

Trends & Policies in Criminology and Justice

K I C J

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Improving the Management of Random Crime Offenders

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Keywords

Random crime, Mudjima (don't-ask-why) crime, indiscriminate crime, judicial hospitalization, mentally ill offenders, community-based correction model, multi-agency collaboration



Summary

- Random crime, known domestically as 'Mudjima' (don't-ask-why) crime, has faced significant criticism regarding the appropriateness of its concept and terminology. These crimes garner greater public attention than general violent crimes due to their unpredictable nature and apparent lack of motive. The high fatality rate and potential for mass casualties significantly amplify public fear of victimization in a short period. However, the perception that random crime is a more severe offense warranting stricter punishment stems not from the offender's motive but from its characteristic as an 'indiscriminate attack targeting unspecified individuals.' The term 'crime with an abnormal motive' has a limitation in that it fails to encapsulate this attribute of aggravated culpability. Therefore, this report proposes 'random crime' as a new, more suitable term.
- Based on a comprehensive analysis of investigation and trial records of random crime offenders, supplemented by various research studies, their characteristics can be summarized as follows: Cognitively, they often exhibit delusions (particularly persecutory delusions) stemming from mental illnesses and possess a poor self-concept (i.e., low self-esteem). Emotionally, they are characterized by anxiety, depression (including suicidal ideation), and traumatic stress originating from childhood trauma. Interpersonally and behaviorally, social withdrawal, hostile attitudes, and egocentrism are predominant. Maladaptive behaviors, such as hostile thoughts and actions toward the general public and frequent physical aggression, appear to be the

result of an antisocial personality formed by a combination of these cognitive, emotional, and behavioral impairments.

- To effectively analyze and manage random crime, a legal framework must first be established. Above all, this report proposes new legislation, tentatively titled the 'Act on the Punishment of Random Crimes,' to regulate these offenses under a single legal umbrella. Article 1 of this proposed act would stipulate special provisions concerning the punishment and procedures for 'indiscriminate crimes' and the correction and management of persons who commit them. Article 2 would provide legal definitions for key terms such as 'indiscriminate,' 'indiscriminate crime,' 'indiscriminate crime offender,' 'victim of indiscriminate crime,' 'possession of a weapon,' and 'public place.' Article 3 would outline the procedures for handling such crimes. Furthermore, Chapter 2 of the act would mandate the implementation of risk assessments during the police investigation stage and specify provisions for case transfers by judicial police officers, inter-agency cooperation, consultation with experts, and mutual assistance among relevant institutions.
- For the prevention of random crime, a judicial hospitalization system should be introduced to more smoothly integrate individuals with mental illness who exhibit a risk of violence into the mental health system. To advance the discussion on adopting such a system, the mental health authorities must first present a concrete plan, deciding whether to adopt a 'judge-led' system, like those in the United States and Germany, or a 'tribunal-based' model, as seen in Australia. If the tribunal model is chosen, it is proposed that the functions of the current Hospitalization Eligibility Review Committee be significantly reorganized. The tribunal's authority should be strengthened to function as a quasi-judicial body for involuntary commitment decisions, comprising psychiatrists, legal professionals, and mental health specialists. The proposal also recommends establishing this tribunal as an independent body with at least some full-time staff, codifying the roles, powers, and specialty qualifications of its personnel, specifying its structure and functions as a compulsory commitment adjudication body, and addressing systemic issues such as low reimbursement rates for public psychiatric care and improving the compensation for specialized professionals.
- Random crime offenders exhibit a very low rate of stable employment in adulthood, often working in non-regular jobs like daily construction labor or living solely on basic livelihood security benefits for extended periods. This long-term unemployment in adulthood is presumed to have exacerbated their social isolation. From a crime prevention perspective, the state must strengthen social bonds by resolving unemployment through a robust social safety net to prevent long-term joblessness from escalating into violence against unspecified individuals. Furthermore, a systematic intervention through community-based counseling and social welfare services, implemented before their criminal records accumulate and they progress into chronic offenders, would contribute significantly to the prevention of random crime.

1 Background and Research Objectives

- A series of recent heinous random crimes, such as the stabbing rampages near Sillim Station and Seohyeon Station and a murder involving a Japanese sword in Eunpyeong-gu, has gravely threatened public safety. These crimes tend to attract significant public attention more than other violent crimes because they occur unexpectedly and without a clear reason. Their high fatality rates and potential for multiple victims can rapidly intensify the public's fear of crime.
- In South Korea, a criminological concept, legal definition, and statistical classification for 'crime with an abnormal motive' have not been properly established. Consequently, a specialized criminal policy tailored to the characteristics of such crimes is absent. This lack of a clear definition and classification complicates a range of efforts, from accurately naming the offense to analyzing related policies, and critically limits the ability to conduct specific and effective criminal policy discussions.
- To improve the prevention of random crime and the management system for its offenders, a substantive definition must first be established based on a phenomenological analysis of the crime. Based on this, a normative concept must be formulated for effective criminal policy management, which will then enable the development of an efficient statistical classification system. Accordingly, this study conducted research on the phenomenological and substantive concepts of random crime, its normative concept, and methods for its statistical classification.

2 Key Findings

○ The Concept of Random Crime

- The suitability of a criminal term to describe a specific criminal phenomenon can be evaluated based on its validity, comprehensiveness/exclusivity, and connotations. In terms of validity, the term must reflect the core characteristics of the crime. The term 'random crime' literally emphasizes that the offender's motive is unclear or not easily discernible. However, this abnormality of motive substantively stems from the 'lack of a prior relationship between the offender and the victim' and the 'indiscriminate nature of victim selection.'
- The perception that random crime is a more severe offense warranting stricter punishment is related not to the offender's motive but to its characteristic as an indiscriminate attack on unspecified individuals. The term 'crime with an abnormal motive' is limited in that it fails to

encapsulate this attribute of aggravated culpability. Therefore, this report proposes 'random crime' as a new term to replace it.

○ Characteristics of Random Crime Offenders

- An analysis of the investigation and trial records of 244 random crime cases that occurred over the last five years (2019-2024, based on first-instance trials) reveals the following: The most frequent crime type was 'assault and physical injury,' accounting for 77.9% of all cases. Regarding location, an overwhelming 68% of crimes occurred on public streets, such as major roads and sidewalks. In terms of weapons, 20.9% of offenders possessed a weapon or criminal tool, and tools were actually used in 37.3% of the incidents. The largest age group was the 50s (26.5%), followed by the 30s (21.3%) and 40s (20.1%). Vocationally, 57.4% of offenders were unemployed, with an additional 26.6% being daily or non-regular workers. Most offenders had at least a high school diploma. In terms of marital status, 'unmarried' was the most common (49.6%), followed by 'divorced or separated' (25%). Over half of the offenders lived alone, and 64.8% had a fixed residence.
- The majority of offenders had prior convictions for interpersonal crimes, and 43.9% had a history of committing a similar offense, i.e., a prior random crime. Regarding their state at the time of the offense, 67.6% of random crime offenders were under the influence of alcohol. As for motives, the most common was committing the crime for no reason while intoxicated (32.4%), followed by offenses due to psychiatric issues (e.g., delusions, hallucinations) at 27.5%, and random acts of violence to vent anger at 18.9%.

○ Characteristics by Subtype

- Three subtypes were identified: The Chronic Anger Type, who displaces anger onto others or expresses it without a clear reason, constituted 63.1% of cases. The Mental Illness Type, where symptoms like delusions or hallucinations influenced the crime, accounted for 27%. The Reality Discontent Type, who commits crimes due to personal pessimism or social dissatisfaction, made up 9.9%.
- Prosecutors demanded prison sentences for most random crime offenders. For the Mental Illness Type, requests for forensic psychiatric treatment and custody were more frequent compared to other types. Within the Mental Illness Type, 87.9% of offenders had a diagnosed psychiatric disorder, a significantly higher rate than in the Chronic Anger (38.2%) and Reality Discontent (37.5%) types. Offenders in the Mental Illness Type primarily showed issues such as delusions, hallucinations, and persecutory delusions, and also had the highest rate of prior psychiatric treatment. In contrast, the Chronic Anger and Reality Discontent types had high rates of alcohol or substance addiction problems. The rate at which prosecutors demanded prison sentences was 87.0% for the Chronic Anger Type,

87.9% for the Mental Illness Type, and 66.6% for the Reality Discontent Type. This shows no significant difference in the demand for prison sentences between the Mental Illness and Chronic Anger types. Considering the low rate of requests for forensic psychiatric treatment (18%) and the high rate of demanded prison sentences for the Mental Illness Type, it can be concluded that the majority serve their time in correctional facilities with inadequate treatment systems.

[Table 1] Health Status and Psychiatric History of Random Crime Offenders by Type (N = 244)

History	Details	Offender Type			x ²
		Chronic Anger Type (n=154)	Mental Illness Type (n=66)	Reality Discontent Type(n=24)	
Presence of Physical Illness	Yes	34 (22.2)	11 (16.7)	9(37.5)	(df=2) 4.42
	No / Unknown	119 (77.8)	55 (83.3)	15(62.5)	
Presence of Psychiatric Disorder ¹	Yes	58 (38.2)	58 (87.9)	9(37.5)	(df = 2) 47.69***
	No / Unknown	94 (61.8)	8 (12.1)3	15(62.5)	
Experience of Psychiatric Diagnosis	Self-reported	25 (27.8)	3 (4.5)	7(29.2)	(df = 4) 36.80***
	Diagnosed	34 (37.8)	54 (81.8)	6(25.0)	
	Unknown	31 (34.4)	9 (13.6)	11(45.8)	
Experience of Psychiatric Treatment ²	Yes	45 (29.8)	55 (83.3)	7(29.2)	(df = 2) 55.82***
	No / Unknown	106 (70.2)	11 (16.7)	17(70.8)	
Substance (incl. Alcohol) Addiction and Abuse	Yes	96 (63.2)	18 (27.3)	15(62.5)	(df=2) 24.71*
	No / Unknown	56 (36.8)	48 (72.7)	9(37.5)	

Notes:

^{1,2} Past or present, ³ Includes 'unknown' only

*p < .05, ***p < .001

Legal Discussion of Random Crime

- To analyze and manage random crime, a legal framework for the offense must first be established. This is because punishment for random crime is only possible with a basis in regulatory legislation founded on a clear legal definition. Furthermore, statistical management through the collection and analysis of such cases is essential to enable the analysis of and response to the specific characteristics of random crime.
- This study proposes 'random crime' as the legal term for 'crime with an abnormal motive' and suggests that it must comprise all of the following constituent elements: 'random,' 'random crime,' 'random crime offender,' 'victim of random crime,' 'possession of a weapon,' and 'public place.' For any future amendments to the Criminal Act, special acts, or the enactment of new legislation, the legal definition of random crime must encompass all of the following: First, concerning the subject of the crime (the offender), the definition

must include the elements of acting 'without a specific motive' and the 'indiscriminateness in victim selection.' Second, regarding the object of the crime (the victim), it must include the 'lack of a prior relationship' with the offender and their status as an 'unspecified third party.' Third, concerning the criminal act, it must include provisions defining it as an abstract endangerment offense, where an offender 'possesses a weapon' in a 'public place' (other than a private space) and thereby creates a dangerous situation for the public.

- The new legislation proposed in this study is the 「Act on the Punishment of Random Crimes」. Article 1 defines its purpose as contributing to 'the eradication of random crime and the establishment of a healthy social order by prescribing special provisions concerning the punishment and procedures for random crimes, as well as the correction and management of persons who have committed them.' Article 2 provides legal definitions for the concepts of 'random,' 'random crime,' 'random crime offender,' 'victim of random crime,' 'possession of a weapon,' and 'public place.' Article 3 stipulates the responsibilities of the state and local governments and establishes this Act as a special act that takes precedence over other laws. In particular, regarding the procedures for handling random crimes, Chapter 2 proposes the implementation of risk assessments at the police investigation stage and specifies details on case transfers by judicial police officers, inter-agency cooperation, inquiry of expert opinions, and the cooperation and assistance of related institutions. Chapter 3, concerning penalties, proposes separate punishments for 'public threats using information and communications networks' and for injury and homicide resulting from 'random crime.' It also provides for the aggravated punishment of habitual offenders and the concurrent imposition of penalties and program completion orders.

[Table 2] Act on the Punishment of Random Crimes

Chapter I General Provisions

Article 1 (Purpose)

The purpose of this Act is to eradicate random crimes and to help establish a sound social order by prescribing special provisions on the punishment of, and procedures for, random crimes, as well as on the correction and management of persons who commit such crimes.

Article 2 (Definitions)

The terms used in this Act have the following meanings:

“Random” means the absence of any prior relationship, nexus, or association between the offender and the victim.

“Random crime” means, under the condition described in subparagraph 1, any offense

falling under Part II, Chapter 13 (Arson and Causing Fire by Negligence), Chapter 24 (Homicide), Chapter 25 (Bodily Injury and Assault), or Chapter 30 (Intimidation) of the Criminal Act, where all of the following requirements are met:

- (i) Random crime offender: a person who commits an offense against an unspecified target without a particular motive or selection criterion;
- (ii) Victim of a random crime: an unspecified third party, unrelated to the offense, who suffers harm;
- (iii) Possession of a deadly weapon: possession, with intent to kill, of a weapon or other dangerous instrument capable of causing death or serious bodily injury; and
- (iv) Public place: any place other than a private space—such as a road or public facility—where harm may be inflicted upon any person in unforeseen circumstances.

Article 3 (Duties of the State and Local Governments)

The State and local governments shall establish and implement legal and institutional measures—including education and public awareness—to prevent and eradicate random crimes, and shall secure the necessary fiscal resources.

Article 4 (Relationship to Other Laws)

This Act shall prevail with respect to random crimes; provided, however, that where aggravated punishment is prescribed by the Act on the Aggravated Punishment, etc. of Specific Crimes, that Act shall govern.

Article 5 (Prohibition of Abuse)

In applying this Act, due care shall be taken not to unjustifiably infringe the rights of the people, and this Act shall not be applied for purposes alien to its legislative intent.

Chapter 2 Procedures for Handling Random Crimes

Article 6 (Implementation of Risk Assessment at the Police Investigation Stage, etc.)

A judicial police officer shall conduct a risk assessment of an alleged random crime offender arrested pursuant to Articles 7 and 8.

Based on the results of the preceding paragraph, each police station may obtain a comprehensive evaluation—through an externally commissioned psychological specialist—covering psychiatric assessment, the specific facts of the offense, the issuance of an arrest warrant, and matters relevant to sentencing.

Article 7 (Transfer of Cases by Judicial Police Officers)

A judicial police officer shall promptly investigate a random crime and transfer the case to a public prosecutor. In such case, the officer may present an opinion on the evaluation results carried out under the procedures of the preceding Article.

Article 8 (Inter-Agency Cooperation)

If, according to the preceding provisions, a person is evaluated as having a mental illness and a high risk of recidivism, information shall be shared from the police stage through the prosecution, courts, correctional institutions, probation offices, and the Korea Rehabilitation Agency so that the person can be intensively managed at each stage of the criminal process, and all parties shall make mutual efforts to cooperate.

The Minister of the Interior and Safety, the Minister of Justice, or the head of a local government shall take necessary measures to establish and operate a system for such inter-agency cooperation.

Other matters necessary for the management and operation of the inter-agency cooperation system shall be determined by the Minister of the Interior and Safety after consultation between the head of the local government and the chairperson of the local council.

Article 9 (Inquiry of Expert Opinions)

The court may inquire into the opinions of psychiatrists, psychologists, sociologists, social work scholars, and other relevant experts regarding the causes of a random crime and the offender's psychological state.

The court shall take into consideration the results of the opinion inquiry under paragraph (1) when investigating and hearing a random crime case.

Article 10 (Cooperation and Assistance)

Where necessary for the investigation or trial of a random crime case, the court may request cooperation and assistance from relevant judicial agencies, counseling centers, medical institutions, or other organizations.

Any agency or organization that receives a request under paragraph (1) and refuses it shall present a justifiable reason.

Chapter 3 Penalties

Article 11 (Public Threats Using Information and Communications Networks)

A person who disseminates or posts, via an information and communications network, content threatening to inflict harm upon the life or body of an unspecified person or many persons, thereby causing public anxiety or fear, shall be punished by imprisonment for not more than five years or by a fine not exceeding 50 million won.

Article 12 (Random Crime)

A person who, by committing a random crime, causes bodily injury to a victim shall be punished by imprisonment for not less than five years.

A person who, by committing a random crime, causes the death of a victim shall be punished by death, life imprisonment, or imprisonment for not less than seven years.

Article 13 (Habitual Offenders)

A person who habitually commits the random crimes referred to in the preceding Article shall be subject to an aggravated penalty of up to one-half of the statutory punishment for the offense; provided, however, that this shall not apply where the person is otherwise subject to aggravated punishment as a habitual offender under other laws.

Article 14 (Concurrent Imposition of Punishment and Program-Completion Orders, etc.)

When sentencing a random crime offender to a guilty verdict (excluding suspension of the pronouncement of sentence), the court may concurrently impose an order to complete a correctional treatment program (hereinafter, “completion order”).

The correctional treatment program shall include psychiatric evaluation, psychological treatment interventions, and educational programs for the prevention of recidivism.

Addenda

Article 1 (Enforcement Date)

This Act shall enter into force six months after the date of its promulgation.

Article 2 (Applicability)

This Act shall also apply to cases that are under investigation or trial at the time of its enforcement.

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Policy Recommendations

- Improving prevention of crimes by persons with mental illness and strengthening offender management

- Our review of investigation and trial records shows that, among 72 random crime offenders with mental illness, prosecutors sought a medical treatment and custody order for only 13 (18%), while they sought imprisonment in 87.9% of cases. Moreover, courts imposed imprisonment at first instance on 92.4% of such offenders. These figures indicate that petitions for medical treatment and custody—intended for offenders who actually need treatment—are not being properly utilized in criminal proceedings. To restore the purpose of psychiatric evaluation and the treatment-and-custody regime, psychiatric assessments should be used more broad-

ly for mentally ill offenders with high risk of reoffending and clear treatment needs, and those assessments should more actively lead to orders for medical treatment and custody.

- To prevent random crime, a judicial hospitalization system should be introduced so that persons with mental illness who present a risk of violence can be more smoothly brought under the mental-health care system. To make this discussion concrete, mental-health authorities should present a specific proposal on whether to adopt a judge-led model (as in the United States and Germany) or a tribunal model (as in Australia). In the United States, initial commitment is prioritized and a judge decides on extensions, which is feasible because many jurisdictions have mental-health courts in local hospitals (some operating as circuit courts) and are supported by dedicated mental-health and administrative staff.
- In Korea, however, publicly funded psychiatric hospitals are few (e.g., the National Forensic Hospital and the National Center for Mental Health). Low reimbursement rates for psychiatric services and resulting workforce shortages mean the basic infrastructure is insufficient, and opposition from service-user organizations also makes it difficult to adopt a judge-led model in the short term. If a tribunal model is chosen, the current Committees for Review of Appropriateness of Admission could be substantially reorganized into a tribunal system that includes psychiatrists, legal professionals, and mental-health specialists, with enhanced authority so that reviews of involuntary admission function in practice, as a court. The tribunal should be established as an independent body with psychiatrists, legal professionals, mental-health specialists, and administrative staff (some as full-time personnel); roles, powers, and qualification (specialty) requirements should be codified; the staffing structure and functions of the coercive-admission adjudicatory body should be specified; and policies should address low public-psychiatry reimbursement and improve working conditions for specialized personnel.

- **Improving recidivism prevention and offender management for high-risk serious offenders released from prison**

- Rethink the current police-stage, single-agency approach to post-release supervision and shift to a multi-agency model spanning the entire criminal justice system and related services. As in the U.K.'s MAPPA (Multi-Agency Public Protection Arrangements) or IOM (Integrated Offender Management), prioritize chronic serious offenders—such as random crime offenders—by screening all releasees to identify those requiring community management and applying differential supervision by risk level.
- Under MAPPA, releasees are initially risk-classified with validated tools; degree of agency cooperation and intervention intensity are then calibrated accordingly. For those classified at Levels 2 and 3, police, prisons, and probation operate a shared information system to assess risk, share data for risk management, and monitor outcomes.
- Evaluations of MAPPA indicate participating cohorts show reoffending rates at roughly half the national average compared with non-participants. To pivot toward a community-based cor-

rections model, government should provide sustained funding and make a multi-agency co-operation model a core policy priority so offenders can reduce reoffending and achieve better outcomes.

- **Strengthening the social safety net for crime prevention**

- Random crime offenders exhibit very low rates of stable employment in adulthood; many rely on precarious work (e.g., day labor in construction) or periods of no employment with basic public assistance. Prolonged adult unemployment likely exacerbates social isolation, a risk factor for violence against strangers. The state should use the social safety net to address unemployment and reinforce social bonds, preventing escalation into indiscriminate violence.
- Early psychological and social-welfare interventions for youth who have experienced dysfunctional family relationships are critical. Nationwide Youth Counseling & Welfare Centers should provide counseling to high-risk youths for violent behavior, connect them to medical care when pharmacotherapy is needed, and link them to legal services where appropriate. If systematic support through community-based counseling and social-welfare services is provided before criminal records accumulate and offending becomes chronic, it can meaningfully prevent random crime.

2

A Study on the Prevention and Response System of Investor-State Dispute Settlement

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Keywords

International investment, foreign investment, international investment law, international investment disputes, Investor-State Dispute Settlement (ISDS)



Summary

- As of April 2024, Korea has been involved in 18 Investor-State Dispute Settlement (ISDS) cases in total, indicating the need to explore measures for ex-ante prevention and ex-post response to international investment disputes.
- Rather than analyzing disputes case by case, this study reviews ISDS by substantive and procedural issues to build a more comprehensive and systematic understanding.
- For prevention, it examines key substantive standards in international investment law—national treatment (NT), most-favored-nation (MFN), and fair and equitable treatment (FET)—so that risks surrounding international investment disputes can be minimized during any renegotiation of existing agreements.
- For cases in which the Korean government has been a respondent, the study identifies problems and constraints observed in the response process and proposes policy options to enable more effective handling when disputes arise.
- It underscores the need to establish a cooperative framework—supported by enabling legislation—that allows participation by all ISDS actors, including the State (central government), law firms and arbitrators, and local governments.

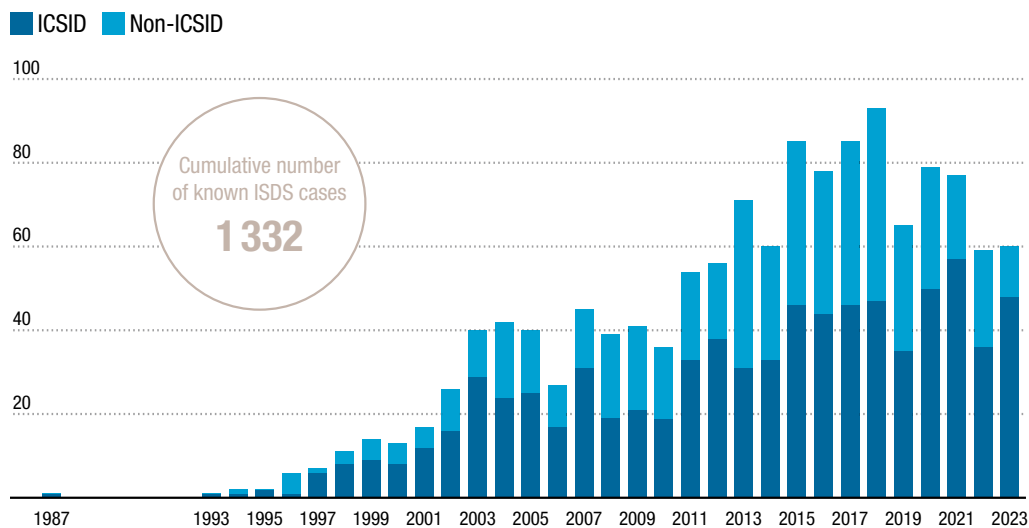
1 Background and Research Objectives

- Since the 1990s, the introduction and use of Investor–State Dispute Settlement (ISDS)—a mechanism for resolving disputes between private foreign investors and host states—has increased sharply.
- As of April 2024, Korea has been involved in 18 ISDS matters: 10 cases in which the Korean government was sued, and 8 cases filed by Korean investors against host states.
- Against this backdrop, the study explores how Korea can prevent disputes ex-ante and respond effectively ex-post when such disputes occur.

2 Key Findings

International Investment Disputes – Ex-Ante Prevention and Ex-Post Response Measures

- Clarifying “investment” and “investor” (material and personal jurisdiction of ISDS).
 - Objections based on the definition of 'investment' and 'investor' often appear as preliminary issues in the merits phase of ISDS. Traditionally, the ICSID Convention and many bilateral investment treaties (BITs) left these terms undefined, which made them highly ambiguous in practice.



Source: UNCTAD, IIA Navigator database

- Whereas earlier practice tended to define “investment” broadly, recent treaty practice shows a trend toward narrowing the scope. If “investment” is drafted in sweeping, catch-all terms,

assets that the parties never anticipated—or that contribute little to the host economy—may still claim ISDS protection. Accordingly, today’s international practice increasingly uses more limited definitions of “investment” and “investor.”

- **To prevent ISDS claims ex ante, we identify and examine the principal substantive issues in international investment law highlighted by UNCITRAL and the OECD.**

- First, we review the National Treatment (NT) obligation, one element of the non-discrimination principle. NT requires that domestic and foreign investments (and investors) not be treated differently. A three-step test is typically applied: (i) whether domestic and foreign investors were in “like circumstances”; (ii) whether the host state accorded the foreign investor less-favorable treatment; and (iii) whether any differential treatment was a justified measure pursuing a legitimate policy objective of the host state.

- Another non-discrimination element is Most-Favored-Nation (MFN) treatment, which prohibits discrimination among foreign investors. In ISDS, debate continues over whether MFN permits the importation of substantive protections from third treaties and whether it extends to procedural protections. Arbitral tribunals generally assess the text of the MFN clause, the treaty’s drafting history (*travaux préparatoires*), and state practice, with particular weight given to the clause’s wording.

- Second, we examine the Fair and Equitable Treatment (FET) standard, a core provision of many IIAs (International Investment Agreements). Although recent treaties tend to articulate FET more concretely, controversy persists over its scope, and arbitrators continue to play a central role in shaping the investor–state relationship under FET.

- UNCTAD indicates that FET may encompass legitimate expectations, denial of justice and due process, manifest arbitrariness in decision-making, discrimination, and outright abusive treatment.

- Finally, we review expropriation clauses—often a primary reason for concluding IIAs. While customary international law recognizes a sovereign’s right to expropriate foreign property, that right is not unfettered.

- Expropriation provisions, found in nearly all international investment agreements, generally require that when a state takes property belonging to a foreign investor, the taking is lawful only if four conditions are met: (i) public purpose (public policy), (ii) a non-discriminatory manner, (iii) compensation, and (iv) due process.

- **On an ex post basis, we examine (i) who has authority to hear and determine the case (jurisdiction) and (ii) whether there are adequate avenues for parties to challenge an award (annulment/set-aside).**

- With respect to jurisdiction, persistent issues concern the interaction between domestic courts and international investment tribunals. Proposed approaches range from modest refinements to the current investor–state arbitration system—such as revising arbitrator appointment meth-

ods, harmonizing codes of conduct, and enhancing transparency—to introducing an appellate mechanism for tribunal awards and, more ambitiously, establishing a Multilateral Investment Court.

- Second, we review the annulment/set-aside procedures that are critical to safeguarding the integrity and finality of investment awards. Like other international arbitral awards, investment awards are final and binding on the parties and, in principle, are not appealable; they may be challenged only on limited grounds.
- In general, challenges to investment awards proceed along two tracks: (1) annulment under the ICSID Convention and (2) set-aside under the UNCITRAL Arbitration Rules (i.e., before the courts at the seat). Under the ICSID regime, the narrowly framed and somewhat abstract annulment grounds afford ad hoc committees considerable discretion, which undermines predictability for the parties. Moreover, even when applications are filed, the grant rate is very low—on the order of 2.3–5%—raising questions about how effective annulment/set-aside is as a remedy.
- **Building on these substantive and procedural issues, Chapter 4 of the original report provides an overview of ISDS cases filed against the Government of Korea—including the Lone Star, Dayyani, Elliott, and Mason cases—and examines the problems and limitations encountered during the government’s responses to those matters.**
- At the early stages of dispute, recurring issues included limited awareness of investment-dispute risks, the absence of a dedicated unit to handle investor grievances, and the lack of an archive of international investment arbitration awards. During the conduct of ISDS proceedings, additional challenges arose, such as the absence of a lead ministry, insufficient participation by specialized personnel, and difficulties in securing funding and allocating costs.
- Drawing on these experiences, the study proposes a range of policy measures to enhance Korea’s capacity to manage international investment disputes.

3

Policy Recommendations

- A comprehensive re-examination of key provisions in international investment agreements (IIAs) is needed to proactively manage ISDS-related risks.
- Expand ISDS awareness among national and local investment officials; expand the pool of international investment law experts (e.g., strengthened graduate training and research capacity); build and maintain an international arbitration network (linking leading international arbitrators with domestic specialists); and establish funding mechanisms to cover arbitration costs.

- Establish a cooperative framework that includes all ISDS stakeholders—the central government, law firms and arbitrators, and local governments.
- Enact enabling legislation to provide a clear statutory basis for inter-agency cooperation mechanisms.

3

A Study on Countermeasures Against Drug Crimes: Focusing on the Undercover Investigation

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Keywords

Drug crimes, undercover investigation, legislation, investigators' perceptions, comparative legal study



Summary

- Drug crime in the Republic of Korea is becoming increasingly severe. According to the Korean Prosecution Service's 2023 White Paper on Drug Offenses, 27,611 offenders were apprehended in 2023—the first time the total has exceeded 20,000 and the highest number on record. Notably, offenders under 19 rose to 1,477, more than tripling year-over-year, and foreign offenders reached an all-time high of 3,151.
- A principal driver of this surge is the explosive growth of non-face-to-face transactions via the dark web and Telegram enabled by advances in information technology. Traditional tools—customs inspections and police-prosecution investigations—now face clear limits in stemming the inflow and distribution of drugs, while the spread of newly synthesized substances designed to evade regulation further exacerbates the problem.
- Although the situation is serious, Korea remains within a “critical window” in which the spread of drug crime can still be curtailed. Given Korea's legal framework—which criminalizes manufacturing, sale/purchase, and administration—effective investigation leading to criminal punishment is an essential control lever, and the strategic importance of undercover investigation correspondingly increases.
- Undercover investigation—an investigative technique in which authorities provide an opportunity for the offense and then apprehend the perpetrator—is indispensable for “hidden crimes” that proceed covertly without victim reporting, such as drug offenses. In Korea,

identity-nondisclosure and identity-disguise investigations were first introduced in 2021 under the Act on the Protection of Children and Youth against Sex Offenses, and there is ongoing discussion about extending these methods to drug crime and other areas. Indeed, three bills to introduce undercover investigation for drug crimes have been submitted to the 22nd National Assembly.

- However, little empirical research has examined frontline investigators' views. This study therefore reviews how to design an undercover investigation regime that both reflects the distinctive features of drug crime and safeguards suspects' rights while improving investigative efficiency. To that end, it surveys major foreign practices (Germany, the United States, and Japan) and conducts an in-depth survey and analysis of domestic drug investigators' perceptions.
- Germany has generalized the system by specifying, in the Code of Criminal Procedure, the conditions and procedures for deploying undercover officers; deployment is permitted—subject to prosecutorial approval or judicial authorization—only for serious drug-trafficking offenses and under the principle of subsidiarity.
- In the United States, rather than a stand-alone statute, the Department of Justice's guidelines enable broad use of undercover techniques. The Drug Enforcement Administration (DEA) leads operations, with tiered internal approvals calibrated to the scale and sensitivity of an investigation; judicial controls are supplied primarily through case law.
- Japan has no formal statutory framework for undercover investigations, but courts have broadly permitted “opportunity-providing entrapment” through precedent. In addition, individual special statutes—such as the Narcotics Special Provisions Act and the Act on Interception of Communications—are used extensively for “controlled delivery” under agency supervision and for communication interception.
- A questionnaire administered to 202 drug investigators from the National Police Agency, Korea Coast Guard, Korea Customs Service, and the Prosecution Service shows that 93.6% favor legislating an undercover-investigation regime for drug crimes. Respondents expect that, when conducted within a clear legal framework, undercover operations will better protect investigator identity and allow qualified immunity for otherwise unlawful acts incidental to the operation, thereby enabling more proactive investigations.
- Based on the study's findings, we propose the following policies. First, in specifying the concept of undercover investigation, and in light of the distinctive features of drug crime, the concept should be defined as “an investigative technique whereby investigators or informers temporarily use a disguised or fictitious identity or role to obtain information on criminal acts,” and the scope of informer use should be expressly delineated.

- An emergency identity-nondisclosure procedure should be established. As in the recently amended Act on the Protection of Children and Youth against Sex Offenses, when urgency so requires, investigations should be allowed to commence first with ex post approval, thereby ensuring investigative speed.
- To make undercover methods operational in practice, the statute should include an enabling clause and the enforcement decree should specify concrete modalities—such as issuing covert credentials and creating cover accounts—so that practical operations are possible.
- Immunity provisions should be clarified. Delete vague formulations in current law such as “for unavoidable reasons” and replace them with a clear and concise rule—e.g., “No punishment shall be imposed absent intent or gross negligence”—to create conditions for proactive yet lawful investigations.
- Provisions should be introduced into the Criminal Procedure Act. In the longer term, as in Germany, a general framework for undercover investigation should be established in the Criminal Procedure Act rather than only in special statutes; in parallel, the introduction of a reduced-punishment (leniency) system for judicial cooperation should be considered to further enhance investigative efficiency.

1

Background and Research Objectives

○ Background

- Drug crime in the Republic of Korea is growing increasingly severe. According to the Korean Prosecution Service’s 2023 Narcotics White Paper, the number of drug offenders apprehended in 2023 reached 27,611, surpassing 20,000 for the first time and marking an all-time high. Notably, offenders under the age of 19 rose to 1,477—more than triple the previous year—and foreign offenders also hit a record 3,151.
- A principal driver of this surge is the explosive growth of non-face-to-face transactions using the dark web, Telegram, and similar platforms, enabled by advances in IT. Traditional tools—customs enforcement and police–prosecutorial investigations—have reached their limits in blocking inflows and distribution, while the spread of new psychoactive substances designed to circumvent regulation has further exacerbated the problem.
- Although the situation is grave, Korea can still be seen as within a “critical window” to curb the spread of drug crime. Under Korea’s legal regime, which criminalizes manufacturing, sale, and use across the board, criminal enforcement grounded in effective investigation is necessarily a primary control mechanism. Accordingly, the case for adopting an undercover investigation framework takes on particular significance.

2 Key Findings

○ The Need to Institutionalize Undercover Investigations

- As drug crimes typically involve transactions between sellers and purchasers/consumers without direct bodily or property harm, they are sometimes classified as “victimless crimes,” and they are carried out covertly—making detection by law-enforcement difficult. To more effectively deter drug crimes, investigative techniques are needed that make buyers, sellers, and abusers perceive a high likelihood of being detected by authorities.
- Given the recent rise in drug crimes, methods such as “dead-drop” delivery and incidents like the drug-laced beverage case in the Daechi-dong private-academy district can cause substantial harm to the general public if not addressed proactively.
- In particular, a large share of drug transactions occurs via the internet and social media (e.g., Telegram). In practice, sellers operate in compartmentalized cells and maintain a two-track system—open “general rooms” for contacting ordinary buyers and “verified-dealer rooms” centered on mid-level distributors—in order to build sales networks.
- In this sense, undercover investigations are of critical importance for drug-crime enforcement. An undercover investigation is an investigative technique in which an investigative agency or its collaborator provides an opportunity for a specific person to commit an offense, waits for the crime to occur, and then apprehends the person. Because crimes such as drug trafficking, smuggling, bribery, prostitution, gambling, and organized crime are characteristically covert and prone to becoming part of the 'dark figure' of crime, undercover investigations are both highly necessary and widely used in practice.
- Drug offenders also know that investigative agencies frequently use undercover operations; uncertainty about whether the counterpart is an undercover officer tends to restrain offending. Undercover work can also identify offenders and expose members of criminal networks and organizations.
- Thus, in drug-crime investigations, undercover operations are one of the most important techniques: they help detect suspects with criminal intent, secure evidence, and prevent crime.

○ Undercover investigation regimes in major jurisdictions abroad

- Comparative reviews of Germany, the United States, and Japan show that the importance of undercover investigations has long been recognized in light of each country’s circumstances, and that they continue to be operated in various forms—such as controlled delivery—to this day.

- Germany has codified and mainstreamed the system by specifying, in the Code of Criminal Procedure, the requirements and procedures for deploying undercover investigators. Deployment is permitted for serious drug-trafficking offenses only, under the principle of subsidiarity (last resort), and requires approval by the public prosecutor or authorization by a court.
- United States practice relies less on a standalone statute and more on U.S. Department of Justice (DOJ) guidelines, under which undercover operations are widely used. The Drug Enforcement Administration (DEA) takes the lead, and internal approval procedures are calibrated to the scale and sensitivity of the investigation. Oversight of undercover operations is shaped primarily by case law.
- Japan has no formal statutory system for undercover investigations, but courts have broadly permitted opportunity-providing entrapment (sting) operations through jurisprudence. In addition, individual special statutes—such as the Act on Special Cases Concerning Narcotics and the Communications Interception Act—are frequently used to conduct controlled delivery (allowing the transport of narcotics under investigative supervision) and communications interception.
- In Korea, three bills to legislate an undercover investigation system for drug crimes have been introduced in the 22nd National Assembly.

○ Findings from the domestic survey of narcotics investigators

- Based on this study's survey of 202 narcotics investigators affiliated with the National Police Agency, the Korea Coast Guard, the Korea Customs Service, and the Prosecution Service, 93.6% responded that it is necessary to legislate an undercover-investigation system for drug-crime investigations.
- Respondents indicated that, when undercover work is carried out within a clear legal framework, it protects investigators' identities and allows for immunity from liability for incidental unlawful acts committed in the course of operations, thereby enabling more proactive investigations.
- The key items investigators identified as needing legislation were: (i) strict compliance with legal procedure by requiring warrants in advance and—where urgency so requires—ex post for undercover operations to prevent abuse; (ii) clear immunity provisions specifying that when an investigator simulates unlawful conduct or assumes a false identity for a legitimate investigative purpose, the investigator may be exempt from punishment; and (iii) robust institutional safeguards to ensure protection of investigators' personal data and physical safety in connection with identity-disguise activities.

3 Policy Recommendations

- First, the concept of undercover investigation should be clarified and rules on the use of informants should be established. In light of the distinctive features of drug crimes, undercover investigation should be specifically defined as 'an investigative technique in which investigators or informants temporarily use a disguised or fictitious identity or role to obtain criminal intelligence.' Furthermore, the scope of using informants and cooperators should be included in this definition, and this should be reviewed in conjunction with the future introduction of a reduced-punishment (leniency) system for judicial cooperation.
- Second, an emergency identity-nondisclosure procedure should be introduced. To ensure investigative speed, in urgent situations investigators should be allowed to proceed without prior authorization and obtain post-approval thereafter. This aligns with the recent amendment to the Act on the Protection of Children and Youth introducing post-authorization for identity-nondisclosure operations.
- Third, the operationalization of undercover methods is needed. Merely enacting a statutory clause without concrete implementation measures undermines effectiveness. The enabling statute should delegate to a decree the specification of practical identity-disguise techniques—e.g., issuance of cover identity credentials and creation of cover (alias) accounts—so that investigators have a firm legal basis to employ them in practice.
- Fourth, immunity provisions must be made specific and strengthened. To enable proactive narcotics investigations, immunity rules should be clarified. Ambiguous phrases such as “for unavoidable reasons” in current law should be removed and, drawing on U.S. practice, replaced with language such as: “No punishment shall be imposed where the act was committed without intent or gross negligence.”
- Fifth, a Criminal Procedure Act amendment is advisable in the longer term. Placing undercover-investigation provisions only in special statutes (e.g., the Narcotics Control Act) is a short-term measure. For uniformity and clarity of application, it is preferable—following the German model—to establish general provisions on undercover investigation in the Criminal Procedure Act, while also linking them to a future reduced-punishment (leniency) system for judicial cooperation to further enhance investigative efficiency.