44 (explaining the frequency with which international human rights laws are incorporated into national constitutions and legal systems); John McGinnis & Olya Somin, *Democracy and International Human Rights Laws*, 84 NOTRE DAME L. REV. 1739, 1749 (2009) (noting the enthusiasm of Supreme Court justices to use international human rights law when interpreting the U.S. Constitution); Melissa A. Waters, *Creeping Monism: The Judicial Trend Toward Interpretative Incorporation of Human Rights Treaties*, 107 COLUM. L. REV. 628, 648 (2007) (discussing the benefit to individual rights resulting from the trend of national courts to recognize international human rights laws).

⁵⁵ See, e.g., Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 292-312 (1996) (discussing the Universal Declaration of Human Rights as a source of human rights laws and the role of national courts in applying them); McGinnis & Somin, *supra*

functions have been highly observable in the constitutional adjudications of both the Taiwanese and South Korean Constitutional Courts.

A. Adding New Rights and Giving New Content to Existing Rights

As already discussed, the ROC Constitution was enacted in 1947 and subsequent constitutional revisions in the 1990s have not focused upon the creation or revision of the existing list of rights.⁵⁶ This makes the judicial function of adding new rights and new contents of rights to the existing list even more prominent. International human rights laws thus provide abundant legal sources for such judicial purposes in Taiwan. The first example is *J.Y. Interpretation No. 372*.⁵⁷ Unlike other postwar constitutions, the ROC Constitution does not specifically mention the right of human dignity.⁵⁸ In the 1992 constitutional revisions, a declarative provision was added to assert the state's responsibility to ensure the protection of women's personal dignity and safety.⁵⁹ In *J.Y. Interpretation No. 372*, the Constitutional Court referred to the UDHR in the beginning of its reasoning in order to ensure human dignity and personal security.⁶⁰ The Court explained: "the maintenance of personal dignity and the protection of personal safety are contained in the Universal Declaration of Human Rights, and are also two of the fundamental concepts underlying our constitutional protection of the people's freedoms and rights."⁶¹

note 54, at 1747-51.

⁵⁶ See Gregory W. Noble, *Opportunity Lost: Partisan Incentives and the 1997 Constitutional Revisions in Taiwan*, 14 CHINA J. 89, 89-114 (1999) (explaining the history of the ROC Constitution and revisions made in the 1990s).

⁵⁷ Interpretation of the Council of Grand Justices, Judicial Yuan, No. 372 (Feb. 24, 1995) [hereinafter *J.Y. Interpretation No. 372*].

⁵⁸ For example, constitutions in both Europe and America evolved after World War II. As part of this evolution, constitutions were modified so as to include dignity-based rights. See Chang, *supra* note 16, at n. 12 (citing JACKSON, *supra* note 1, at 15-16). To the contrary, the ROC Constitution exhibited no such direction.

⁵⁹ XIANFA TSENGHSIU TIAOWEN [The Additional Articles of the Constitution of the Republic of China] art. 10, § 6 (2005).

⁶⁰ *J.Y. Interpretation No. 372*, *supra* note 57.

⁶¹ *Id.*

Similarly, a child's right to identify his parents is not specified in the Constitution, nor is any general right of personality. In *J.Y. Interpretation No. 587*,⁶² the Constitutional Court added this right to the list of constitutionally protected rights by resorting to the CRC as well as to the general provision of Chapter II, Article 22, which concerns the rights and duties of the people.⁶³ The Court argued that a child's right to identify his or her blood filiations was protected by Article 7, Section 1, of the CRC, and therefore the right to establish paternity should be protected under Article 22 of the Constitution.⁶⁴

The incorporation of new international human rights laws in South Korea has not been as prevalent as it has been in Taiwan. This may be the effect of South Korea's 1988 Constitution, which included a comprehensive list of human rights and fully provided human rights protection to Korean citizens.⁶⁵ In contrast to South Korea, Taiwan's most recent constitutional amendments focus primarily on the separation of powers, with only a rare mention of the protection of human rights.⁶⁶ Thus, any new rights protection must heavily rely on the judicial interpretation system.

B. Providing Persuasive Arguments for Existing Rights Protection

The second function of judicial reference to international human rights laws is to provide additional arguments for protecting existing constitutional rights. For example, Taiwan's *J.Y. Interpretation No. 582* addressed a criminal defendant's right to cross-examine witnesses.⁶⁷ In this interpretation, while the right to a fair trial—and subsequently the right of cross-examination—is clearly ensured by Article 16 of the ROC Constitution, the Court nevertheless felt the need to rely further on foreign laws and

⁶² *J.Y. Interpretation No. 587*, *supra* note 53.

⁶³ See MINGUO XIANFA, art. 22 (1947) (Taiwan); see also *J.Y. Interpretation No. 587*, *supra* note 53 (“All other freedoms and rights of the people that are not detrimental to social order or public welfare shall be guaranteed under the Constitution.”).

⁶⁴ *J.Y. Interpretation No. 587*, *supra* note 53.

⁶⁵ DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] arts. 10-38 (S. Kor.).

⁶⁶ See generally Chang, *supra* note 16 (comparing constitutional developments in Japan, South Korea, and Taiwan).

⁶⁷ *J.Y. Interpretation No. 582*, *supra* note 53.

international human rights documents for additional support. The Court's reference to international human rights documents demonstrates the universal nature of such rights.⁶⁸ The Court elaborated:

Article 16 of the Constitution provides for the people's right to sue. As far as a criminal defendant is concerned, he should enjoy the right to adequately defend himself under a confrontational system, according to adversarial rules, so as to ensure a fair trial. . . . The right of an accused to examine a witness is a corollary of such right. . . . Such right of a criminal defendant is universally provided—whether in a civil law country or a common law jurisdiction, and whether an adversarial system or an inquisitorial setting is adopted in administering a state's criminal justice. (*See, e.g.*, 6th Amendment to the United States Constitution, Article 37-II of the Japanese Constitution, Article 304 of the Code of Criminal Procedure of Japan, and Article 239 of the Code of Criminal Procedure of Germany) Article 6-III(iv) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, effective on November 4, 1950, and Article 14-III(v) of the International Covenant on Civil and Political Rights, passed by the United Nations on December 16, 1966 and put into force on March 23, 1976, both provide, "everyone charged with a crime shall be entitled to the following minimum guarantees: . . . to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him"⁶⁹

In South Korea, the concurring opinion in *Refusal of the Participation of Attorney in the Interrogation of Suspects who are not in Custody* references Article 14 of the ICCPR to support the recognition of the right to assistance of counsel—a right that has not been explicitly guaranteed by the South Korean Constitution.⁷⁰ The reference was made on the basis of two domestic

⁶⁸ *See id.*

⁶⁹ *Id.*

⁷⁰ CONST. CT., 1998Hun-Ma425, Apr. 25, 2002 (consol.) (S. Kor.).

constitutional provisions, Articles 10 and 37.⁷¹ These provisions request an obligation from the government to recognize and guarantee the inalienable basic rights of the individuals; the provisions further appeal to the government to protect freedoms and rights not expressly provided in the Constitution when necessary for human dignity.⁷² The opinion argued that the right to assistance of counsel—guaranteed by Article 14 of ICCPR—must be deemed a basic right closely related to the right of bodily freedom—a right which has been established through the historical experiences of many nations in the world and ought to receive maximum protection.⁷³

Moreover, the dissenting opinion in *Pledge to Abide by the Law* Case applied Article 18 (2) of ICCPR as a supporting argument to broaden the content of the right to conscience.⁷⁴ The Court stated that the Korean Constitution, “unlike constitutions of other nations, has an independent article explicitly stipulating protection of freedom of conscience while distinguishing it from freedom of religion and separating it from freedom of thoughts.”⁷⁵ It thus declared that the state should not intrude upon the freedom of inner thoughts, nor interfere with one’s value judgment: “It is . . . better protection of mental activities, a basis of democracy, which should not be abridged by any state authority and which has been an essential element for progress and development of the human race.”⁷⁶

Like the above case, the dissenting opinion in *Conscientious Objection of Military Service* employed Article 18 of the ICCPR and General Comment No. 22 by the Human Rights Committee to articulate the scope of right to conscience and its relationship with the right to religion.⁷⁷ The Court argued that the right to

⁷¹ CONST. CT., 2004Hun-Ma138, Sept. 23, 2004 (2004 DKCC, 75) (S. Kor.).

⁷² *Id.*; see also ICCPR, *supra* note 7, art. 10, 37.

⁷³ Refusal of the Participation of Attorney in the Interrogation of Suspects who are not in Custody, CONST. CT., 2004Hun-Ma138, Sept. 23, 2004 (2004 DKCC, 75) (S. Kor.).

⁷⁴ Pledge to Abide by the Law, CONST. CT., 1998Hun-Ma425, Apr. 25, 2002 (consol.) (S. Kor.).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Conscientious Objection of Military Service, CONST. CT., 2002Hun-Ka1, Aug. 26, 2004 (S. Kor.).

conscientious objection was not explicitly referred to in the Covenant, but that such a right could nevertheless be derived from Article 18 inasmuch as the obligation to use lethal force would seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.⁷⁸

C. Limiting Rights that are Equally Protected in the Constitution

Undeniably, the reference to international human rights laws often adds to the domestic list of constitutionally protected rights and thus provides better rights protection. However a possibility still exists that courts may use international human rights laws as a way to limit domestic constitutional protections for the existing rights. For example, in *J.Y. Interpretation No. 623* of Taiwan, the Court found a child's right to be free from sexual exploitation, guaranteed by the CRC, trumped the right to free speech.⁷⁹ The Court argued that the Constitution's guarantee of free speech was not absolute and that the legislature could impose adequate restrictions by enacting clear and unambiguous laws. Since protecting a child from engaging in any unlawful sexual activity is a universally-recognized fundamental right and a significant public interest, the purpose of the reviewed act, to prevent and eliminate the circumstances where children and juveniles were treated as sexual objects, must be deemed rational and legitimate.⁸⁰

Similarly, the Korean Constitutional Court in *Disclosure of the Identity of Sex Offenders Convicted of Acquiring Sexual Favors from Minors in exchange for Monetary Compensation* referred to the CRC to approve the legitimacy of the disclosure identity system.⁸¹ The Court did not deny that the identity disclosure system might restrict the general right to personality and the right to privacy.⁸² However, it held that such restriction should not be

⁷⁸ *Id.*

⁷⁹ Interpretation of the Council of Grand Justices, Judicial Yuan, No. 623 (Jan. 26, 2007).

⁸⁰ *Id.*

⁸¹ Disclosure of the Identity of Sex Offenders Convicted of Acquiring Sexual Favors from Minors in exchange for Monetary Compensation, CONST. CT., 2002Hun-Ka14, June 6, 2003 (S. Kor.).

⁸² *Id.*

deemed as excessive as the government must comply with the CRC to protect children from all forms of sexual exploitation and sexual abuse.⁸³

Another example is *Ban on Civil Servants' Labor*.⁸⁴ The Court cited the ICCPR to defend the legitimacy of the restriction on basic labor rights such as the right to association.⁸⁵ The Court stated that the ICCPR and other treaties related to the International Labor Organization do not contradict the disputed provisions of the Local Public Officials Act.⁸⁶ In addition, since the South Korean government did not ratify other international human rights instruments concerning basic labor rights, those international laws held only advisory status to the Court.⁸⁷ As a result, the Court could not apply these laws to review the constitutionality of relevant domestic laws.

V. Alternative Functions of Referencing International Human Rights Law in Constitutional Adjudication

The following illustrates two alternative functions of the reference to international human rights law that have been discernible in the constitutional adjudications of South Korea and Taiwan. The first alternative function of reference to international human rights law is to provide the benchmark for further legislative revision or policy change. The second alternative function is to boost dialogues between majority and minority opinions regarding understandings and interpretations of domestic constitutional rights as well as international norms.

A. *Setting a Benchmark for Further Legislative Revisions*

The first alternative function of referring to international human rights laws is to provide the benchmark for further legislative change.⁸⁸ For example, in both *J.Y. Interpretation No. 549* and *J.Y. Interpretation No. 578*, the Taiwanese Constitutional

⁸³ *Id.*

⁸⁴ *Ban on Civil Servants' Labor*, CONST. CT., 2003 Hun-Ba 50 and 2004 Hun-Ba 96, Oct. 27, 2005 (consol.) (S. Kor.).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *See, e.g., Hannum, supra* note 55, at 312.

Court examined the Labor Insurance Act and the Labor Standards Act and having found the Acts constitutional, it nevertheless advised the government to overhaul the entire statutory regime with relevant international labor conventions.⁸⁹ In *J.Y. Interpretation No. 549*, the Court requested that “an overall examination and arrangement, regarding the survivor allowance, insurance benefits and other relevant matters, should be done in accordance with the principles of this Interpretation, international labor conventions and the pension plan of the social security system.”⁹⁰ Similarly in *J.Y. Interpretation No. 578*, the Court advised the government to conduct a comprehensive examination of the current scheme regarding labor retirement payment and stressed that “the provisions of international labor conventions and the overall development of the nation shall also be taken into account.”⁹¹

In *Constitutional Complaint against Article 8 (1) of the Support for Discharged Soldiers Act*, the South Korean Constitutional Court referenced CEDAW to review the veterans’ extra point system in the public officer exam, and suggested the government revise the system accordingly.⁹² The Court stated that CEDAW and other international treaties ban discrimination against women and treat the protection of rights for women and the disabled as fundamental.⁹³ The veterans’ extra point system, notwithstanding its benign attempt to support economically disadvantaged veterans, nevertheless sacrificed the socially weak, particularly women and the disabled.⁹⁴ Thus, the Court held that the extra point system fell short of reasonableness as a means of aiding veteran soldiers and must be revised accordingly.⁹⁵

⁸⁹ Interpretation of the Council of Grand Justices, Judicial Yuan, No. 549 (Aug. 2, 2002) [hereinafter *J.Y. Interpretation No. 549*]; Interpretation of the Council of Grand Justices, Judicial Yuan, No. 578 (May 21, 2004) [hereinafter *J.Y. Interpretation No. 578*].

⁹⁰ *J.Y. Interpretation No. 549*, *supra* note 89.

⁹¹ *J.Y. Interpretation No. 578*, *supra* note 89.

⁹² CONST. CT., 98Hun-Ma363, Dec. 23, 1999 (1998-1999 DKCC, 32) (S. Kor.).

⁹³ *Id.* at 47.

⁹⁴ *Id.*

⁹⁵ *Id.* at 48.

B. Channeling Judicial Dialogues on the Understanding of Domestic and International Norms

The second alternative function of the reference to international human rights laws is to boost dialogues between majority and minority opinions regarding the understanding of domestic, and even international, norms.

The typical example in Taiwan is *J.Y. Interpretation No. 392*.⁹⁶ One dissenting opinion in this case defends the prosecutor's—rather than the judge's—power to detain a criminal defendant.⁹⁷ The opinion relied upon the conservative readings of relevant provisions in the ICCPR and ECHR, arguing:

This concept was reflected in Article 5 of “the European Convention for the Protection of Human Rights” and Fundamental Freedom effective on September 3, 1953; in Article 9 of the United Nations’ “International Covenant on Civil and Political Rights” effective on March 23, 1976; and in Article 7 of “the Continental American Human Rights Convention” effective in June, 1978. They required that an arrested criminal suspect be promptly surrendered to “a judge or an official exercising judicial power prescribed by law.” Apparently, the abovementioned international conventions and treaties have determined that the organ accepting the surrender of a detainee shall not be limited to a judge.⁹⁸

Interestingly however, the majority opinion in *J.Y. Interpretation No. 392* did not agree with such a reading that allowed prosecutorial detention.⁹⁹ It referred to a decision by the European Court of Human Rights that interpreted the same provision and rebutted the reading by the Ministry of Justice.¹⁰⁰ It said:

⁹⁶ Interpretation of the Council of Grand Justices, Judicial Yuan, No. 392 (Dec. 22, 1995) [hereinafter *J.Y. Interpretation No. 392*].

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

[T]he judgment rendered by the European Human Rights Court in the Pauwels Case (1988) indicated that, if the law confers the authority of criminal investigation and indictment on the same officer, even though the officer exercises powers independently, his neutrality in carrying out his duties should be considered highly suspect, hence, it violates the provision “other officer authorized by law to exercise judicial power” referred to in Article 5, Paragraph 3, of said Convention. (G. Pauwels Case, Judgment of May 26, 1988, COUNCIL OF EUROPE YEARBOOK OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS, 148-150 [1988]). That is, not to confer on the officer the right to detain people.¹⁰¹

In South Korea, the example for international human rights laws channeling judicial dialogues is the *Ban on Civil Servants' Labor Movement* case.¹⁰² The majority opinion held a very different understanding of the legal effect of international human rights law and its application to the domestic legal system from the dissenting opinion. The majority insisted that international human rights covenants allowed the “restriction of basic labor rights by statutes as long as the restriction does not infringe upon the essence of the right and takes place in accordance with . . . democratic procedure.”¹⁰³ The majority also noticed that relevant “declarations, conventions and recommendations under international law concerning basic labor rights have not been ratified” by South Korea and thus could not lend themselves as a standard to review the constitutionality of domestic laws.¹⁰⁴

The dissenting opinion held a contrasting view to the legal effect of international human rights law.¹⁰⁵ This opinion stated that “the Universal Declaration of Human Rights, international human rights covenants, the treaties related to the International Labor Organization concerning civil servants' basic labor rights, and recommendations of international bodies . . . can become important guidelines in interpreting the meaning, content, and

¹⁰¹ *J.Y. Interpretation No. 392, supra* note 96.

¹⁰² CONST. CT., 2003Hun-Ba50, Oct. 27, 2005 (2005 DKCC, 122) (S. Kor.).

¹⁰³ *Id.* at 123.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

scope of application of highly abstract provisions of the Constitution” even though they have not been ratified by South Korea.¹⁰⁶ The opinion argued that domestic constitutional provisions must be understood in light of these persuasive or guiding international legal authorities, and the Court found that in so doing, the challenged provisions in the present case violated the Constitution.¹⁰⁷

These two examples illustrate that both majority and minority opinions discuss international human rights laws in reflection upon domestic norms and rights as a way to channel judicial dialogues. Rather than merely disputing with one another on the definition, protected scopes, or limitations of domestic constitutional rights, these justices rely on their understandings of international human rights laws to reinterpret domestic constitutional rights, opening up an entirely different channel for judicial debate. Admittedly, these dialogues may be quite tense if majority and minority opinions hold very contrasting views on the interpretation of international and domestic norms and rights. However, such dialogues may enable justices that hold different positions with regard to domestic constitutional laws to find a new common ground in their understandings of international human rights laws.

VI. Conclusion

Constitutions are the supreme laws of nations that govern governments and their citizens,¹⁰⁸ whereas international human rights treaties are primarily consensual norms that bind state parties.¹⁰⁹ Both are different normative regimes with distinctive functions. The sharp line between the two, however, has been blurred by the fact that an increasing number of national courts are looking into, referring, or even directly applying international human rights laws or judicial decisions in their interpretation of domestic constitutions. The dialogue or even convergence of constitutional laws and international human rights has been of acute attention recently. Regrettably, however, recent discussions on the convergence of constitutional law and international human

¹⁰⁶ *Id.* at 124.

¹⁰⁷ CONST. CT., 2003Hun-Ba50, Oct. 27, 2005 (2005 DKCC, 122) (S. Kor.).

¹⁰⁸ BLACK'S LAW DICTIONARY 353 (9th ed. 2009).

¹⁰⁹ *Id.* at 1640.

rights laws have centered upon experiences of the West and have ignored East Asian practices.

Perhaps to the surprise of Western eyes, both of the constitutional courts in South Korea and Taiwan have referred to international human rights laws since the 1990s. By closely examining constitutional decisions where international human rights laws were discussed in South Korea and Taiwan, this article finds limited, but gradually increasing, references to international human rights laws in both South Korea and Taiwan. Interestingly however, most international human rights laws referred in these two courts are nonbinding in nature. Evidently, the reference to international human rights laws in both South Korea and Taiwan has been part of evolutionary process in developing their respective democratic constitutionalism. The references have been made to strengthen constitutional rights protection for individuals who are typically disadvantaged in emerging democracies rather than answering any calls for globalization or developments for normative convergence or legal pluralism.

VII. Appendix

I. The Use of International Human Rights Norms in Taiwanese Cases

	Case	Place of Reference	Decided date
1	J. Y. Interpretation 372 (Spouse unbearable mistreatment in marriage)	Reasoning Concurring opinion (dissenting in part)/Justice Jyun-Hsiung Su	Feb. 24, 1995
2	J. Y. Interpretation 392 (Detention power of Prosecutor)	Reasoning Dissenting in part/Justice Ho-Hsiung Wang Dissenting in part/Justice Sen-Yen Sun	Dec. 22, 1995
3	J. Y. Interpretation 514 (Minors entering the Amusement Park)	Dissenting opinion/Justice Yueh-Chin Hwang,	Oct. 13, 2000
4	J. Y. Interpretation 547 (Restrictions on the qualifications of Chinese herbal doctor)	Concurring opinion (dissenting in part)/Justice Yueh-Chin Hwang	June 28, 2002
5	J. Y. Interpretation 549 (Labor insurance)	Holding/ Reasoning Concurring opinion/Justice Chi-	Aug. 2, 2002

	payment)	Nan Chen Concurring opinion/Justice Yueh-Chin Hwang	
6	J. Y. Interpretation 550 (National Health Insurance payment)	Concurring opinion/Justice Jyun-Hsiung Su Dissenting in part/Justice Yueh-Chin Hwang	Oct. 4, 2002
7	J. Y. Interpretation 552 (Special circumstance of Interpretation 362)	Dissenting opinion/Justice Hua-Sun Tseng Dissenting opinion/Justice Tieh-Cheng Liu	Dec. 13, 2002
8	J. Y. Interpretation 558 (Freedom to choose and change residence)	Dissenting opinion/Justice Tieh-Cheng Liu	Apr. 8, 2003
9	J. Y. Interpretation 571 (Emergency relief to victims of 9/21 earthquake)	Dissenting opinion/Justice Jen-Shou Yang	Jan. 2, 2004
10	J. Y. Interpretation 573 (Disposition and modification of temple property)	Concurring opinion/Justice Ho-Hsiung Wang	Feb. 27, 2004
11	J. Y. Interpretation 578 (Labor retirement pensions)	Holding/Reasoning	May 21, 2004
12	J. Y. Interpretation 582 (Criminal defendant's right to cross-examination)	Reasoning Concurring opinion/Justice Yu-Hsiu Hsu	July 23, 2004
13	J. Y. Interpretation 587 (Child's right to identify blood)	Reasoning	Dec. 30, 2004
14	J. Y. Interpretation 603 (Fingerprinting information)	Concurring in part and dissenting in part/Justice Syue-Ming Yu	Sep. 28, 2005
15	J. Y. Interpretation 617 (Obscenity under Article 235 of Criminal Code)	Dissenting opinion/Justice Yu-Hsiu Hsu	Oct. 26, 2006
16	J. Y. Interpretation 623 (Article 29 of the Child and Juvenile Sexual	Reasoning	Jan. 26, 2007

	Transaction Prevention Act)		
17	J. Y. Interpretation 636 (The constitutionality of the Act for Eliminating Hoodlums)	Concurring in part/Justices Tzong-Li Hsu, Tzu-Yi Lin and Yu-Hsiu Hsu	Feb. 1, 2008
18	J. Y. Interpretation 664 (Detention and rehabilitation of juveniles)	Concurring in part and dissenting in part/Justice Shin-Min Chen	July 31, 2009
19	J. Y. Interpretation 665 (Detention in serious crime case)	Concurring in part/Justice Chun-Sheng Chen	Oct. 16, 2009
		Dissenting in part/Justice Chen-Shan Li	
20	J. Y. Interpretation 666 (Administrative penalties under the Social Order Maintenance Act)	Concurring in part/Justices Chun-Sheng Chen, Justice Sea-Yau Lin	Nov. 6, 2009
		Concurring opinion/Justice Pai-Hsiu Yeh	
21	J. Y. Interpretation 667 (Depository service of process in an Administrative Appeal Act)	Dissenting opinion/Justice Pai-Hsiu Yeh	Nov. 20, 2009
22	J. Y. Interpretation 670 (Acquitted detention for Compensation)	Concurring in part and dissenting in part/Justice Shin-Min Chen	Jan. 29, 2010
		Concurring opinion/Justice Chen-Shan Li	
		Concurring opinion/Justice Pai-Hsiu Yeh	
		Concurring opinion/Justice Tzong-Li Hsu	
23	J. Y. Interpretation 678 (The use of wireless frequency)	Concurring opinion/Justice Shin-Min Chen	July 2, 2010
24	J. Y. Interpretation 680 (The constitutionality of provisions for the Punishment Of Smuggling)	Concurring opinion/Justices Tzong-Li Hsu, Tsay-Chuan Hsieh	July 30, 2010

II. The Use of International Human Rights Norms on South Korean Cases

	Case	Place of Reference	Decided date
1	Constitutional complaint against Article 764 of Civil Law	Majority opinion	Apr. 1, 1991
2	Constitutional Complaint against Social Protection Law	Dissenting opinion	Apr. 1, 1991
3	Unconstitutionality against Article 55 and Article 58(1), (4) of Private School Law	Majority opinion	July 22, 1991
4	Constitutional Complaint against Articles 16(3) and 19(3) of the Registration, etc. of Periodicals Act	Dissenting opinion	Sep. 16, 1991
5	Detainees' Mandatory Wearing of Uniforms	Majority opinion	May 27, 1999
6	Constitutional Complaint against Article 8 (1) of the Support for Discharged Soldiers Act	Majority opinion	Dec. 23, 1999
7	Nationality Act case	Majority opinion	Aug. 31, 2000
8	Constitutional Complaint against Article 2(2) of Fraud Cheque Regulation Law	Majority opinion	Apr. 26, 2001
9	Act on the Immigration and Legal Status of Overseas Koreans Case	Majority opinion	Nov. 29, 2001
10	Pledge to Abide by the Law Case	Dissenting opinion	Apr. 25, 2002
11	Disclosure of the Identity of Sex Offenders Convicted of Acquiring Sexual Favors from Minors in change for Monetary Compensation	Majority opinion	June 26, 2003
12	Unconstitutionality Against Article 242(1) of Military Court Act	Majority opinion	Nov. 27, 2003
13	Conscientious Objection of Military Service Case	Majority opinion	Aug. 26, 2004
14	Refusal of the Participation of Attorney in the Interrogation of Suspects who are not in Custody	Concurring opinion	Sep. 23, 2004
15	Ban on Civil Servants' Labor Movement	Majority opinion/ Dissenting opinion	Oct. 27, 2005
16	Constitutional Complaint against Act on National Civil Servant	Majority opinion/ Dissenting opinion	Aug. 30, 2007

17	Unconstitutionality against Act on Establishment and Operation of Civil Servant Union	Majority opinion	Dec. 26, 2008
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III. The Use of International Human Rights Norms in Taiwanese Cases

	Case	Applicant
1	J. Y. Interpretation 372	Woman
2	J. Y. Interpretation 392	Criminal defendant
3	J. Y. Interpretation 514	Individual
4	J. Y. Interpretation 547	Laborer
5	J. Y. Interpretation 549	Laborer
6	J. Y. Interpretation 550	Individual
7	J. Y. Interpretation 552	Woman
8	J. Y. Interpretation 558	Individual
9	J. Y. Interpretation 571	Individual
10	J. Y. Interpretation 573	Religious Group
11	J. Y. Interpretation 578	Laborer
12	J. Y. Interpretation 582	Criminal defendant
13	J. Y. Interpretation 587	Child
14	J. Y. Interpretation 603	Individual
15	J. Y. Interpretation 617	Criminal defendant
16	J. Y. Interpretation 623	Child
17	J. Y. Interpretation 636	Criminal defendant
18	J. Y. Interpretation 664	Child
19	J. Y. Interpretation 665	Criminal defendant
20	J. Y. Interpretation 666	Criminal defendant
21	J. Y. Interpretation 667	Individual
22	J. Y. Interpretation 670	Criminal defendant
23	J. Y. Interpretation 678	Criminal defendants
24	J. Y. Interpretation 680	Criminal defendants

IV. The Use of International Human Rights Norms in South Korean Cases

	Case	Applicant
1	Constitutional complaint against Article 764 of Civil Law	Individual
2	Constitutional Complaint against Social Protection Law	Criminal defendant
3	Unconstitutionality against Article 55 and Article 58 (1) (4) of Private School Law	Laborer
4	Constitutional Complaint against Articles 16(3) and 19(3) of the Registration, etc. of Periodicals Act	Individual
5	Detainees' Mandatory Wearing of Uniforms	Criminal defendant
6	Constitutional Complaint against Article 8 (1) of the Support for Discharged Soldiers Act	Woman
7	Nationality Act case	Foreigner
8	Constitutional Complaint against Article 2(2) of Fraud Cheque Regulation Law	Individual
9	Act on the Immigration and Legal Status of Overseas Koreans Case	Foreigner
10	Pledge to Abide by the Law Case	Criminal defendant
11	Disclosure of the Identity of Sex Offenders Convicted of Acquiring Sexual Favors from Minors in exchange for Monetary Compensation	Criminal defendant
12	Unconstitutionality Against Article 242(1) of Military Court Act	Criminal defendant
13	Conscientious Objection of Military Service Case	Religious group
14	Refusal of the Participation of Attorney in the Interrogation of Suspects who are not in Custody	Criminal defendant
15	Ban on Civil Servants' Labor Movement	Laborer
16	Constitutional Complaint against Act on National Civil Servant	Laborer
17	Unconstitutionality against Act on Establishment and Operation of Civil Servant Union	Laborer