

# COMPARISON OF THE SOUTH'S CONFEDERATION PROPOSAL WITH THE NORTH'S "LOW STAGE FEDERATION" PROPOSAL - FROM THE PERSPECTIVE OF INTERNATIONAL LAW

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After the June 15 South-North Joint Declaration was adopted in 2000, the unification formula has become an official agenda between the two sides, and also a subject for negotiation. Though the 'Low Stage Federation' Proposal and our Confederation Proposal have some parts in common, they are much different in many respects from the international legal perspective. However, there is no doubt that Article 2 of the North and South Declaration will become a step to accelerate unification negotiations. Probably one of the most important tasks we face for cooperative relations between South and North Korea is to fully comprehend the common and differing points of each proposal, and then make every effort to discover the contact point between the two.

## I. Introduction

During June 13 to 15 in the year 2000, a summit conference was held between South and North Korea for the first time since the division of the Korean peninsula 55 years ago. The summit meeting has important significance in and of itself. In addition, the conference opened a new era to improve relations between the two sides from the acceptance of the "June 15 South-North Joint Declaration." Now in the process of its implementation, the atmosphere of reconciliation and cooperation is on the rise.

The South-North Joint Declaration includes important paragraphs concerning unification formulae for South and North Korea. Paragraph 1 states, "The South and the North have agreed to solve the question of national unification in an independent manner," and paragraph 2 states, "Acknowledging that the South's Confederation Proposal and the North's "Low Stage Federation" Proposal have similarities, both the South and the North have decided to pursue national unification in this direction." These are the highlights of the declaration. The latter paragraph especially has historical and symbolic meaning because it was the first time since Korea's division for summit-level political leaders of the South and the North to officially discuss the subject of unification and search for direction. That is to say, through the summit conference in Pyongyang, the unification formula has become an official agenda between the two sides, and also, a subject for negotiation.

Generally, it has been analyzed that the June 15 South-North Joint Declaration could be produced since paragraph 2 was agreed to and accepted at the summit conference. Suppose that paragraph 1 and 2 (especially the latter paragraph) were not included - in this case, it is highly likely that the Joint Declaration would not have been drawn up. The North is understood to be placing much importance on paragraph 2, and it is no exaggeration to say that it is due to the symbolism and invisible effect of this paragraph that the declaration is being imple-

mented between the two Koreas.

However, opinions are sharply divided in our society concerning the interpretation of paragraph 2. Some positively estimate that this paragraph will overcome the division system, pursue unification, and make a giant step towards it. Others negatively say that since the paragraph touches the fundamentals of the national structure of the Republic of Korea (ROK), the Assembly's consent is required. Moreover, there exists an extreme opinion that not only the Assembly's, but the people's consent also, is needed.

Meanwhile, the Pyongyang Broadcasting Center of North Korea had reported on December 5, 2000 that the June 15 Joint Declaration, through conveying the familiarities between the South's Confederation Proposal and the North's "Low Stage Federation" Proposal, has laid a firm foundation and made clear a plan that will eventually help to pursue unification by the federation scheme. As such, a report was in conflict with the existing explanations of the ROK government; that the North's "Low Stage Federation" Proposal in fact abandons a federal system as a unification concept, and it has attracted much attention on both national and international levels. Nevertheless, in the future, paragraph 2 of the Joint Declaration will, on the one hand, act as a source of motivation for unification of the South and North, and on the other hand, will bring about conflicts between the opposing civil associations in the South as well as between the South and the North.

In this paper, I will focus on the legal aspects of the Joint Declaration, defining theoretically what the South's Confederation Proposal and the North's "Low Stage Federation" Proposal actually mean. I will first consider confederation and federation from the international law perspective, and distinguish one from the other. And, I will also observe the context of the South's Confederation Proposal and the North's "Low Stage Federation" Proposal and make comparison with each other. This study is to be of help in the future during the process of political unification when the government needs to construct a con-

tact point between the South's Confederation Proposal and the North's "Low Stage Federation" Proposal.

## II. Differences Between Confederation and Federation in General International Law

Both the confederation formula and the "low stage federation" formula stated in paragraph 2 of the Joint Declaration are each similar to federation and confederation as viewed from the standpoint of international law. Therefore, before comparing the two, it is necessary to observe the concept and characteristics of confederation and federation in international law.

Both confederation and federation are a form of a union of nations. However, substantially, they differ greatly.<sup>1</sup>

Confederation is a union of nations according to the rule of equality of nations without component states losing their individual legal distinctness.<sup>2</sup> While confederation exists as a new legal entity, it does not possess individual legal distinctness (a subject of international law as a sovereign entity) under international law. Thus, confederation has no sovereignty. In all respects, confederation is only an association of states without its own sovereignty or domestic jurisdiction, and government control over the people lies mostly in the hands of the constituent units.<sup>3</sup>

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1 Regarding Korean studies on differences between confederation and federation, see Myung-gi Kim, *Studies on South-North Federative Unification* (Seoul: Tamguwon 1991), pp. 29-32; Myung-bong Chang, "A Study of Confederation in Relations of the Development of our Unification," *Korean Journal of International Law*, vol. 33, no. 2 (1998), pp. 32-34; Jae Shick Pae, "A Study on the Union of States," *Seoul Law Journal*, vol. 26, no. 1 (1985), pp. 83-85.

2 J. H. W. Verzijl, *International Law in Historical Perspective*, vol. 2 (Leiden: A. W. Sijthoff 1969), p. 159.

3 Charles G. Fenwick, *International Law*, 4th ed. (New York: Appleton, Sterling Pub-

A confederation is essentially a technical association of two or more nations for the purpose of taking a common stand internationally. Nevertheless, the component states generally possess diplomatic and military authority. Exceptionally, a confederate central organization,<sup>4</sup> called congress or diet, has limited diplomatic competence as provided in the confederation-making treaty.<sup>5</sup> Thus, the central organization of the confederation can make legally binding decisions on its component states that result in the limitation of their sovereign power to a certain extent.<sup>6</sup>

On the other hand, a federation is formed by a pact between two or more states (the constituent units of a federation are called states, cantons, lands, etc.). In a federation system, only the federal government (central government) possesses complete international distinctness and ability under international law, while constituent units retain limited residuary authority or ability in the field as permitted by federal constitutional law.<sup>7</sup> Therefore, a federation directly exercises sovereign power over its component states and their people through its own governmental organs.<sup>8</sup> The characteristics of a federation are as follows: A

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lishers, 1983), pp. 241-242.

- 4 In accordance with the Articles of Confederation adopted by 13 States during the Second Continental Congress in 1777, each state had the equal status in dispatching a diplomatic mission to that congress which was a kind of confederal assembly. According to Farnsworth, the Continental Congress resembled an association of diplomatic representatives of the various states in which each state had an equal vote. E. Allan Farnsworth, *An Introduction to the Legal System of the United States, Corrected First Edition* (New York: Oceana Publications 1975).
- 5 Majorie M. Whiteman, *Digest of International Law*, vol. 1 (Washington D. C.: United States Government Printing Office 1963), p. 222.
- 6 Verzihl, *Supra* note 2, p. 159.
- 7 James Crawford, *The Creation of States in International Law* (Oxford: Clarendon Press 1979) p. 291; Gerhard von Glahn, *Law Among Nations*, 4th ed. (New York: Macmillan Publishing Company 1981), pp. 63, 65.
- 8 *Ibid.*, p.64; J. G. Starke, *Introduction to International Law*, 8th ed. (London: Butterworths 1977), p. 130.

new creation of a single sovereign power above the authorities of the component states; the constitutional distribution of powers between a federal government and constituent states' governments; the acknowledgement of independence and autonomous control of the latter to a certain extent; direct control of the central government over local (component state) governments and their people<sup>9</sup>; concentration of diplomatic and military authority on the central government<sup>10</sup>; the admission of component states' legislative or judicatory powers within the limits of the federal constitution, etc.<sup>11</sup>

There are great differences between a confederation and a federation on various aspects. First, the two are substantially different in terms of whether the component states surrender or renounce their sovereignties. That is, with respect to existing states retaining their sovereign powers. A federation creates a new single sovereign power as a higher authority above its constituent states, but a confederation does not cause any change of sovereignty in relation to its constituent states.

Second, the two are quite different in terms of legal distinctness under international law. A confederation itself does not acquire new international legal distinctness,<sup>12</sup> but rather, its component states retain international distinctness. A federation obtains international distinctness while its component states lose their former international distinct-

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9 Ivan Bernier, *International Legal Aspects of Federalism* (London: Longman Group Limited 1973), p. 2.

10 In case of federation, its central government exclusively handles currency issuing, besides military and diplomatic authorities.

11 James Crawford, *Supra* note 7, pp. 291-292. On the main characteristics of a federation system appeared in federal constitutions, see The National Unification Board, the ROK, *A Comparison of Federal Constitutions in Democratic and Communist Countries*, Research on Unified Countries' Constitutions (3) (Seoul: the National Unification Board 1982), pp. 1-58.

12 Article 2 of the 1933 Convention on Rights and Duties of States signed at Montevideo states that a federal state shall constitute a sole person in the eyes of international law.

ness. Therefore, a federation is in every respect an actual state under international law, while a confederate is not.<sup>13</sup>

Third, the two are drastically different in terms of their constitutive basis. The legal basis of a confederation is a treaty concluded between its component states based on international law. However, a federation is formed on the grounds of a federal constitution, which is a domestic law. Therefore, the constituent states of a confederation possess its own constitution without affecting each other's political independence or constitutional system. In contrast, those of a federation are commonly bound by a single higher federal constitution, possessing also their local constitutions to preserve autonomy within the limits of the federal constitution.

Fourth, the two are different in terms of continual stability. The confederation is substantially a temporary, provisional, and transitional form of association of states. This is proper both theoretically and historically. The fact that a confederation is a temporary union in transition to a federation is well shown by the examples of the United States or Sweden (the Confederate States of America from 1781~1787 and the Confederate States of Sweden from 1815~1948), and the experience of dissolution of the United Arab Republic (a confederation of Egypt and Syria from February 1958 to September 1961).<sup>14</sup> That is, most confederate states either formed a federation or dissolved into unitary states, eventually. On the contrary, a federal state, unless its federal constitution is abolished, remains a permanent or semi-permanent form of association of states.

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13 Glahn, *Supra* note 7, p. 64; Starke, *Supra* note 8, p. 129.

14 See Robert Jennings and Arthur Watts (eds.), *Oppenheim's International Law* (9th ed.), vol. 1 (London: Longman 1992), pp. 246-248; Wilfred Fiedler, "Confederations and Other Unions of States," Rudolf Bernhardt (ed.), *Encyclopedia of Public International Law*, vol. 10 (Amsterdam: North-Holland 1986), pp. 60-61; Myung-bong Chang, *Case Studies on Confederation*, Materials on Unification Policy 86-7 (Seoul: The Executive Office of South-North Dialogue, the National Unification Board of the ROK, 1986), pp. 19-42, 90-101.

Fifth, the two are totally different in terms of nationality. Any constituent person of a confederation retains the former nationality of his or her own home country, not acquiring a new nationality of the confederation itself. However, every constituent person of a federation loses the former nationality of his or her original state and obtains a single and common nationality of the federation itself.

Sixth, the two are quite different in terms of domestic jurisdiction or internal governmental control. Each component state of a confederation exercises its domestic jurisdiction (including legislative, executive, judiciary) on its people. In particular, taxing power belongs not to the confederation itself, but to its component states. Also, each component state possesses military authority (including maintenance of military force and operational command), currency issuing and control authority - a confederation itself does not have such authorities. However, its component states may take collaborated military or economic action within the framework of a confederation.

In the case of a federation, the central or federal government directly administers its authority over its component states and their people. Constituent states possess and exercise limited residuary powers, covering legislative, executive, and judicial, in accordance with the federal constitution.<sup>15</sup> For example, taxing or budgetary power belongs both to the federation itself and to the constituent states. As a result, in a federation, the problem of distributing governmental powers between a federal government and component states arises inevitably. Nevertheless, military power<sup>16</sup> and currency issuing and control belong only to the federal government.

Seventh, the two are much different in terms of external govern-

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15 Whiteman, *Supra* note 5, p. 384; Starke, *Supra* note 8, p. 130.

16 The constituent states of a confederation maintain military power or armed force individually while the confederation itself does not. But in principle the central government only possesses military power in a federation while the constituent states of the federation do not.



mental control. In a confederation, the component states, in principle, can exercise their diplomatic authority fully and unrestricted while the confederation itself exercises it with limitation, based on what is recognized in a confederation-making treaty.<sup>17</sup> However, in a federation, the central government principally exercises the diplomatic authority, while component states cannot. In this regard, it must also be remembered that there are exceptional cases where constituent states can conclude some treaties with other countries upon recognition of the central government according to permissive provisions of the federal constitution.<sup>18 19</sup>

Eighth, the two are quite different in terms of international responsibility. A confederation itself does not take responsibility for wrongful acts committed by its component states in violation of international law. In the case of a confederation, only the direct participant state in

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17 Glahn, *Supra* note 7, p. 63.

18 In the Basic Law of the Federal Republic of Germany, Article 3 (3) states that insofar as the Lander have power to legislate, they may, with the consent of the Federal Government, conclude treaties with foreign states. The Constitutional Court of the ROK, A Study on Decisions of the Federal Constitutional Court and the Revisions of the Basic Law (Seoul: The ROK's Constitutional Court, 1996), p. 492. The U.S. Constitution states in Article 1 Section 10 (1) that "No State shall enter into any Treaty, Alliance, or Confederation..." and in Article 1 Section 10 (3) that "No State shall, without the Consent of Congress, ... enter into any Agreement or Compact with another state, or with a foreign Power..." An adverse interpretation of the paragraph (3) leads that with the consent of the Congress, a state may enter into an agreement with another state, or with a foreign Power. The U.S. Constitution Research Society of the ROK, *The U.S. Constitution Research*, no. 2 (1991), pp. 353-354. According to a counter interpretation of section 10 Article 1 of the U.S. Constitution, it can be inferred that a state may keep troops and conduct war in time of peace with the consent of the Congress.

19 Starke, *Supra* note 8, p. 130. The Bylorussian Republic and the Ukrainian Republic, both constituent units of the former Union of Soviet Socialist Republics, sent delegates to vote at the United Nations General Assembly, and possessed limited diplomatic authority to conclude treaties to a certain extent. However, after the dissolution of the Soviet Union rarely does a constituent unit of a federation has or exercises authority on the dispatch or acceptance of diplomatic envoys.

international delinquencies assumes responsibility and other component states are not bound by any responsibility. However, a federation is responsible not only for its own international wrongful acts, but also, for those of its component states.<sup>20</sup> Constituent units of a federation do not take any international responsibility.

Ninth, the two are sharply different in terms of armed conflicts. Armed conflicts between confederate states are considered under international law as war. However, in a federation, such conflicts are constituted only as civil wars or domestic insurrection.<sup>21</sup> In other words, the former conflicts are considered international matters, while the latter conflicts are regarded as domestic unrest in the eyes of international law.

### **III. Legal Character of the South's Confederation Proposal and the North's "Low Stage Federation" Proposal**

#### ***1. Legal Character and Features of the South's Confederation Proposal***

##### A. Concept of the South's Confederation Proposal

The South's Confederation Proposal, drafted in August 15th, 1994, is a formal governmental unification plan, which suggests a so-called "Korean Commonwealth" as a semi-unification process,<sup>22</sup> and so, it can be considered the same as a "Korean Commonwealth Proposal." This

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20 Fenwick, *Supra* note 3, p. 243.

21 Han-ki Lee, *International Law Lecture*, new edition (Seoul: Pakyoungsa 1997), pp. 165, 246-247.

22 The Korean government announced that the South's Confederation proposal is on the same extension with the *Korean National Community Unification Formula* which was accepted by the absolute majority of general public in South Korea. The Ministry of Unification of the ROK, *Interpretation of Articles in South-North Joint Declaration and Q & A about Related Problems* (2000. 6), p. 12.

was already mentioned in the *Korean National Community Unification Formula*, announced in September 1989. Concerning the substance of its contents, such as the structure and organization of a Korean Commonwealth, these are listed in that unification formula, and hereafter, I will mainly focus on the *Korean National Community Unification Formula* to explain the South's confederation proposal.

The *Korean National Community Unification Formula*, or the South's Confederation Proposal emphasizes "national community" as a paradigm for unification policy. National community is momentum to tie up the entire nation, and also, in itself, is the power immobilizing reunification. This notion of national community focuses on how the people of the South and North can live together, rather than on assembling different political systems.<sup>23</sup>

As the "Korean Commonwealth" concept spotlights the divided people's coexistence, it is quite natural to include a wide range of social, cultural, economic and political aspects.<sup>24</sup> To become an everlasting momentum for economic, social, cultural, political and military integration among the Korean people, the national community should be corporeal in the process of unification, instead of being a theoretical and ideological concept or morale. Therefore, the national community must be systematically organized. In this context, the Korean Commonwealth is to be a legal and systematic institution, or a corporeal political entity in the real world.

However, the Korean Commonwealth cannot be the ultimate goal.

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23 The National Unification Board of the ROK, *White Paper on Korean Unification 1994* (Seoul: The National Unification Board 1994), p. 65.

24 A community is defined as a territorially bounded social system or a set of interlocking or integrated functional subsystems. See Jessie Bernard, "Community Disorganization," David Sills (ed.), *International Encyclopedia of Social Sciences*, vol. III (New York: The Free Press 1979), p. 163. But when we use the "national community" concept here, it covers a new supranational community, which can be formed on the basis of Korean nationalism beyond the quasi-territorial boundary, namely the Korean Demilitarized Zone.

The eventual object of national community is to unite the entire nation as a single unit. The Korean Commonwealth is a framework to restore or develop a national community that promotes integration among sub-units. From this point of view, the Korean Commonwealth can focus more on technical means or legal institutions to restore or rehabilitate national community, whereas the national community focuses on evolutionary and dynamic procedures or complex systems to bring about national harmony or reconciliation in the process of unification. Still, each affects the other, and can create a synergy effect.

#### B. Legal Character of the South's Confederation Proposal

The legal status of the Korean Commonwealth is defined in the *Korean National Community Unification Formula*: "As an interim period on the road to national unification, the South and North would be formed into a common sphere of national life, thereby accelerating the development of a single nation (national community), and eventually will form a perfect democratic republic system."<sup>25</sup> According to this explanation, the Korean Commonwealth implies an interim unification that prepares for a common sphere of national life, the restoration of national homogeneity and national community on the basis of mutual recognition, co-existence and prosperity. In other words, the Korean Commonwealth is an interim stage towards unification to build a common sphere of national life, managing its process of unification organized systematically.<sup>26</sup>

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25 The National Unification Board of the ROK, *The Korean National Community Unification Formula: to Unify This Way*, Explanations of Unification Formula (Seoul: The National Unification Board 1989), p. 12. From this point of view, the Korean National Community Unification Formula is to pursue national unification first, namely national community (economic, social, cultural community) and political unification second, by gradual progress.

26 Jhe Seong Ho, "A Comparison of Unification Proposals of the South and the North," Research Institute for National Unification, *Theory and Practice of the Korean National*

The legal status of the Korean Commonwealth is controversial:

First, some scholars understand it as a kind of confederation. Professor Jang-hee Lee identifies it as a “tentative confederation” because it is a pending organization until the unification of the two Koreas.<sup>27</sup> Professor Myung-bong Chang also identifies it as a type of confederation recognized by international law.<sup>28</sup>

Second, others understand it as a union of systems or system alliance. Dr. Hong-koo Lee, Deputy Prime Minister of the National Unification Board of the ROK, who designed the *Korean National Community Unification Formula*, defined the Korean Commonwealth as a system alliance.<sup>29</sup> These words would originate in a special situation where South and North Korea are reluctant to recognize each other as a state in law, even though each exists as a different political system. Professor Hak-Joon Kim, who consents to the idea of a system alliance, regards it as something halfway between confederation and federation.<sup>30</sup>

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*Community Unification Formula* (Seoul: Research Institute for National Unification 1994), p. 195.

27 Jang-hee Lee, *Problems of Legal System Confronting the Confederation, Revolution and Korean Democracy* (3rd ed.) (Seoul: Asian Research Institute for Social Science, 1994), p. 98.

28 Myung-bong Chang, Comparison of the South's Confederation Proposal and the North's Low Stage of Federation Proposa, *Gosige*, vol. 522 (Aug. 2000), p. 26. He defined the Korean Commonwealth as a confederation within the two Koreas, partially similar to the British Commonwealth of Nations. See Myung-bong Chang, “A Study on Confederation: Regarding the Development of our Unification Formula,” *Korean Journal of International Law*, vol. 33, no. 2 (1988), pp. 27-49.

29 Dr. Hong-koo Lee, former minister of the National Unification Board of the ROK, announced in August 1994 that the new “Three-phased Unification Formula for Constructing the Korean National Community” (abbreviated as “National Community Unification Formula”) supplements the existing “Korean National Community Unification Formula” of 1989.

30 Hak-joon Kim, “A Study on National Community and the Korean Commonwealth: Background of the Korean National Community Unification Formula of the 6th Republic,” *The Korean Journal of Unification Affairs* (National Unification Board of the

Third, another regards it as an institution between confederation and the British Commonwealth of Nations (Commonwealth). This opinion is related to the use of the words 'Korean Commonwealth,' which originates from British Commonwealth.<sup>31</sup> However, the South's government explains in the ROK's formal brochure on national unification that 'Korean Commonwealth' is similar to European Community or Nordic Council, more so than confederation.<sup>32</sup>

In my opinion, considering the unique or special legal relations between the South and North, it is reasonable to note its dual legal status according to the relationship between the two. They, externally and in the eyes of international law, exist as "one nation, two states, two governments" without denying each other's external statehood in the international arena, whereas, internally and in the eyes of domestic law, they exist as an association between "one nation, one state, two systems."

The former explains the current situation that each makes a treaty with over 100 countries and participates in international organizations such as the UN. The latter makes clear that the South and North exist as independent political entities, where one regards the other's controlled area as part of its own territory under its domestic (especially constitutional) law.

In light of this double character, the Korean Commonwealth is not a confederation of states between two states legally recognizing each other, nor a mere system alliance. Namely, the Korean Commonwealth can be externally regarded as a confederation on the one hand, while on the other, it is regarded internally as a system alliance. This double standard comes from the division of the Korean peninsula. Therefore, I would characterize it as a "quasi-confederation national community."<sup>33</sup>

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ROK), vol. 1, no. 3 (1989), pp. 38-39.

31 The National Unification Board of the ROK, *Supra* note 25, pp. 38-39.

32 The National Unification Board of the ROK, *White Paper on Unification 1990* (Seoul: The National Unification Board 1990), p. 86.

### C. Contents of the South's Confederation Proposal

According to the *Korean National Community Unification Formula* or the South's Confederation Proposal, the South and the North will communicate or cooperate on the pending issues the two face, possessing independent rights on diplomatic, military and economic affairs, and maintaining "one nation, two states, two systems, two government," which means an interim unification system.<sup>34</sup>

The *Korean National Community Unification Formula* proposed the establishment and operation of the Korean Commonwealth by adopting the "National Community Charter" or "South-North Association Charter" at the summit conference. As for its bodies, there are 4 main organs as in the following: 1) a Council of Presidents, or the chief executives from the two Koreas; 2) a Council of Ministers; 3) a Council of Representatives; and 4) a Joint Secretariat. In particular, the Council of Ministers, to be co-chaired by the Prime Ministers of the South and North, and to be comprised of about ten cabinet-level officials from each side, would discuss and adjust all pending South-North issues and ensure the implementation of its decisions. Under the Council, five standing committees would be created to deal with humanitarian, political or diplomatic, economic, military, social and cultural affairs. The Council of Representatives would be formed of about 100 legislators, with equal numbers representing both sides.<sup>35</sup> Through this organ, the Korean Commonwealth can solve current issues, develop the national community and systematically prepare for unification.

In addition, both the South and North would present their own proposals for the constitution of a unified Korea to the Council of

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33 Seong Ho Jhe, *Theory and Practice of the Special Relationship between the South and the North: Legal Issues and their Solution* (Seoul: Hanwool Academy 1995), p. 32; Seong Ho Jhe, "The Issue of Amending of Constitutional Articles on National Unification," *Korean Journal of Unification Studies*, vol. 1, no. 1 (1992), p. 27.

34 Seong Ho Jhe, *Supra* note 26, pp. 194-195.

35 The National Unification Board of the ROK, *Supra* note 25, pp. 49-50.

Representatives so as to combine into a single draft. The agreed draft of the constitution of a unified Korea should be finalized and promulgated through democratic methods and procedures.

The address laid down the phased process of unification as follows: 1) Drafting a united constitution; 2) Finalizing the draft constitution; 3) Holding general elections; and 4) Forming a unified legislature and government.<sup>36</sup> Furthermore, the unified national assembly would consist of both Houses - the Upper House of local representatives and the Lower House of people representatives.<sup>37</sup>

The unified Korea must be a democratic nation that guarantees the human rights of everyone and their right to seek happiness.<sup>38</sup> Moreover, the unified nation would maintain neighborly and friendly relations with all other countries contributing to world peace and human welfare.<sup>39</sup>

## ***2. North Korea's "Low Stage Federation" Proposal: Its General Principles, Legal Status and Contents***

### A. Concept of the "Low Stage Federation" Proposal

The North's proposal for "Low Stage federation," which was stated

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36 Seong Ho Jhe, *Supra* note 26, p. 198.

37 The National Unification Board of the ROK, *Supra* note 25, p. 51.

38 In regard to the features of a national society, the ROK government said in "the Korean National Community Unification Formula" of 1989 that the unified country must be a single national community in which every citizen is his own master, that is to say, a democratic nation that guarantees freedom and human rights of every individual and his right to seek happiness. The National Unification Board of the ROK, *A Comparison of Unification Policies of South and North Korea* (1990), p. 131; The National Unification Board of the ROK, *Supra* note 32, p. 46. Such a feature of the unified Korea has been slightly modified to an advanced democratic country that guarantees the freedom, welfare and dignity of people in the 1994 National Community Unification Formula. However, there is no big difference between the two.

39 The National Unification Board of the ROK, *Supra* note 23, pp. 62-63.



in paragraph 2 of the South-North Joint Declaration, is regarded as a modification of its former unification concept by the “Koryo Federation,” which was publicly announced on Oct. 10, 1980. But Pyongyang named its Koryo Federation Proposal as the “Proposal for the Establishment of the *Democratic Confederal Republic of Koryo* (DCRK)” (English translation). In spite of its name, the DCRK bears more similarity to a federation than to a confederation, and is expressed as the “고려민주련방공화국” in the Korean language (“*Democratic Federal Republic of Koryo*” in the literal translation). It is because the structure and functions of the DCRK resemble those of a federation rather than a confederation, and North Korea characterizes its unification formula as a federation proposal on a domestic political level and in the Korean language as well.

North Korea’s standpoint concerning the “Low Stage Federation” was explicitly implied for the first time during Kim Il-sung’s policy report in his New Year’s speech on Jan. 1, 1991. In the speech, Kim had referred to several concrete proposals such as the following: It is necessary for the South and North to draw a pan-national agreement over the “Koryo Federation Proposal” with more ease; North Korea is now eager to confer more powers to the regional governments of the South and North<sup>40</sup>; North Korea will not object to joining the United Nations with South Korea even before the constitution of a federal union, if the joining is under a single ticket for both sides of Korea; representatives

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40 Kim Il-sung reaffirmed the basic principles of federal unification idea in his New Year’s Speech of 1991. They are as follows. “In consideration of two different social systems of the North and the South, the unification of the fatherland should be accomplished by federation scheme based on ‘One Nation, One Country, Two Systems, Two Governments,’ not in the condition of the life-and-death struggle but in the peaceful atmosphere. The unification formula based on ‘One Nation, One Country, Two Systems, Two Governments’ is to ally the two Koreas and establish an unified national country by allowing them to retain their respective ideologies and systems. This theory starts from the premise that two different systems and two different governments can exist in one national country,” *Rodong Sinmun* (Labor Newspaper), Jan. 1, 1991, p. 2.

of the two regional governments, all political parties and social organizations from both sides should be called for the 'Conference for Political Negotiation on National Unification' to solve the unification issues confronting the fatherland as soon as possible; and the matter of integrating the two Koreas' different political systems can be settled more gradually and naturally by the coming generations.<sup>41</sup>

After Kim Il-sung's New Year's speech, North Korea showed its same standpoint through announcements of the North's high-ranking officials, that it is possible to establish a transient unification system by adopting the "Low Stage Federation."<sup>42</sup> Sung-pil Son, the then North Korean Ambassador to Russia, stated at the meeting with Mr. Rogachov, the Russian Vice-minister of Foreign Affairs, "In due consideration of the change of the international situations, North Korea has modified the "Koryo Federation Proposal," and its modification is now in the final stage. As the highest unification body over the North and South, the Supreme National Federal Assembly will be formed, and as well, the Permanent Federal Committee (federal government) as a standing executive body will be created to guide the regional governments of the two sides and to take charge of the overall programs of the federal state (DCRK), and it shall not obstruct the autonomy of the North and South. The regional governments of both sides will independently perform operations in the fields of national defense, diplomacy, legislation, and economy. However, both the federal government and the two regional governments shall solve the essential international problems in cooperation, and cope with the external threats together. These schemes reflected some of the affirmative constituents from South Korea's *Korean National Community Unification Formula*, and the North is willing to perform more profound studies

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41 See *Ibid.*

42 Seong Ho Jhe, *Analysis and Evaluation of the North Korea's Federation Proposal*, Research Paper 91-02 (Seoul: Research Institute for National Unification 1991), pp. 18-25.

on the unification formula.”<sup>43</sup>

Jun-ki Chung, chairman of the External Cultural Contact Committee, stated at a meeting with a Kyodo Correspondence reporter during his visit to Japan on April 8, 1991, “It is possible for both the two regional governments to maintain their own authorities separately to deal with diplomatic and military affairs.”<sup>44</sup> Ki-bok Yun, Secretary of the North Korean Workers’ Party, had mentioned through an interview with reporters at the 8th general assembly meeting of the IPU (International Parliamentary Union) held in Pyongyang in 1991, “We can revise the Koryo Federation Proposal in the direction of conferring powers governing diplomatic and military affairs onto the two regional governments provisionally, within the specified limits.”<sup>45</sup>

After Yun’s announcement, Si-hae Han, vice-president of the Fatherland’s Peaceful Unification Committee, had stated in a press interview with the New York Times on June 2, 1991 that the federative unions of the original thirteen states of the US can be applied to the Korean peninsula. He also mentioned a new idea of the Koryo Federation system from a North Korean perspective. The main framework of the concept is as follows: “Thirteen colonies in the days of independence had united themselves as a confederation and afterwards founded the U.S. as a federal state. In the integration process, the United States made the authorities of the Federal government more powerful gradually, while protecting and promoting each component state’s interests. There is no reason why Korea cannot follow in the path of the United States.”

Mr. Yun continued his remarks, “South and North Korea can form a

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43 The National Unification Board of the ROK, “Analyzing North Korea with its Main Cadres’ Speeches and Conducts on Koryo Federation Formula - Centered Round on Recent Information Reports,” The Inner Policy Materials, The National Unification Board of the ROK, 1991, p. 1.

44 *Chosun Ilbo*, April 9, 1991, p. 1.

45 *Chosun Ilbo*, May 5, 1991, p. 1.

unitary national community, even though their social systems are different, since both sides have the same blood, same culture, and same language. The federal government in the initial stages may not have powerful authority, and therefore, the powers governing diplomatic and military affairs would be exercised independently by the two regional governments. However, the Koryo Federation would allow a unified Korea's attempt to join the United Nations only when the two Koreas become a member country of the UN under a single ticket, and the unitary application for admission should be presented to the United Nations."<sup>46</sup>

#### B. Legal Character of the "Low Stage Federation"

As mentioned above, the core of the North's "Low Stage Federation" Proposal is based upon recognition of the fact that the South and North cannot accomplish political unification by federation scheme instantly, and so, it is necessary to confer more authority over foreign and military affairs to the South and North's regional governments provisionally before establishing a unified country (a complete people's federation), and then enlarging the functions of the central government step-by-step, as well as to leave systems unification, which means a complete state unification, entirely to the generations to come. In regards to the North's standpoint, which recognizes the two regional governments' independent powers to manage diplomatic and military affairs, the North's new concept of the "Low Stage Federation" Proposal is quite different from the general concept of federation under international law, and also from the former idea of a "*Democratic Confederal Republic of Koryo*," which was proposed in October 1980. From this point of view, the "Low Stage Federation" Proposal can be interpreted as having some confederation-like elements,<sup>47</sup> but the so-called

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46 *Chosun Ilbo*, June 3, 1991, p. 2.

“low level federation” is not a confederation in the real sense of the word, but instead, bears more similarity to federation. That is why the federation concept is being introduced in a building state structure of the unified Korea, and division of powers is to be made between the central or federal government and the regional governments.

Therefore, the “Low Stage Federation” Proposal has much in relation to the DCRK Proposal (the “Koryo Federation Proposal”). It can safely be said that the former proposal is devised as a transitional or intermediate stage, where the latter is hardly realizable in the immediate future. In other words, the “Low Stage Federation” Proposal is one that leads to the DCRK proposal, and hence, both proposals are on the same line of extension.

With the “Low Stage Federation,” the central government would be the only symbolic entity, while the regional governments manage

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47 In this point of view, the North’s ‘Low Stage of Federation Proposal’ can be said as the recurrence of the first “North-South Federation Idea” which North Korea had suggested in 1960. Such a federation Idea is worked out as a transient method leading to unification which Kim Il-sung had suggested at the speech of 15th Anniversary of Korean Independence day on Aug 14, 1960. He suggested with the North-South Confederation Idea that (1) the withdrawal of American forces from South Korea and enforcement of North-South liberal general election on the basis of democracy without any interference of foreign powers, (2) in case of the non-enforcement of the general election, gradual implementation of North-South Korean federation (retaining the current political systems in the North and the South for some time, guaranteeing independent activities of the Government of the DPRK and the Government of the ROK, creating Supreme National Federal Assembly composed of representatives of both governments, and regulating economic and cultural development in a uniform way), (3) on the occasion of impracticability of federal system, organizing Economic Committee composed of representatives from industrial field of both governments (mutual cooperation or support in trading commodities and resources between the two governments), and (4) cultural exchange and free traffic between the North and the South. See “Reports at the 15th anniversary ceremony of Chosen People’s National Holiday, August 15th’s Korean Independence day,” *Writing Collections of Kim Il-sung*, vol. 14 (Pyongyang: Chosen Workers’ Party Publishers 1981); Seong Ho Jhe, *Supra* note 42, pp. 4-5.

diplomatic and military affairs independently.<sup>48</sup> From this point of view, the DCRK Proposal or the "Koryo Federation Proposal" can qualify as a "High Stage Federation" Proposal or completed federation proposal from the North's side.<sup>49</sup>

### C. Contents of the "Low Stage Federation"

In examining the contents of the "Low Stage Federation" Proposal, it is necessary to preliminarily consider the DCRK Proposal. The key points of the DCRK Proposal is composed of four main parts:

First, the most realistic and reasonable method of unifying the fatherland on the principles of independence, peace and national unity is for both Koreas to become allies and form a federal state while retaining their ideologies and systems. This means a construction of one federal state.

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48 Ahn Kyung-ho, Secretary General of the Fatherland's Peaceful Unification Committee, indicated the key point of the "Low Stage of Federation" as the 'Constructing a National Unification Body by the two Korean regional governments, with each political entity retaining its current functions and authorities over' domestic politics, military and foreign affairs' and the like, at the Report Meeting in Celebration of 20th Anniversary of Proposing the Idea of a *Democratic Confederal Republic of Koryo* in Pyongyang, Oct 6, 2000. Mr. Ahn also stated, "Both the two governments should find an unified solution for national unification, and pursue actualization of the independent unification in accordance with the inter-Korean agreements formulated in the June 15 North-South Joint Declaration of 2000," and emphasized, "All the political and physical barriers which conflict with establishment of Unified Federal Country should be abolished, and North-South Talks must be proceeded in various fields." Refer to News Reports from Korean Central Broadcasting Center and Pyongyang Broadcasting Center on Jun 10, 2000; National Unification Board of the ROK, *Weekly Report on North Korea*, no. 507 (Sep. 30-Oct. 6 2000), p. 39.

49 The Koryo Federation Proposal was to establish a federal country by immediate and structural methods, and refuse the gradual and step-by-step unification policy. However, this proposal had principally focused on assembling state systems, and disregarded the reality of deepened heterogeneities and damaged or disparate 'One-Nation' spirit among both sides' people.

Second, the federal state would be called the “*Democratic Confederal Republic of Koryo*” outwardly, and under the federal government, the North and the South would maintain their own regional autonomy, carrying equal rights and obligations through regional self-governing systems.

Third, the North and South would form a Supreme National Federal Assembly, which would consist of the appropriate number of their respective representatives and overseas delegates. They also would constitute a federal standing organization.<sup>50</sup> The federal government (permanent federal committee) would “guide” the regional governments of the two sides and take charge of the overall programs of the DCRK, exercising competence over foreign and military affairs.<sup>51</sup>

Fourth, after the formation of the federal government, the so-called Ten Major Policies of a unified federal state would be enforced in the North and South, such as promotion of inter-Korean exchanges and

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50 Since then, North Korea supplemented its Koryo Federation Proposal with the suggestion of rotation system in relation to operating federal government. That is to say, Kim Il-sung suggested on September 9, 1983, in his speech at a reception held in celebration of the 35th anniversary of his regime building, that the two sides elect co-chairmen of a Supreme National Federal Assembly and a federal Standing Committee, who would then operate the unification bodies by turn, “Kim Il-sung’s Speech at a Reception Held to Mark the 35th Anniversary of His Regime.” *Korean Central News Agency, Korean Central Yearbook* (Pyongyang: Korean Central News Agency 1984), pp. 39-44; The National Unification Board of the ROK, *Comparison of Proposals on Unification and Inter-Korean Talks (1945-1988)* (Seoul: National Unification Board 1988), p. 225.

51 In Koryo Federation Proposal, the function of the federal government and the regional governments are prescribed as follows: “The federal government shall discuss and decide over the matters of politics, national defense, and mutual problems related to the interests of the Nation and the People (the function of discussion and decision), and promote operations of unified developments for the Nation and the People (the function of promoting operations);” and “The regional governments shall practice independent policies within the limits of fulfilling the People’s fundamental interests and requirements, abolishing the gaps in all fields between the North and the South, and serve the unified development of the People.”

cooperation, and organizations of allied national forces.<sup>52</sup> Thus, the North's "Koryo Federation Proposal aims at forming a unified national government based on "one people, one country, two systems, two governments," on the basis of recognizing and tolerating the ideologies and systems existing in each other's areas as they are.

How to establish a unified country under the "Low Stage Federation" Proposal was mentioned in Kim Il-sung's New Year's speech in 1991. The process of national unification is as follows: (1) Holding the "National Unification Political Negotiation Conference," to be attended by political parties and social organizations of the two sides; (2) conference settlement over federal unification formula; and (3) promulgation of the "*Democratic Confederal Republic of Koryo*." Here it is observed that "National Unification Political Negotiation Conference"

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52 North Korea suggested 'Ten Major Policies for a Federal State' as follows (which would be enforced, after a unified federal country is established, in the field of political, economic and social life): (1) Enforcement of independent policies in all areas of state activities; (2) Implementation of democracy and promotion of national unity in all areas, throughout the national society and in all sectors; (3) Implementation of economic collaboration and exchanges, and guarantee of the self-reliant development of national economy; (4) Realization of exchanges and cooperation in the areas of science, culture and education, and promotion of the uniform development of science technology, national culture and national education; (5) Connection of transportation and communication routes between the North and the South, and the guarantee of free use of transportation and communications facilities across the country; (6) Promoting the stability of livelihood of working class, including handworkers, farmers, and other working masses, and the rest of the people, and elevating ordinary people's well-being; (7) Elimination of the state of military confrontation between the North and the South, organization of allied national forces and protection of the Korean nation from the invasion of external forces; (8) vindication and protection of the national rights and interests of overseas Korean residents; (9) Proper handling of the external relations which the North and the South established before complete unification, and uniform adjustment of the external activities of the two regional governments; and (10) Development of friendly relations with all other countries as a unified state, and implementation of peace-loving external policies. Suk-yeol Ryu, *The Theory of Korean Unification* (Seoul: Bubmun Publishing Co. 1994), p. 201; Seong Ho Jhe, *Supra* note 42, pp. 14-15.



has the characteristics of a multitude assembly for the talks on the unification schemes.

In short, the DCRK Proposal suggests a federal state by the “one nation, one country, two systems, two governments” formula as the ultimate form of a unified country. In such a formula, the North and South’s governments can participate in the operation of a federal system equally. The proposal presents foreign policy based on the principle of independence, peace, good-neighborliness and non-alignment as one of the policy directions of a unified Korea. However, the unification policy of North Korea does not suggest any concrete figures or future images of a unified Korea.

#### **IV. Comparison Between the Unification Proposals of the South and North**

##### ***1. Common Points in the Unification Proposals***

There are quite a few common points found in the South’s Confederation Proposal (or Korean Commonwealth Proposal) and the North’s “Low Stage of Federation” Proposal.

First, the South’s Confederation Proposal and the North’s “Low Stage Federation” Proposal are similar in that both are not aimed at the ultimate goal of unification. The proposals of both sides are based on the recognition of realities on the Korean peninsula that complete political unification is difficult to achieve in the immediate future, and so, unification-oriented measures should be carried out step-by-step. That is, the Korean Commonwealth and the “Low Stage Federation” are also to be constituted as a provisional union in the transitional period prior to ultimate unification. Through such an intermediate stage, the entire nation would be able to gradually pursue political unification.

It can be said the South’s confederation, which has the status of

“inauthentic confederation”<sup>53</sup> from the international law perspective, is a form of “systems association” to be organized within a divided country in a transitional manner before complete national unification. The North’s proposal to achieve unification through the so-called “Low Stage Federation,” including the plan to entrust the task of systems unification to descendants, can be assessed as an interim approach to national unification. Both the South and North’s proposals can be interpreted as a means of achieving unification gradually.

Second, both the South and North exist as a sovereign nation and an independent political entity domestically and internationally according to its own unification formulas.<sup>54</sup> Therefore, South and North Korea maintain separate political identities and have obligations not to interfere in each other’s internal affairs. Also, the South and North hold independent authority in diplomatic and military affairs and act individually in the international arena.<sup>55</sup> If either of them concludes an

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53 A scholar of Germany, Friedrich Berber referred to the effect that the relations between East and West Germany before unification was similar to those of ‘inauthentic federation’ (sogenannte unechten Bundesstaat), compared to the former German Reich (Gesamtstaat). See Friedrich Berber, *Völkerrecht*, Band I(München: C. H. Beck’sche Verlagsbuchhandlung 1975), refer to 17. However as the essential elements of federation are there, first, the existence of central power (federal government), second, mutual agreement on the division of powers between a federation and the component states (to be provided in a federal constitution), but these cannot be found in the relations between East and West Germany. On the other hand, after the Basic Treaty on East-West German relations was concluded, a joint committee was established between the two and this composed an association to adjust the interests of both sides. In light of these facts, it is more appropriate to regard inter-German relations as those of ‘inauthentic confederation.’ See Jae Shik Pae, *Supra* note 1, p. 95, note 1).

54 The South’s Confederation Proposal set mutual independence and full sovereignties’ of the South and the North a premise. It seems the North’s “Low Stage of Federation” Proposal presupposes something like that. But there is some doubt about this matter in the North’s unification proposal.

55 At present, South and North Korea hold separate membership in international organizations, including the United Nations.

agreement with a third party, this agreement would not influence the South-North confederation or the “Low Stage Federation” between the two. In principle, the South and North possess independent authority in diplomatic and military aspects, but within a certain extent, the confederation would regulate the South and North’s unified policies (especially in diplomatic, economic, social and cultural spheres).

Third, both the South’s Confederation Proposal and the North’s “Low Stage Federation” Proposal assume a construction of a South-North cooperative system, although there is a difference in the names of the intermediate unification mechanism. In this stage, the South and North would coordinate exchanges and cooperation in the fields of economy, and social and cultural development, and also endeavor to regain cultural homogeneity. These are also common points.

In short, the North’s “Low Stage Federation,” which confers more domestic control and military power onto the regional governments, has a confederation-like factor, somewhat similar to the South’s “*Korean National Community Unification Formula*” or the Korean Commonwealth Proposal.<sup>56</sup>

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56 Seong Ho Jhe, “A Comparison of the South’s Confederation Proposal and the North’s “Low Stage of Federation” Proposal,” *Constitution and Politics*, No. 223 (Jan. 2001), pp.66-67; On the other hand, Prof. Myung-bong Chang suggests the following as the common points between the unification proposals of South and North Korea: (1) recognition and approval of each other’s system (coexistence and co-prosperity); (2) exclusion of absorptive unification or unification by national liberation; (3) gradual and step-by-step approach to unification; (4) establishment of provisional unification system as an interim stage; (5) giving priority to the promotion of national unification; (6) regarding the process of unification more highly than the result of unification; and (7) sharing confederation-like elements in the South-North Korean regime’s association. Myung-bong Chang, “Comparison between the South’s Confederation Proposal and the North’s Low Stage of Federation Proposal,” *Journal of Legislation Research*, vol. 19 (2000), pp. 21-23, 34.

## **2. Different Points in the Unification Proposals**

Although there are some common points in the South's Confederation Proposal and the North's "Low Stage Federation" Proposal as mentioned above, quite a few different points exist as well between the two proposals:

First, the South recognizes the North as a *de facto* state according to the confederation proposal.<sup>57</sup> However, considering the territory clause (article 3)<sup>58</sup> in South Korea's constitution and special relationship between the two Koreas stipulated in the preamble of the South-North Basic Agreement of 1992, the South does and cannot afford to not give the North *de jure* recognition of state. The South also is not considering establishing a super-national organization that would be higher than the governments of the two states (it simply plans a joint organization in the form of a consultative body). That is to say, the South's Confederation Proposal presents the "two states, two systems, two governments" concept as a prerequisite for the Korean Commonwealth.

On the other hand, the North's "Low Stage Federation" Proposal plans to install a central (federal) government, although it would only

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57 The words 'Recognizing North Korea as an actual state' does not implicate 'de facto recognition of state' in the meaning of the International Law, but on the other hand they mean to recognize the 'substantiality of the state' and approve of the communication, contact and interchange between the two nations - as the meaning of 'de facto special recognition of state (faktische Anerkennung).' As for the aspect of effect, this is more restrictive than the 'de facto recognition of state.' According to the State Recognition Law, when bestowing "de facto recognition" the bestowing country must reserve (in a clear statement) that the bestowal is provisional and transient. Originally the notion of 'de facto special recognition of state' was a theory used between Communist countries during the Cold War, however this can still be used in the relations between South Korea and North Korea or a non-foe Communist Country. Dietrich Frenzke, *Die Kommunistische Anerkennungslehre* (Köln: Verlag Wissenschaft und Politik 1972), pp. 178, 180-181.

58 Article 3 of the South Korean constitution stipulates, "The Territory of the Republic of Korea shall be composed of the Korean Peninsula and its adjunct islands."

be symbolic and nominal, and the South and North's governments would be reduced to and qualify as regional (autonomy) governments. Thus, the 'Low Stage Federation' still presupposes the authorities of the central government to be weak and the regional government to be strong on the basis of the "one state, two systems, two governments" concept.

Second, according to the South's Confederation Proposal, either the South or the North would maintain sovereign political entity even after forming the Korean Commonwealth and use separate names - the 'Republic of Korea' and the 'Democratic People's Republic of Korea.' However, the North's 'Low Stage Federation Proposal' presents the "Democratic Confederal Republic of Koryo" as the single name of an umbrella country, that is to say, a low level of South-North federation.<sup>59</sup>

Third, under the South's Confederation Proposal, South and North Korea would conduct international activities as two sovereign states and join the United Nations as separate member countries. However, under the North's 'Low Stage Federation' Proposal, the two Koreas would join the United Nations with a single seat and act jointly (refer to Kim Il-sung's New Year's Speech in 1991 and Shi-hae Han's speech in June 2, 1991). This point is well taken in the fact that the North had been constantly persisting on a single seat before South and North Korea simultaneously became members of the United Nations in September 1991.<sup>60</sup> Yet, due to not only the lack of reality but also the South's dissent, the suggestion was not realized.

Fourth, the South's Confederation Proposal assumes that the bodies of the Korean Commonwealth consist of the government representa-

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59 *Rodong Sinmun*, Jan. 1, 1991.

60 See the National Unification Board of the ROK, *South-North Dialogue*, vol. 51 (1990), pp. 85, 152-164; The National Unification Board of the ROK, *Proceedings of the Communication between South and North Korean Representatives concerning the Admission to the United Nations* (Seoul: National Unification Board 1990), pp. 7-76.

tives, but the North's "Low Stage Federation" Proposal suggests its organization consists of not only government representatives, but also, a number of Korean residents living abroad. This point was included in "The Proposal for the Establishment of the *Democratic Confederal Republic of Koryo*," but was not concretely mentioned in the North's "Low Stage Federation" Proposal, or in other words, Kim Il-sung's New Year's Speech in 1991 or the following statements of DPRK high-ranking officials relevant to the Koryo Federation Proposal. Since the North has not referred to the matter in substance contrary to the past proposal, we are led to believe that North Korea maintains their existing standpoint.

Fifth, the South's Confederation Proposal suggests 4 confederate organizations: 1) a Council of Presidents; 2) a Council of Ministers; 3) a Council of Representatives; and 4) a Joint Secretariat. In particular, under the Council of Ministers, there are five concrete standing committees as consultative and executive organs. On the other hand, the North's "Low Stage Federation" Proposal mentions nothing at all about federal organizations. "*The Proposal for the Establishment of the Democratic Confederal Republic of Koryo*," which corresponds to the "High Stage Federation," only states that as a super-national organization, they would establish Supreme National Confederal/Federal Assembly (in contrast to the Council of Representatives) and Permanent Confederal/Federal Committee (in contrast to the Council of Ministers). Therefore, the North's Proposal lacks concreteness in the aspect of organizational structure, if it is compared with the South's Proposal.

Sixth, according to the South's Confederation Proposal, the Council of Representatives (which would be formed of about 100 legislators with equal numbers representing both sides of Korea) is to provide policy advice and recommendations to the Council of Ministers, and draft a unified constitution to provide the method of unification, the procedures to realize national unification, etc. That is to say, assembly persons who are the representatives of the people are to discuss and

decide the method of unification. However, according to the North's "Low Stage Federation" Proposal, such a decision would be in the hands of the "National Unification Political Negotiation Conference," which is a political negotiation meeting in the form of a mass rally. The representatives of the governments, parties and organizations of the South and North would participate in the "National Unification Political Negotiation Conference." To be brief, the South and North's Proposals are completely different from each other in the personal composition of the meeting to discuss and decide the unification method.

Seventh, the South's Confederation Proposal plans for the Council of Representatives to legislate the unification Constitution and to form the unified country's organizations by democratic general elections. On the other hand, the North's 'Low Stage Federation' Proposal, as well as the *Proposal for the Establishment of the Democratic Confederal Republic of Koryo*, do not mention legislation plans nor process of federal constitution. Although the federal constitution is the outline presenting the foundation and the structure of the federal state, the North does not comment on this matter at all.<sup>61</sup>

Eighth, the North has in the past insisted on a rotation system concerning the management of the federal state, which the heads of the two regional autonomous governments rotate between the South and North. Although this was mentioned only in the North's suggestion of the early 1980s towards the South, there is a possibility that the North will refer to this again if the Korean Commonwealth takes shape. On the other hand, the South's Confederation Proposal does not discuss the rotation system because the Korean Commonwealth itself does not have a unified government. Instead, it plans to hold regular summit conferences.

Lastly, concerning the form of the ultimate unified country, the South's Confederation Proposal presents a liberal democratic state on

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61 Seong Ho Jhe, *Supra* note 26, p. 211.

the basis of "one nation, one state, one system, one government" as the final goal of unification. On the other hand, the North's 'Low Stage Federation' Proposal presupposes a federal state as the ultimate unification form by the "one nation, one state, two systems, two governments" formula, and also adds that they would entrust the task of system unification to the successive generations.<sup>62</sup>

## V. Conclusion

After the June 15 South-North Joint Declaration was adopted, inter-Korean relations have made remarkable progress. De facto regularization of holding the ministerial meetings, tangible efforts for reconnection of the severed Seoul-Sinuiju Railroad, military expert-level meetings for confidence-building measures related to mine-sweeping work at the DMZ, conferences to provide permanent mechanism for economic and social cooperation, etc., are extraordinary changes that we could never have imagined in the past. The recent developments of inter-Korean relations will lay the foundation for the establishment of the Korean national community, and ultimately contribute to peaceful national unification.

Korean unification is a historical event that will incorporate the divided Korean peninsula into one nation, bringing 70 million people together into the same life zone, and furthermore, will integrate the political powers of the South and North. Also, the operation of unifying two different political entities would finally result in integrating and reorganizing two heterogeneous legal systems into one. Therefore, unification is not only a long process of unifying the two Koreas' legal and political systems, but also, it would be the final result of such a process. In light of this point, South and North Korea's unification

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62 *Ibid.*, p. 209.



formulas, namely, the South's Confederation Proposal and the North's 'Low Stage Federation' Proposal, have significance in providing the basis and direction for integration of the legal and political systems of the two Koreas.

In Paragraph 2 of the June 15 South-North Joint Declaration, South and North Korea recognized common points between the South's Confederation Proposal and the North's 'Low Stage Federation' Proposal, and agreed to promote unification towards this direction. This paragraph showed the exquisite device of compromise as a result of official conference between the highest-level government officials of South and North Korea. Of course, this paragraph does not implicate that we have accepted the North's 'High Stage Federation' Proposal. It means no more than our recognition that the 'Low Stage Federation' Proposal and our Confederation Proposal have some parts in common.

However, there is no doubt that Paragraph 2 of the South-North Joint Declaration will become a step to accelerate unification negotiations. Probably one of the most important tasks we face for cooperative relations between South and North Korea is in finding the contact point of the two proposals and establishing a united system. Consequently, from now on, the government should fully comprehend the common and differing points of each proposal, and then make every effort to discover the contact point between the two.