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THE KOREAN RECONCILIATION TREATY AND THE GERMAN BASIC TREATY:
COMPARABLE FOUNDATIONS FOR UNIFICATION?

Derek J. Vanderwood

Abstract: With the end of the Cold War, the North-South Korean relationship has been the focus of increasing attention in the international community. In 1991, after years of tense and hostile relations, the two states adopted the Korean Reconciliation Treaty. To assess the prospects for successful reunification of the two Koreas through the Treaty, this comment compares it with the German Basic Treaty of 1984, which promotes similar goals of reunification of divided states. The comparison shows that the German Treaty has been more successful in facilitating unification, due largely to its relative flexibility in implementation. This comment proposes that the two Koreas might achieve greater cooperation through more flexible implementation of the Reconciliation Treaty, particularly with respect to its provisions on cross-border communication.

I. INTRODUCTION

The cold war ushered in a new era for both the Korean and German nations. The common cultural and historical heritages shared by Koreans in North and South Korea and Germans in East and West Germany were disrupted by artificially created barriers of separation. The separation of the previously unified countries was primarily due to the occupation and control of the United States and the Soviet Union following World War II. Although the divisions were intended to be temporary, the development of governmental structures based upon ideologically opposite foundations resulted in hostile and completely separate states. In an attempt to ease cross-border tensions, both East and West Germany, and North and South Korea pursued formal bilateral agreements. The results of these efforts were the Basic Treaty between East and West Germany1 and the Korean Agreement on Reconciliation, Non-Aggression and Exchanges and Cooperation between the South and the North (Reconciliation Treaty).2

A comparison of these treaties provides important insight into the future North-South Korean relationship. The Reconciliation Treaty contains specific provisions regarding travel, communications, and high level

1 POLITICS AND GOVERNMENT IN THE FEDERAL REPUBLIC OF GERMANY: BASIC DOCUMENTS 382-87 (Carl-Cristoph Schwertzer et al. eds., 1984).
governmental contacts. Although the German Basic Treaty addressed these same issues, reliance on flexible implementation allowed for a more comprehensive adoption of the objectives. The Basic Treaty used predominantly vague language to create a foundation for future agreement which resulted in extensive cross-border contact. In contrast, North and South Korea's Reconciliation Treaty plainly identifies the parameters of the Treaty and establishes specific time periods for implementing the provisions. Such specificity has hindered the effectiveness of the Reconciliation Treaty. South Korea can contribute to inter-Korean contact and create a basis for eventual unification by overlooking the Treaty's specific language and instead adopting a flexible approach to Treaty implementation. South Korea should focus on implementing the provisions of the Reconciliation Treaty in order to achieve the cross-border contact and cooperation necessary to eventually resolve the most difficult aspect of the inter-Korean relationship: the nuclear weapon issue. Inter-Korean contact and cooperation is a fundamental step required before unification can be achieved.

II. HISTORICAL DEVELOPMENTS

A. A Divided Korea

After being liberated from Japanese rule in 1945, Korea was divided into two zones of occupation. The regions were controlled by the Soviet Union in the North, and the United States in the South. The division was supposed to be temporary, but two antagonistic political units steadily developed. The Soviet Union and the United States could not agree upon a program for unification, and in 1948 two separate and independent states were formally created.

Hostility developed as the ideological rift between the two states solidified. Communist control in the North reflected the influence of the Soviet Union. In contrast, anti-Communist leaders gained control of the government in the South. The Korean nation, which had been unified since

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3 Koon Woo Nam, South Korean Politics: The Search for Political Consensus and Stability 1 (1988).
6 Nam, supra note 3.
7 Id.
8 Id. at 2.
the year 668,9 was divided into competing state structures due to cold war forces beyond their control.10 The Korean War (1950-53) further solidified the division between North and South.11 Each state claimed to be the only legitimate representative of the Korean nation, and pledged to seek unification as quickly as possible. Each state would consider unification only if completed in accordance with its own political philosophy.12 Despite policy shifts by both North and South Korea over the last forty years,13 the Korean states have existed across a tense divide with little direct contact.14

B. Korean Attempts to Improve Relations

The tense and hostile relationship between North and South Korea showed signs of improvement in the early 1970s.15 The first significant breakthrough in the inter-Korean relationship occurred when the states began formal talks and agreed to form a committee designed to promote inter-Korean contact. The South-North Coordinating Committee was created to achieve progress in the Korean relationship.16 The Committee did succeed in issuing a Joint Communiqué which outlined areas of limited cooperation.17 Despite this initial accomplishment, the Committee did not achieve any of the intended goals, and the organization collapsed within two years.18 South Korea blamed the North for attempting to use the Committee as a means to achieve a South Korean communist revolution.19 Mutual mistrust resulted in a renewed deterioration of the Korean relationship.

In 1991, however, the relationship entered a new phase. The primary accomplishment of this new phase was the adoption of the Reconciliation Treaty. The Treaty formalized the basis for future inter-Korean contact and

10 Kwak, *supra* note 5.
11 Kim, *supra* note 9, at 8-9.
14 Kwak, *supra* note 5, at 143.
15 YIM, *supra* note 4, at 29.
19 *Id.*
cooperation. The Reconciliation Treaty between North and South Korea was the first bilateral treaty recognizing a mutual desire to promote inter-Korean contact. The agreement allowed both states to acknowledge the existence of separate and autonomous political units in the two Korean states. The states agreed to pursue policies intended to overcome the effects of division while creating a basis for cooperation. The Treaty marks a significant development in the North-South Korean relationship, especially considering the more than forty years of tense cross-border relations.

C. German Division

In many ways, the experience in North and South Korea is similar to that in Germany. Following the end of World War II, Germany was divided into four zones of occupation. One of the initial signs of political division between the two German states was the development of separate political parties. Shortly after the end of World War II, the communist party, with substantial help from the Soviet Union, gained political control in East Germany through the creation of the Socialist Unity Party (SED). The party dominated all aspects of life in East Germany. By contrast, in West Germany the occupying powers of France, Great Britain, and the United States sought to guarantee the development of democratic political institutions. Three political parties developed in West Germany. The parties were united in a common desire to counter communist influence. As a result, by the end of 1949, formal governmental structures had been established in both East and West Germany.

The initial relationship between the two German states was marked by hostility. Both West and East Germany claimed to be the sole representative of the German nation. The West German government maintained that it would not have relations with any country which recognized the existence of East Germany. The policy was ineffective at achieving the intended

20 Dong-Won Lim, Inter-Korean Relations Oriented Toward Reconciliation and Cooperation 16 KOREA AND WORLD AFFAIRS 213, 213 (Summer 1992).
21 Full Text of Reconciliation Treaty, supra note 2.
26 Id.
27 TILFORD, supra note 23, at 8.
goal of isolating East Germany from the international community, but it did contribute to the feeling of German division.\textsuperscript{28} East Germany sought legitimacy by emphasizing that "the GDR is the fatherland of the nation."\textsuperscript{29}

\section*{D. Improved German Relations}

In the early 1970s, the West German government introduced a new political relationship with the East.\textsuperscript{30} The new relationship between East and West Germany resulted in policies that were intended to ease inter-German tension and promote a basis for contact and cooperation. The West German political leaders, led by the new chancellor Willy Brandt, concluded that the division between the two German states could only be resolved through mutual accommodation.\textsuperscript{31} The change in policy was intended to establish a groundwork upon which closer relations with the German Democratic Republic could eventually result in German reunification.\textsuperscript{32}

The change in policy resulted in the eventual adoption of bilateral agreements. The primary inter-German agreement was entitled the Basic Treaty between East and West Germany.\textsuperscript{33} The treaty allowed the states to formally recognize the existence of two Germanies, and thereby minimize many of the harsh realities of separation. By acknowledging the separation, the two German states transcended their previous hostilities. As a result, the states were able to adopt pragmatic agreements intended to ease the costs of separation. The West German government realized that improvements in the inter-German relationship would be modest in the short term, but believed the Basic Treaty was crucial in establishing cooperation with East Germany.

\textsuperscript{29} Siegfried Kupper, \textit{Political Relations with the FRG}, in GDR FOREIGN POLICY 232, 267 (Eberhard Schulz et al. eds., 1982).
\textsuperscript{30} The general term used to refer to these policies was Ostpolitik. The term included an effort to improve and stabilize relations with East Germany, the Soviet Union, and Eastern European states. See Melvin Croan, \textit{Dilemmas of Ostpolitik in West Germany in WEST GERMAN FOREIGN POLICY: DILEMMAS AND DIRECTIONS} 35, 35 (Peter H. Merkl ed., 1982).
\textsuperscript{31} Wolfram F. Hanreider and Graeme P. Huton, \textit{Reunification and Ostpolitik in THE FOREIGN POLICIES OF WEST GERMANY, FRANCE, & BRITAIN} 50, 67 (1980).
\textsuperscript{33} POLITICS AND GOVERNMENT IN THE FEDERAL REPUBLIC OF GERMANY: BASIC DOCUMENTS, supra note 1.
III. TREATY COMPARISON

A. West German Political Objectives

In order to create a new foundation for inter-German cooperation, West Germany abandoned efforts to isolate East Germany in favor of creating mechanisms for cross-border contact. The initial objectives were to provide better inter-German transportation and postal arrangements, as well as the reunification of family members. West Germany hoped the improved relations would allow greater communication between Germans in both countries. The policies were intended to establish a foundation for future inter-German cooperation. The Basic Treaty was a substantial departure from previous West German policies. The goal was to circumvent political separation by promoting both a common past and hope for a common future.

Long-term West German objectives included the desire to solve the artificial division of the German nation. West Germany hoped to allow Germans in both states to "regain a form of cultural, economic, and social unity and identity." West German Chancellor, Willy Brandt, stressed this objective when he said,

The process of partition has also affected the ties between the people. To partition was added separation. In this situation, politics must help to facilitate and improve communications between the people, so as to reinforce the will to belong together and the awareness of so doing as a condition for the survival of the German nation.

The ultimate objective of the process was to provide the German nation an opportunity to decide for itself if reunification was desired. West German leaders were convinced that given the opportunity to decide, East Germans would prefer the West German state system. Egon Bahr, the West German State Secretary, said in 1972 that "the reunification of Germany

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34 KENNETH A. MEYERS, OSTPOLITIK AND AMERICAN SECURITY INTERESTS IN EUROPE 8 (1972).
35 A. James McAdams, Explaining Inter-German Cooperation in the 1980s, DAAD SPECIAL ISSUE GERMAN STUDIES REVIEW 99, 100 (1990).
37 MYERS, supra note 34, at 10.
remained the ultimate goal of Bonn's policy, even if this did not seem possible in the foreseeable future."\textsuperscript{39}

Central to the long-term political objectives of the Federal Republic was the continuing perception of a single German nation. Brandt claimed that improving relations with the East would allow Germans in both states to have increased contact and thus promote a common national identity. This intention was identified in a speech on October 28, 1969:

\begin{quote}
The assignment of practical policy in the coming years is to so preserve the unity of the nation that relations between the parts of Germany can be freed from their present tension. Germans are bound not only by language and history, with its glory and its misery, but we are all at home in Germany.\textsuperscript{40}
\end{quote}

In reference to the signing of the Basic Treaty between East and West Germany, Brandt said, "in the present situation this was the only way of preserving the German nation and ties of culture, language and history that the two German states have in common."\textsuperscript{41}

B. South Korean Political Objectives

The Reconciliation Treaty was a substantial departure from previous South Korean policies.\textsuperscript{42} Although the South had attempted to improve relations with the North through agreements in the early 1970s, the effort was quickly abandoned.\textsuperscript{43} South Korea justified the abandonment by noting North Korea had not given up the intention of achieving unification through communist revolution in the South.\textsuperscript{44} The Reconciliation Treaty provided a means for the South to promote contact and cooperation with the North and thereby decrease the possibility of armed conflict, while creating a basis for future understanding.\textsuperscript{45}

\textsuperscript{39} Presse und Informationsamt der Bundesregierung, Bonn's Standpoint on Divided Germany's, Including GDR's Role, THE BULLETIN, June 13, 1972, at 158.
\textsuperscript{40} Presse und Informationsamt der Bundesregierung, Bundestag Speech, THE BULLETIN, Oct. 28, 1969, at 11.
\textsuperscript{41} Presse und Informationsamt der Bundesregierung, supra note 38.
\textsuperscript{42} Joong, supra note 22, at 5.
\textsuperscript{43} NATIONAL UNIFICATION BOARD, REPUBLIC OF KOREA, A WHITE PAPER ON SOUTH-NORTH DIALOGUE IN KOREA 33 (1977).
\textsuperscript{44} Kim, supra note 9, at 25.
\textsuperscript{45} Young Whan Kihl, New Environment and Context for Korean Reunification, 16 KOREA AND WORLD AFFAIRS 621, 626 (Winter 1992).
Many of the South Korean government objectives are similar to those of West Germany in adopting the Basic Treaty. South Korean leaders viewed the treaty as a means to promote a common national identity with the North Korean populace.\textsuperscript{46} Indeed, "through increased interaction between the peoples of the two Koreas, a sense of national unity will be enhanced."\textsuperscript{47} Unification of Korea has been an important political objective, and efforts to promote contact and cooperation have been viewed as an essential means to achieve eventual unification.\textsuperscript{48} By the end of the 1980s, the South Korean government began a new phase of foreign policy intended to alter the inter-Korean relationship. South Korea sought to establish relations with North Korea's historical supporters, the Soviet Union and China, in order to ensure a more cooperative North Korea.\textsuperscript{49} These efforts have seemed to be effective, because the North has been more receptive to establishing contact with the South.

IV. \textbf{TREATY PROVISIONS}

A. \textit{Basic Treaty}

The Basic Treaty is composed of ten articles, along with attached supplementary protocols enumerating more specific agreements.\textsuperscript{50} Although the agreements involved a number of significant points, this analysis will focus on the most influential of these provisions: travel, communications, and governmental contact.

The primary aspect of the treaty effecting inter-German cooperation was Article 7. The article identified the "readiness to regulate practical and humanitarian questions in the process of the normalization" of relations. The states agreed to "conclude agreements with a view to developing and promoting on the basis of the present treaty and for their mutual benefit cooperation in the fields of transport . . . posts and telecommunications, and in other fields."\textsuperscript{51} Details regarding the mechanisms for achieving cooperation were to be included in the supplementary protocols.

\textsuperscript{46} \textit{Id.} at 632-33.
\textsuperscript{47} \textit{Rhee, supra note 12, at 76.}
\textsuperscript{48} \textit{ROHTAE Woo, RESPONSIBILITY IN KOREA: A NATION TRANSFORMED} 29, 30 (1990).
\textsuperscript{49} These policy efforts are generally referred to as South Korea's "Northern Policy." \textit{See Dong-Won Lim, Inter-Korean Relations Oriented Toward Reconciliation and Cooperation, 16 KOREA AND WORLD AFFAIRS} 213, 219 (Summer 1992).
\textsuperscript{50} \textit{POLITICS AND GOVERNMENT IN THE FEDERAL REPUBLIC OF GERMANY: BASIC DOCUMENTS, supra note 1.}
\textsuperscript{51} \textit{Id.}
The supplementary protocols established that the two states would develop cultural cooperation by negotiating inter-governmental agreements. Thus, the treaty created a framework for negotiation and provided a basis to adopt mutually agreeable provisions. The protocols also explicitly identified the need "to conclude an agreement on posts and telecommunications on the basis of the Constitution of the Universal Postal Union and the International Telecommunication Convention." The protocols simultaneously provided both specific and general guidance regarding the form of future inter-German agreements.

Governmental contact was formalized in Article 8 of the treaty. The states agreed to create permanent missions in their respective capitols. However, the treaty carefully noted that "practical questions relating to the establishment of the Missions shall be dealt with separately." Once again, specific aspects of the treaty were combined with general guidelines for flexible application.

B. Reconciliation Treaty

The Reconciliation Treaty emphasizes many of the same areas for cooperation as did the Basic Treaty. The Reconciliation Treaty is far more specific than the Basic Treaty. The treaty contains twenty-five articles, and identifies specific target objectives. Areas for inter-Korean cooperation are identified, as well as specific dates for treaty implementation. Article 17 establishes that "both parties shall guarantee residents of their respective areas free inter-Korean travel and contact." Article 18 further clarified the commitment to travel, "[t]he two sides shall permit free correspondence, meetings and visits between dispersed family members and other relatives and shall promote the voluntary reunion of divided families and shall take measures to resolve other humanitarian issues."

Thus, in comparison with the Basic Treaty's vague commitment to promote "cultural cooperation" which developed into agreements regarding inter-German travel, the Reconciliation Treaty established an irrefutable commitment to achieve inter-Korean travel.

The same pattern of specificity is evident in the area of inter-Korean communications. Article 20 establishes that "[b]oth parties shall establish and link facilities needed for South-North postal and telecommunications

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52 Id.
53 Full Text of Reconciliation Treaty, supra note 2.
54 Source Material, supra note 2.
services and shall guarantee the confidentiality of inter-Korean mail and telecommunications."

Of the three areas of comparison, this seems to be the most similar to the Basic Treaty. The supplementary protocols to the Basic Treaty did identify specific mechanisms for agreement. Although the Reconciliation Treaty does not rely on international treaties as a basis for agreement as did the Basic Treaty, the specific objectives of confidentiality and accessibility are also identified. Specific objectives regarding inter-governmental contact are also part of the Reconciliation Treaty.

The Reconciliation Treaty identifies several aspects of implementing improved mechanisms for inter-Korean contact. First, Article 22 states that "both parties shall establish joint committees for specific sectors . . . within three months of the effective date of this agreement." Beyond identifying committees as the primary method for implementation, Article 23 establishes that "a South-North exchanges and cooperation subcommittee shall be established within the framework of the inter-Korean high-level talks within one month of the effective date of this agreement . . ." Thus, not only were committees essential to the implementation process, but unlike the Basic Treaty, the Reconciliation Treaty identifies specific duties of certain committees. Second, Article 7 states that "a South-North liaison office shall be established at Panmunjom within three months of the effective date of the agreement." This aspect is similar to the Basic Treaty in that it identifies the location of permanent missions, however, the establishment of a three month time limit is a different approach with respect to implementing the treaty provisions.

V. TREATY IMPLEMENTATION

A. Cross-border Travel

The implementation of the provisions in both treaties is a basis for comparing the relative effectiveness of the Korean and German treaty process. The first area of analysis is travel between the countries. The Basic Treaty succeeded in promoting inter-German travel. Travel between East and West Germany had existed prior to the 1970s, but only on a limited
basis. After adoption of the Basic Treaty, the West German government encouraged its citizens to travel to the GDR. The ability to travel provided many West Germans the first opportunity to visit family in East Germany. During the 1970s, visits to the GDR increased by 158 percent. Except for two periods when East Germany increased the amount of currency West Germans would have to buy when entering the country, the number of individuals visiting East Germany increased steadily over the decade following the Basic Treaty. Although the East German government limited travel to cases of "urgent family business" (including weddings, family illness, or deaths), the number of visitors to West Germany also increased as a result of the Basic Treaty.

West Germany openly welcomed visiting East Germans as part of a single nation. The visitors from the GDR were permitted by the East German government to take only a limited amount of currency to the West. The result was that most visitors needed to rely on friends and family in the West for support during their stay. The West German government did provide visitors an annual gift of 100 West German marks, and free medical coverage while in West Germany. The policy helped promote a positive feeling toward the West German governmental system.

Visitation to West Germany enabled those in the East to personally experience life in the Federal Republic. The policy helped maintain a feeling of common nationality. Many East Germans discovered both a common heritage and culture with West Germany. Exposure to the West German governmental institutions created familiarity with the effects of democratic government, and allowed the East Germans to become comfortable with West German political institutions.

In contrast to implementation of the Basic Treaty, the specific Reconciliation Treaty objectives of achieving inter-Korean travel have yet to be realized. The issue currently remains unresolved, and there are no plans to accomplish free travel. Even prior to the Basic Treaty, the East

59 David Childs, The SED Faces the Challenges of Ostpolitik and Glastrasse in EAST GERMANY IN COMPARATIVE PERSPECTIVE 1, 5 (David Childs et al. eds., 1989).
61 Id. at 200.
62 Childs, supra note 59, at 6.
63 Id. at 7.
66 Kihl, supra note 45, at 634.
German government allowed some limited travel by family members in the West. In contrast, North Korea has never allowed visitations of any type from the South. Attempts to renew Red Cross talks, originally begun in 1972, regarding cross-border visits of elderly Koreans have been rejected by North Korea. A major factor in the impasse has been the South Korean desire to link inspection of North Korean nuclear facilities with the implementation of inter-Korean travel provisions. South Korean Prime Minister, Chung Won-Shik, stated "it is regrettable that such urgent issues like the nuclear problem and the reunion of separated families are left unresolved . . . I hope the two sides will promptly find solutions to these issues."69

The Korean treaty provisions regarding travel seemed to be an unqualified success at the time the treaty was adopted. However, in practice inter-Korean travel has been problematic to implement. The importance of this issue on the larger North-South relationship should not be overlooked. The North-South talks collapsed in the 1970s following the inability to implement cross-border visits. The issue has remained a source of continued disagreement.

B. Mechanisms for Communication

Prior to the Basic Treaty, telephone contact between East and West Germany remained limited. Until 1971 telephone communications between East and West did not exist. Lack of adequate telephone lines and neglect of equipment in the East were the primary reasons for the inadequate service in the early 1970s. The Basic Treaty resulted in improved telephone service. Studies have demonstrated a tremendous increase in contact between individuals through the use of inter-German telephone lines. The German people in both states gained access to an important means of communication.

West German television also proved to be an important means of contact between people in the German states. Although fewer than fifty percent of East German homes had television sets in the 1960s, by the end of the

68 Kihl, supra note 45, at 633.
70 Childs, supra note 59, at 7.
71 Id. at 8.
72 Id. at 7.
1970s most people had access to television. Individuals in the East were able to watch many programs broadcast in the West. Thus, East Germans were able to view and become familiar with many aspects of life in the West Germany. David Childs notes that access to television "... has been of major political significance. East German leaders have complained about the effects of Western television, refugees have commented on it, and the attempts of the GDR's own television to be more engaging ... confirm its influence." Indeed, prior to reunification, East Germans were more familiar with Western politicians from television than with their former leaders.

Such direct cross-border communication does not currently exist between North and South Korea. Indeed, the two Koreas have achieved limited progress. In September 1992, the two states agreed to a protocol allowing the free exchange of information regarding their political systems. Although the type of information included in the agreement is not expansive, the agreement does in principle provide the states the ability to exchange political information. Beyond this broad acceptance of political information, the Koreas agreed to establish postal links. Although at present mail service remains limited, insufficient time has passed to assess the implementation of these provisions.

C. Governmental Contact

A final area of consideration is high level governmental contact between the states. The Basic Treaty established both a precedent and a framework for further contact between high ranking political figures in East and West Germany. Herbert Wehner, chair of the parliamentary group of the SPD, and Wolfgang Mischnick, chair of the parliamentary group of the FDP, were the first high level party leaders to visit SED party chairman Honecker in East Germany. Throughout the 1970s several meetings between the leaders of East and West Germany occurred. In a 1975 conference in Helsinki Chancellor Schmidt met with Honecker. A number of other occasions were arranged throughout the next decade for leaders of...
the two states to come together. By the mid-1980s trips to the GDR by West German political leaders had become a routine occurrence.\footnote{Id. at 8.}

Further governmental contacts were conducted through the creation of specialized governmental agencies responsible for implementing treaty provisions. The function of these agencies was to resolve any conflicts which arose, and provide a basis for creating mutual trust by enhancing East German confidence in the implementation process.\footnote{Cordell, supra note 36, at 47.} The establishment of permanent missions provided a source for constant contact between East and West and helped open the diplomatic relationship. Although ambassadors were not exchanged, the permanent missions effectively resulted in similar types of governmental exchanges.\footnote{Id at 41-43.}

The Reconciliation Treaty enabled North and South Korea to establish similar formal channels for direct governmental contact. Based upon the Reconciliation Treaty, North and South Korea established four joint commissions responsible for specified areas of treaty implementation.\footnote{Pyongyang, Seoul Enter Stage of Implementing Basic Accord on Reconciliation, Nonaggression & Exchange, 258 KOREAN REPORT 1 (Sept. 1992).} Four primary commissions are devoted to establish military exchanges, economic exchanges social and cultural exchanges, and general areas of reconciliation.\footnote{Stormont, supra note 69.} The commissions consist of representatives from both governments and are designed to promote continued progress. Beyond the commissions, meetings between the Prime Ministers have been scheduled at regular intervals. The site of the meetings alternates between the two countries.

This regulated plan for high level governmental contact has produced tangible results. A primary result was the adoption of the previously mentioned protocols of September 1992, which further clarified areas and mechanisms for North-South cooperation.\footnote{Seoul, Pyongyang Sign Pact Aimed at Closer Understanding, supra note 67.} Recent tensions arising from the nuclear issue have at least temporarily stopped these high level meetings.

VI. ANALYTICAL COMPARISON

In order to compare the Basic Treaty and the Reconciliation Treaty, it is essential to evaluate the general approach taken in both documents. The

\footnotesize{\begin{itemize}
\item \footnote{Id. at 8.}
\item \footnote{Cordell, supra note 36, at 47.}
\item \footnote{Id at 41-43.}
\item \footnote{Pyongyang, Seoul Enter Stage of Implementing Basic Accord on Reconciliation, Nonaggression & Exchange, 258 KOREAN REPORT 1 (Sept. 1992).}
\item \footnote{Stormont, supra note 69.}
\item \footnote{Seoul, Pyongyang Sign Pact Aimed at Closer Understanding, supra note 67.}
\end{itemize}}
Basic Treaty established a broad framework for inter-German reconciliation, while the Reconciliation Treaty identified specific areas for reconciliation along with a time table for implementing those measures.

A. Germany's Flexible Approach to Reconciliation

Each German state claimed to be the single representative of the German nation. This conflict was the fundamental source of antagonism between the German states. The hostile relationship could only be altered if each state formally recognized the existence of the other Germany. The Basic Treaty marked a fundamental change in the West German policy toward the East. West Germany deviated from its previous policy of non-recognition by accepting the existence of the East German state. By acknowledging the existence of the East German government, West Germany created a climate for improving inter-German relations.

Although many in the West felt that the Federal Republic had conceded too much in the Basic Treaty, the West German government maintained that improving relations would facilitate the eventual development of a single German state. The long-term objective of reunification allowed the Federal Republic to work with East Germany in an effort to promote cooperation. Thus, West Germany ignored the fundamental differences which had been at the center of previous inter-German hostilities, and instead attempted to improve the relationship.

Even with the significant progress of the Basic Treaty, conflicts and setbacks arose. As a result, evidence of the improving relationship was not uniform. Following improvements related to travel by West Germans into the East, the East German government increased the amount of money West Germans would have to exchange into East German currency. The policy increased the financial burden on West Germans wishing to visit the East and provided the East German government with additional access to the valuable West German currency. The policy marked a period of setback for inter-German cooperation, but eventually further progress was achieved.

The German experience demonstrates that strategies which ignore

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84 TILFORD, supra note 23, at 8.
85 LAQUER, supra note 25, at 410-13.
86 McCurdy, supra note 64, at 267-71.
88 PLOCK, supra note 60, at 45.
89 FREY, supra note 28.
fundamental differences between divided states can still provide a solid basis for long-term cooperation.

The Basic Treaty's general objective of achieving inter-German cooperation was a vague and flexible goal. The article 7 language referring to inter-German cooperation was sufficiently ambiguous to allow West Germany to claim success on issues most important to it. For example, inter-German travel was a major achievement of the improving relationship. Although the shift in governmental policy was not universally accepted in the West, the opportunity to engage in direct contact with citizens in the East was widely supported by West Germans. Following the Basic Treaty, a significant number of further agreements regarding travel, communications, and governmental contact were implemented. As a result, the West German government was able to declare the Basic Treaty a success.

Although the Basic Treaty resulted in concrete improvement immediately following its implementation, the late 1970s and early 1980s marked a period of relative stagnation in the inter-German relationship. The dramatic political changes in Eastern Europe during 1989 set the stage for German reunification. The policies implemented as a result of the Basic Treaty remained largely intact and provided an essential foundation for inter-German contact. Without such a period of contact, reunification would have remained only a distant objective.

B. Korea's Specific Plan for Reconciliation

The inter-Korean relationship has been marked by many of the same types of hostilities as those which existed in Germany. The primary source of contention in the inter-Korean negotiations is unique to the Korean Peninsula. The possession of nuclear weapons by North Korea has remained the main source of South Korean concern. South Korea has long desired to limit and control North Korea's nuclear weapons capability. Although some efforts have been made to reach an agreement on the issue, North Korea's continued unwillingness to allow South Korean inspection has severely hindered the implementation of the Reconciliation Treaty.

North and South Korea have both indicated that addressing the nuclear issue remains a prerequisite for improving inter-Korean relations.

90 Kleinfeld, supra note 65, at 19.
92 Stormont, supra note 69.
93 Kim, supra note 91.
South Korea is unwilling to move forward with the Reconciliation Treaty provisions until an agreement regarding the nuclear weapon issue can be reached. The schedule of future inter-Korean talks regarding treaty implementation has been postponed due to this issue. South Korea's position, therefore, requires a different strategy than that followed by West Germany.

South Korea has hindered implementation of treaty provisions due to the nuclear issue, yet has not provided any concessions to the North Korean government on the primary issue of inter-Korean contention. Admittedly, concessions regarding the legitimate existence of East Germany and the nuclear issue in North Korea are not equivalent security concerns. The real and obvious threat to South Korea should not be ignored.

Despite failure to reach bilateral agreement on nuclear inspections, North Korea agreed to important international safeguards. The Nuclear Non-proliferation Treaty was signed by North Korea in 1985. North Korea also allowed a nuclear inspection by the International Atomic Energy Agency (IAEA) in May 1992. Such progress on the nuclear issue should allow South Korea to implement some of the Reconciliation Treaty provisions prior to complete bilateral agreement regarding nuclear inspections. A policy of flexibility should be followed in order to establish a basis for mutual compromise regarding the nuclear issue.

South Korea's present policy of precondition currently shows little chance of bringing about a change in the North Korean position. On March 12, 1993, North Korea announced its withdrawal from the Nuclear Non-Proliferation Treaty. The resumption of the annual United States-South Korean joint military exercise known as "Team Spirit" was cited as the primary cause for North Korea's withdrawal. The military exercise had been canceled in 1992 as a gesture of inter-Korean reconciliation, but impatience with the nuclear inspection issue resulted in South Korean support for resumption of the joint exercise. Despite the obvious risk to

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97 Taewoo Kim, *South Korea's Nuclear Dilemmas*, 16 KOREA AND WORLD AFFAIRS 250, 254 (Summer 1992).
98 DPRK Decides to Withdraw from NPT, 272 KOREAN REPORT 1, Mar. 1993, at 1.
99 Id. at 3.
the inter-Korean relationship, South Korea used the military exercise as a means of pressuring North Korea to accept inspection of its nuclear facilities. 101 Unfortunately, South Korea's tactic "had the reverse effect by stealing the embittered North Korean government against further compromise." 102 Although North Korea has again agreed to abide by the terms of the Nuclear Non-Proliferation Treaty, 103 the temporary crisis demonstrated the futility of South Korean policy efforts based solely on coercion.

North and South Korea have been locked into a confrontational implementation structure based on zero-sum negotiations, because of specific provisions in the Reconciliation Treaty. Neither side can back away from previously stated policy objectives without appearing to be giving in to the wishes of the other side. As a result, the two Korea's are unlikely to progress from the present state of their relationship. The positions of each state are firmly established, and often directly contradict those espoused by the other state. The Korean states have created a negotiation structure doomed to failure, by linking progress on treaty issues to the resolution of the largest area of disagreement.

Establishing specific time periods for implementation of the Reconciliation Treaty provisions has resulted in a negotiation process prone to failure. Predictably, unexpected areas of disagreement have arisen. The previous hostile relationship between the two Koreas virtually guarantees the development of continuing areas of disagreement. Complex negotiation of such difficult issues is bound to be a time consuming process. The setbacks weaken the overall process since the urgency of negotiation has been lost because the implementation timetable has not been reached. Despite this use of specific time periods, the Reconciliation Treaty should be used as the primary mechanism for promoting inter-Korean contact. The Korean states need to look beyond the specific implementation time schedule and instead focus on the treaty's policy objectives.

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101 DPRK Decides to Withdraw from NPT, supra note 98, at 3.
102 Id.
VII. RESULTS OF TREATY IMPLEMENTATION

A. The German Experience

Implementation of the Basic Treaty enabled the citizens in both states to retain a feeling of common identity. Despite years of separation, increased contact following the early 1970s allowed Germans on both sides of the border to retain a shared interest in the future of Germany. The influx of East Germans into West Germany near the end of 1989 demonstrated the strong desire of East Germans to be part of a single German state. As a result of the media and travel contacts with the West, East Germans were familiar with the West German political institutions. Following the collapse of the Berlin Wall, East Germans were more familiar with the leaders of the West German political parties than with the party leaders of their own country.

The push for reunification seemed to gain a momentum of its own as those in the East accepted West Germany as their homeland. As reunification approached, it became evident that the single German state would be simply an enlargement of the existing West German political and economic structure. The West German political parties absorbed the previous East German political party structure, and the democratic structures of the West were formally recognized.

The acceptance of West German political structures by Germans on both sides of the border was indicated by the reunification through existing West German institutions. Rather than creating the type of German federation which had long been suggested as the only reasonable approach to German reunification, East Germans accepted assimilation into the West German state structure. Even though the West German constitution provided for the creation of a new constitution in the event of reunification, the existing constitutional document (the Basic Law) was accepted as binding. The East German territory was accepted into the government

\[106\] Id. at 65.
\[107\] Id.
\[108\] Manfred Rexin, The GDR on the Way to Germany, 41 AUSSENPOLITIK 318, 326 (No. 4 1990).
\[109\] McCurdy, supra note 64.
structure with the existing Lander (states) being given equal representation in the unified national government.  

B. The Korean Experience

The Korean experience still stands in stark contrast to the documented developments in Germany. Sporadic implementation of the Reconciliation Treaty has yet to create a basis for inter-Korean contact. Progress regarding travel has not been achieved because South Korea is unwilling to proceed with inter-Korean visitation agreements until North Korea agrees to nuclear weapons inspection. The protocol agreements adopted in September 1992 marked a hopeful development in the inter-Korean relationship. Progress in those areas has yet to be realized. Future prospects for implementing the treaty provisions seem bleak. The scheduled ministerial meetings for December 1992 were postponed and the negotiation process has slowed. The most solid level of inter-Korean contact, the high level government meetings, has been hampered by recent disagreements.

The isolationist position of North Korea will continue to block treaty implementation efforts unless South Korea is willing to seek treaty compliance without linking it to nuclear weapons and security issues. Even though North Korea lost much of its historical support following the disintegration of the Soviet Union and the thawing of the China-South Korean relationship, North Korea seems willing to continue its isolationist strategies. There is little indication that North Korea will suddenly agree to South Korean demands regarding nuclear weapons.

It would be impractical to suggest South Korea should ignore these vital security issues, but South Korea should not condition all areas of inter-Korean progress on the resolution of security concerns. The nuclear issue may be resolved by South Korea and Washington refraining from pushing too hard or publicly for North Korean submission. South Korea should seek progress in those areas outlined by the Reconciliation Treaty while simultaneously seeking further understanding on security issues.

Peaceful unification is not likely until basic contact between the populace in both Korean states is established. Any unification process

111 Suh, supra note 95.
112 ROH, supra note 48, at 2.
113 Geoff Crane, Panmunjom Meltdown, ECON. REPORT 31-32 (June 1992).
without cross-border contact will be both economically costly and politically disruptive. Unless a common national identification is cultivated, not only will the populace in both states be reluctant to unify, but any attempt to unify the states would result in political chaos. Basic contact will provide a necessary basis upon which unification can develop. With a common identity, the populace will be able to accept the eventual governmental structure of a unified Korea.

Unification based on South Korean institutions is a virtual impossibility considering the present status of the inter-Korean relationship. North Koreans would be unwilling to accept the institutions of the South as a basis for a unified government. Years of mutual hostility and distrust have prevented North Korean exposure to South Korean political and economic institutions. Although the most recent Korean discussion of unification indicates some form of confederation between the two states is often contemplated, it is unlikely such a confederation could be created and accepted. The complexities of creating such a confederation from two previously hostile states would be virtually impossible to overcome.

VIII. CONCLUSION

Analysis of the past and present state of the inter-Korean relationship demonstrates that the Reconciliation Treaty has the potential to be used as a solid basis for improving inter-Korean contact. The ratification of the treaty is significant because both sides have defined areas for improving cooperation. Contact in these areas can minimize the present hostility and create a foundation for a gradually improving relationship. Practical and effective steps taken within the treaty context can improve the inter-Korean relationship and provide a basis for eventual unification.

The German experience demonstrates the unpredictability of the unification process; however, certain basic foundations seem to be necessary. The Basic Treaty provided practical areas for inter-German contact. Without such contact, it is unlikely the citizens of both German states would have been prepared to transform the political events of late 1989 into the basis for reunification.

South Korean flexibility is the key to implementing the Reconciliation Treaty. Conditional demands on treaty implementation will make the negotiation process even more difficult. Recent experience involving the nuclear issue indicates such demands are likely to shut down the entire process. Relying on changing political circumstances in the communist world to alter the North's position is unlikely to be effective in
achieving inter-Korean cooperation. Even though North Korea has demonstrated a continued willingness to accept isolation, it can not ignore the fundamental changes which have occurred in the cold war communist world. Indeed, North Korea has tremendous economic incentives for improving ties with the South.\footnote{115 Oh, \textit{supra} note 96, at 477-81.} Tactics designed to pressure North Korea into accepting nuclear inspection should be abandoned in favor of efforts designed to promote inter-Korean contact.

Although resolution of the nuclear issue will not guarantee implementation of the Reconciliation Treaty, a recognition that concrete contact in the short-term will enhance the possibility of future unification should be an incentive for the South to pursue treaty implementation. Such a strategy was successful in the West German context and the logical application of the concept in the Korean context seems likely to succeed. South Korean flexibility will contribute to future inter-Korean agreement and cooperation. Implementation of treaty provisions regarding cross-border travel, communication, and governmental contact will establish personal inter-Korean relationships which may persist despite potential future disputes between North and South Korea.

The North and South Korean states have remained nominally committed to the notion of unification. The pace and eventual structure of a single Korean state remains uncertain. Peaceful unification requires a common vision by a substantial portion of the citizens on both sides of the border regarding the accepted form of governmental institutions. Unless the two states can implement the Reconciliation Treaty provisions, a consensus on a single governmental structure is unlikely. Until the states can begin to form a new relationship based upon cooperation and understanding, the ideal of unification will remain an unrealistic political objective.