

THE KOREAN PENINSULA PEACE BUILDING UNDER INTERNATIONAL LAW: A POSSIBLE ECONOMIC UNION FOR COMMON JURISDICTION

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Abstract - Since late 2017, the world has paid more attention to the Korean peninsula than before due to North Korea's sixth nuclear weapon test and missile launches. There were series of summit for rehabilitating the hostile relations between the two sides, but such a feeble peace came to deadlock when North Korea restarted ballistic missile tests and nuclear weapons development following the US-South Korea Joint Military Drill resumed. The US and South Korea has finally recognized that the nuclear standoff could not be resolved through the conventional manner whose main idea is to press and ultimately change the Kim Jong Un regime. This research introduces a hypothetical four-stage model as a roadmap for the Korean economic integration under international law. The authors explore a possible economic union building like Benelux for common jurisdiction. This blueprint will be a navigator to build "real peace as a system" on the Korean peninsula.

Keywords: Korean Peninsula Peace Building, Nuclear Standoff, DPRK, Peaceful Co-existence, Hostile Balance, Common Jurisdiction, Benelux, Korean Economic Union, Economic Integration

INTRODUCTION

The Korean peninsula has often been a critical point at issue in the postwar world for many groundbreaking incidents. One of the recent crises was the nuclear war cloud covering this region up until the end of 2017. The reconciliation, however, was started with the Pyeongchang 2018 Winter Olympic Games, which changed the former standoff between the two sides fast. This peaceful environment led ex-President Moon Jae In of South Korea (Republic of Korea, "ROK") and Chairman Kim Jong Un of North Korea (Democratic People's Republic of Korea, "DPRK") to sign the historic Panmunjeom Declaration for Peace, Prosperity and Unification of the Korean Peninsula on 27 April 2018. It was the key to a new epoch of peace in Northeast Asia. The US-DPRK summit was then held on 12 June 2018 in Singapore and resulted in a joint statement to rehabilitate the US-North Korean relations. In Singapore, former US President Donald Trump and Chairman Kim agreed to dismantle North Korea's nuclear weapons programme. Before the concrete timetable of denuclearization was agreed upon between the US and North Korea, President Moon and Chairman Kim met again in Pyongyang and adopted the Joint Declaration on 19 September 2018.

This breathtaking development, however, reached a stalemate mainly due to the inconsistent position of the denuclearization process between the US and North Korea. The US asked North Korea to submit the list of nuclear weapons first, while North Korea urged the US to lift the United

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Nations Security Council (“UNSC”) sanctions before then. The Trump-Kim Hanoi Summit of February 2019 was finally cut short without meaningful agreement. Both sides did not trust each other, but only recognized the uncompromising positions in Hanoi. In particular, former US National Security Advisors like John Bolton and some extreme right wing Republican group might keep fundamental regime change in North Korea in mind. The denuclearization of the Korean peninsula was in deadlock.

As President Biden took office in February 2021, the US cautiously tried to look for dismantling the North Korea’s nuclear weapons development program through dialogue. However, such a brief peace came to deadlock when North Korea restarted ballistic missile tests and nuclear weapons development following the US-South Korea Joint Military Drill resumed. Both have gone too far to come back to the negotiation table for breaking through the nuclear standoff through the conventional manner whose main idea is to press and ultimately change the Kim Jong Un regime.

Against this backdrop, this research will adopt a normative approach to this highly critical security issue and propose a roadmap for the Korean peninsula peace building under international law. The authors will explore a possible economic union for the common jurisdiction. For this purpose, a four-stage economic integration model will be explored as a blueprint with special references to the Benelux Economic Union. This new peace design will be a steppingstone to build “real peace as a system” on the Korean peninsula.

HOSTILE BALANCE OR PEACEFUL CO-EXISTENCE?

1. Is Fundamental Regime Change Possible in North Korea?

Just after taking office at the White House, former US President Trump returned to a hardline policy towards North Korea. He heavily criticised Kim Jong Un’s nuclear weapons tests and missile launches.¹ Simply containing or isolating North Korea by the UN sanctions was, as he believed, not effective anymore. Trump might consider dismantling North Korea’s nuclear weapons programme and even the Kim regime itself. After the sixth nuclear test on 3 September 2017, he finally referred to a “military option” against North Korea.² Would the armed attack be actually adopted? Fundamental regime change through armed measures is not exceptional in the US foreign policy and it has often been adopted by postwar administrations in order to set up or maintain friendly allies in Asia, Africa and Latin America.³ A noticeable example is the military intervention into Nicaragua conducted for humanitarian purposes.⁴ Among the hardliners in the US administration and in Congress, fundamental regime change by military strikes may still be considered the best and most efficient way to entirely denuclearise North Korea.⁵ It was in line with the Northern Policy of

¹ Ashley Parker & David Nakamura, ‘In Hard-line Speech, Trump warns North Korea: Do not underestimate us’, *Washington Post* (Nov. 8, 2017), https://www.washingtonpost.com/politics/trump-strikes-more-conciliatory-tone-toward-north-korea-urges-deal-to-resolve-standoff-with-united-states/2017/11/07/d7f59a6e-c3a4-11e7-a441-3a768c8586f1_story.html.

² David Sanger & Choe Sang-Hun, *North Korean Nuclear Test Draws U.S. Warning of ‘Massive Military Response’*, *New York Times* (Sept. 2, 2017), <https://www.nytimes.com/2017/09/03/world/asia/north-korea-tremor-possible-6th-nuclear-test.html>.

³ Orlando Perez, ‘Can Nicaragua’s Military Prevent a Civil War?’, *Foreign Policy* (July 3, 2018), <https://foreignpolicy.com/2018/07/03/can-nicaraguas-military-prevent-a-civil-war>.

⁴ US military intervention in Nicaragua is a typical example. *See Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. US)*, Judgment (June 27, 1986), <https://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-00-EN.pdf>.

⁵ Uri Friedman, ‘John Bolton's Radical Views on North Korea’, *Atlantic* (Mar. 24, 2018), <https://www.theatlantic.com/international/archive/2018/03/john-bolton-north-korea/556370>.

former South Korean President Park Geun-hye's administration. Their basic idea for the inter-Korean relations was to emulate the German case, i. e., "reunification by absorption."

However, a fundamental regime change in North Korea would be virtually impossible taking the following political, legal and strategical factors into consideration. Firstly, North Korea has no similarities with the Eastern European states that collapsed like dominos in the 1990s, following the dissolution of the Soviet Union. Conversely, China is backing up North Korea mainly because both share the common security interests in the region as shown at China's military intervention of the Korean War. Traditionally, the US foreign policy towards East Asia was to contain mainland China through military alliances.⁶ North Korea has been playing the key role as an outpost in directly resisting the American containment very well. East Germany, however, was not such a strategic bridgehead for the former Soviet Union in a geopolitical viewpoint during the Cold War. Actually, China could have shut down Kim Jong Un's regime quickly with a comprehensive fuel embargo, but President Xi Jinping did not implement such a drastic option because he might not have wanted an unfamiliar regime in North Korea.

Secondly, the US and its Atlantic allies are afraid of military option against North Korea mainly because North Korea's possible use of nuclear weapons could dissolve the postwar nuclear non-proliferation system as a whole. North Korea is the only country that intentionally withdrew from the Non-Proliferation Treaty (NPT). However, most of non-nuclear weapon states do not think that the NPT system is fair because only Big Five (Permanent members of UN Security Council) are allowed to develop nuclear weapons under the non-proliferation system. Once the military option is adopted against North Korea, Pyongyang would respond to this armed attack with nuclear weapons which would destruct the contemporary non-proliferation system in the end.⁷

Thirdly, military operations in North Korea could actually result in much more casualties among the US military personnel than the administration supposes, mainly due to a totally different battleground from that of the Middle East or Europe. North Korea is mostly covered with high mountains like northern Afghanistan which would make a US military operation with heavy reliance on air strikes and air support extremely difficult. Also, North Korea has desperately prepared for defending its military facilities against the US air strikes through its experiences during the Korean War. Between 1950 and 1951, the US lost a lot of troops in the northern part of the Korean Peninsula.⁸ In 1994, eventually, the US administration under President Bill Clinton did not conduct air strikes against the Yongbyon nuclear site following the advice of the Department of Defense.⁹

2. Peace Promotion

Considering that the comprehensive denuclearization through fundamental regime change is

⁶ Eric Yong Joong Lee, 'Trans-Pacific Partnership (TPP) as a US Strategic Alliance Initiative under the G2 System: Legal and Political Implications' (2015) 8 *Journal of East Asia and International Law* 326-330.

⁷ Marc Semo & Nathalie Guibert, 'Nous vivons dans le monde de l'affirmation du "nationalisme nucléaire"', *Le Monde* (Sept. 8, 2017), https://www.lemonde.fr/international/article/2017/09/08/bruno-tertrais-nous-vivons-dans-le-monde-de-l-affirmation-du-nationalisme-nucleaire_5182790_3210.html. See also Sassan Seyrafi, 'The US' Withdrawal from the Iran Nuclear Agreement: A Legal Analysis with Special Reference to the Denuclearization of the Korean Peninsula' (2018) 11 *Journal of East Asia and International Law* 267-291.

⁸ Harry Crocker, 'Chinese Intervention in the Korean War' (Dec., 2002) (M.A. thesis, Louisiana State University) 56-63, http://etd.lsu.edu/docs/available/etd-1031102-055140/unrestricted/Crocker_thesis.pdf. See also Wang Shu Zeng, *The Korean War* 445- (Geulhangari Publishers trans.: Seoul, 2013) 553.

⁹ Jonathan Watts, 'How Clinton Came Close to Bombing', *The Guardian* (Dec. 5, 2002), <https://www.theguardian.com/world/2002/dec/05/northkorea>.

virtually impossible, the Trump administration shifted its policy towards direct negotiation with North Korea. It should set up peaceful circumstances for communication in and around the Korean peninsula. The first step was to promote inter-Korean dialogue which led to signing the Panmunjeom Declaration for Peace, Prosperity and Unification of the Korean Peninsula on 27 April 2018 between President Moon and Chairman Kim.¹⁰ In Panmunjeom, both leaders agreed to share the commitment to bring a swift end to the Cold War relic of longstanding division and confrontation; to boldly approach a new era of national reconciliation, peace and prosperity; and to improve and cultivate inter-Korean relations in a more active manner.¹¹ The declaration is actually the firm confirmation of the Geneva Agreed Framework between the US and North Korea in 1994.¹² Right after the inter-Korean summit, President Trump and Chairman Kim agreed to have a meeting in Singapore on 12 June 2018 which finally delivered the joint statement on the rehabilitation of their relations and complete denuclearization of the Korean peninsula. The accords are as follows:

1. The United States and the DPRK commit to establish new US-DPRK relations in accordance with the desire of the peoples of the two countries for peace and prosperity.
2. The United States and the DPRK will join their efforts to build a lasting and stable peace regime on the Korean Peninsula.
3. Reaffirming the April 27, 2018 Panmunjom Declaration, the DPRK commits to work toward complete denuclearization of the Korean Peninsula.
4. The United States and the DPRK commit to recovering POW/MIA [prisoners of war and soldiers missing in action, author's note] remains, including the immediate repatriation of those already identified.¹³

This accelerating peace mood was further advanced by the following inter-Korean summit held in Pyongyang and the release of a joint declaration on 19 September 2018. In the Panmunjeom Declaration, both leaders reaffirmed more concrete and significant tools to end the hostile relations between the two Koreas, such as denuclearization, economic cooperation and humanitarian matters.¹⁴

3. Deadlock

Even before the Singapore Summit on 24 May 2018, North Korea blasted the Punggye-ri nuclear test sites, where six nuclear tests had been conducted since 2006, in front of journalists from five

¹⁰ Press Release, Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula, ROK Ministry of Unification (Apr. 4, 2018), https://www.unikorea.go.kr/eng_unikorea/news/releases/?boardId=bbs_0000000000000034&mode=view&cntId=54179.

¹¹ Ji Hee Suh, 'Panmunjeom Declaration for Peace, Prosperity and Unification of the Korean Peninsula' (2018) 11 *Journal of East Asia and International Law* 211-215.

¹² Eric Yong Joong Lee, 'The Geneva Agreed Framework and the Optimization of DPRK-US Relationship for Nuclear Security: A Legal and Policy Analysis' (2003) 2 *Chinese Journal of International Law* 294-297.

¹³ See 'Joint Statement of President Donald J. Trump of the United States of America and Chairman Kim Jong Un of the Democratic People's Republic of Korea at the Singapore Summit,' White House Press Release (June 12, 2018), <https://trumpwhitehouse.archives.gov/briefings-statements/joint-statement-president-donald-j-trump-united-states-america-chairman-kim-jong-un-democratic-peoples-republic-korea-singapore-summit>.

¹⁴ See 'Pyongyang Joint Declaration of September 2018', *The Korea Times* (Sept. 19, 2018), https://www.koreatimes.co.kr/www/nation/2018/09/103_255848.html.

countries including the US and South Korea.¹⁵ It was a symbolic measure of North Korea to technically showcase its stance towards denuclearization. In spite of North Korea's unprecedented conciliatory approach including the release of three US hostages, the Singapore Joint Statement was not fully implemented.¹⁶ The second US-North Korea summit and high level talks in Washington were thus delayed. Both sides are inconsistent on what should come first; the US pressed North Korea to verify its denuclearization process in public with substantial results such as opening up the list of nuclear facilities, while North Korea maintained the US to remove the UNSC sanctions first, following the "action-for-action" principle.¹⁷

There are two main agenda items between the US and North Korea: one is the complete denuclearization and the other is the rapprochement of their relationship up to an ambassadorial diplomatic level. For North Korea, denuclearization is the leverage for survival through rehabilitating a diplomatic relationship with the US, while, for the US, it is the end of policy. President Trump seemed to conduct a negotiation diplomatically, but mainstream public opinions in the American society strongly pushed President and Congress not to move towards reconciliation with North Korea before complete, verifiable, irrevocable dismantlement (CVID) of the nuclear weapons programme is realized.¹⁸ They are still at a stalemate.

The critical point of contention in this course were the sanctions imposed on North Korea for nuclear tests by UNSC resolutions 2375 and 2397. Resolution 2375 was adopted after Pyongyang's nuclear test of 2 September 2017. It included new sanctions such as a ban on the supply, sale or transfer of all condensates and natural gas liquids to North Korea, as well as a ban on its exports of textiles including fabrics and apparel.¹⁹ Resolution 2375 provides:

The Council decided that all Member States would prohibit the direct or indirect supply, sale or transfer to the Democratic People's Republic of Korea of all refined petroleum products beyond 500,000 barrels during an initial period of three months - beginning on 1 October 2017 and ending on 31 December 2017 - and exceeding 2 million barrels per year during a period of 12 months beginning on 1 January 2018 and annually thereafter. In addition, Member States would not supply, sell or transfer crude oil to the Democratic People's Republic of Korea in excess of the amount supplied, sold or transferred by that State in the 12-month period prior to the adoption of today's resolution.²⁰

In response to the intercontinental ballistic missile launch by North Korea on 29 November 2017, the UNSC adopted Resolution 2397 which imposed new strong sanctions on North Korea's energy,

¹⁵ See 'DPRK Institute for Nuclear Arms, Complete Abolition of Nuclear Test Sites in Northern Part of Republic [조선민주주의공화국 핵무기연구소, 공화국 북부핵시험장을 완전히 폐기]', Rodong Shinmun Daily (May 24, 2018).

¹⁶ Donna Borak & Zachary Cohen, 'John Bolton says North Korea failure to meet commitments requires second Trump-Kim summit' CNN News (Dec. 4, 2018), <https://edition.cnn.com/2018/12/04/politics/bolton-north-korea-summit-commitments>.

¹⁷ Associated Press Reporter, 'North Korea asks US to ease sanctions', The Independent (Aug. 10, 2018), <https://independent.ie/world-news/north-korea-asks-us-to-ease-sanctions-37202754.html>.

¹⁸ Olivia Enos, 'Why the U.S. Must Discuss North Korea's Prison Camps at the Trump-Kim Summit', Backgrounder (June 1, 2018), https://www.heritage.org/sites/default/files/2018-06/BG3322_1.pdf.

¹⁹ S.C. Res. 2375, ¶¶ 14-18 (Sept. 11, 2017); U.N. S/RES/2375 (2017), <https://www.un.org/securitycouncil/s/res/2375-%282017%29>.

²⁰ Ibid. ¶ 13. For details, see UN, 'Security Council Imposes Fresh Sanctions on Democratic People's Republic of Korea, Including Bans on Natural Gas Sales' Work Authorization for Its Nationals, Meetings Coverages and Press Release, U.N. Doc. S/12983 (Sept. 11, 2018). <https://www.un.org/press/en/2017/sc12983.doc.htm>.

export, and import sectors with maritime authorities to help shut down North Korea's illicit smuggling activities.²¹ Resolution 2397 calls for all member states to prohibit the direct or indirect supply, sale or transfer to North Korea of all crude oil, all refined petroleum products, food and agricultural products, machinery, electrical equipment, earth and stone including magnesite and magnesia, wood, and vessels, the procurement of the commodities and products from North Korea mentioned above and all industrial machinery, transportation vehicles, and iron, steel, and other metals.²² Resolution 2397 provides:

The Council decides that the DPRK shall not supply, sell or transfer, directly or indirectly, from its territory or by its nationals or using its flag vessels or aircraft, food and agricultural products (HS codes 12, 08, 07), machinery (HS code 84), electrical equipment (HS code 85), earth and stone including magnesite and magnesia (HS code 25), wood (HS code 44), and vessels (HS code 89), and that all States shall prohibit the procurement of the above-mentioned commodities and products from the DPRK by their nationals, [...]²³

These sanctions have severely put under pressure North Korea's economy as well as inter-Korean economic cooperation projects. North Korea is demanding that the US remove these sanctions at least in the commodity level, but the US has continuously rejected this. Instead, the US urges North Korea to take substantial measures for CVID of nuclear weapons programme first. Which should be coming earlier?

Actually, Resolutions 2375 and 2397 were adopted by the UNSC because of North Korea's nuclear weapons test and ballistic missile launch in November and December 2017, respectively. During the inter-Korean and the US-North Korea summits, however, North Korea declared to abandon its nuclear weapons programme and took initial measures by blasting the Punggye-ri nuclear test sites.²⁴ The factual circumstance of the UNSC sanctions against North Korea changed at least in part. Although North Korea has not yet fully implemented its denuclearization process, basic economic cooperation and foreign investment can be allowed for further negotiation. If North Korea fails to implement the denuclearization process as promised, the US could press the UNSC members including Russia and China to reimpose sanctions anytime. Once North Korea begins the denuclearization process in association with the international community, North Korea virtually cannot come back nuclear in the near future for the inspection.

A step-by-step approach should be thus considered in this course. If removing the first stage sanctions, the US would simultaneously require North Korea to return to the NPT and sign the Safeguards Agreement which mandates it to open all nuclear facilities to the International Atomic Energy Agency ("IAEA") for inspection. Such technical verification will bring them back to the joint statement adopted at the fourth round of the Six-Party Talks on 19 September 2005 during which North Korea agreed to abandon all of its nuclear weapons and existing nuclear programmes and to return to the NPT and the IAEA safeguards.²⁵ North Korea did not implement the accords of the 2005 joint statement mainly because the US froze its political slush fund at Banco Delta Asia Bank in Macao a few days before adopting it.²⁶ In this regard, however, the US did not actually implement

²¹ United States Mission to the United Nations, Fact Sheet: UN Security Council Resolution 2397 on North Korea, (Dec. 22, 2017), <https://usun.state.gov/remarks/8238>.

²² S.C. Res. 2397, ¶¶ 4-8 (Dec. 22, 2017); U.N. Doc. S/RES/2397 (2017), <https://www.un.org/undpa/en/speeches-statements/22122017/resolution2397%282017%29>.

²³ *Ibid.* ¶ 6.

²⁴ See 'North Korea Nuclear Test Tunnels at Punggye-ri 'destroyed'', BBC News (May 24, 2018), <https://www.bbc.com/news/world-asia-44240047>.

²⁵ Eric Yong Joong Lee, 'The Complete Denuclearization of the Korean Peninsula: Some Considerations under International Law' (2010) 9 Chinese Journal of International Law 799-819.

²⁶ John McGlynn, 'Banco Delta Asia, North Korea's Frozen Funds & US Undermining of the Six-Party Talks: Obstacles to a Solution' (2007) 5(6) Asia-Pacific Journal 1-13.

the 2005 joint statement, either. Since North Korea withdrew from the NPT in 2003, no measure has successfully brought it to re-sign the IAEA safeguards. Therefore, it is important for the US and other UNSC members to have North Korea committed to the international non-proliferation regime.

The Common Jurisdiction: A Roadmap

1. A Substantial Model: The Benelux Economic Union

Complete denuclearization is the key to lasting peace on the Korean peninsula. The ultimate destination of the peace-making process is the reunification of the two Koreas. However, it will take a long time to arrive at such an ultimate stage except for sudden unilateral absorption like in the German case. The visible steppingstone should be thus economic integration to build common jurisdiction on the Korean peninsula in the beginning. Postwar human history shows that economic integration may go through several stages representing different institutional levels of socio-economic exchanges and cooperation between states,²⁷ so that a step-by-step approach is necessary for this path.

A useful model may be the Benelux Economic Union (BEU), which is one of the most noticeable economic integration projects in contemporary world history because it is mainly operated under the “principle of separation of politics and economy.”²⁸ The BEU is one of the leading integrated economic units existing in the current world. As a pioneer of European integration, the BEU began with the Benelux Customs Union established by the governments in-exile of Belgium, Luxembourg and The Netherlands in 1944. When the Convention of the Customs Union entered into force in 1948, customs duties between these three countries were abolished and external tariffs were introduced for goods imported from other countries. Through painstaking courses, in 1958, the Treaty of Benelux Economic Union (BEU Treaty) was finally signed between Belgium, The Netherlands and Luxembourg.²⁹ Article 1 of BEU Treaty provides:

An economic union shall be set up between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of The Netherlands, providing for free movement of persons, goods, capital and services.³⁰

Established as a customs union in 1949, the BEU took its shape as an economic unity with the Benelux Treaty of Economic Union in 1960. By an economic union, the Benelux countries coordinate their economic, financial and social policies without intervening into political matters of each member state.³¹

²⁷ Eric Yong Joong Lee, *Legal Issues of Inter-Korean Economic Cooperation under the Armistice System* (Kluwer Law International: The Hague, 2002) 245.

²⁸ The Luxembourg Government, The Benelux, <https://gouvernement.lu/en/dossiers/2018/benelux.html>.

²⁹ See generally Benelux, Britannica.com, <https://www.britannica.com/topic/Benelux>.

³⁰ Treaty Establishing the Benelux Economic Union of 1958 (BEU Treaty), https://www.beneluxparl.eu/wp-content/uploads/documents/09_Verdragen/1958-Trait%C3%A9-instituant-lUnion-%C3%A9conomique-Benelux.pdf.

³¹ BEU Treaty 1958 art. 8.

Table 1: Development of Benelux Laws and Policies (1944-1960)³²

Year	Development
1944	Benelux Customs Union established by the governments-in-exile of Belgium, Luxembourg and The Netherlands.
1948	When the convention of the Benelux Customs Union entered into force in 1948, customs duties between these three countries were abolished.
1951	The Benelux countries admitted that an economic union could not be brought about until the wide disparities in the economies could be ironed out between them.
1954	A protocol on the liberalisation of capital movement was promulgated for greater transferability of capital within the customs union.
1955	The Benelux countries decided to harmonise their agricultural policies.
1956	Approval was given to the Labor Convention, which ensured the free movement of wage-earners within the Benelux countries.
1958	BEU Treaty was signed.
1960	BEU Treaty was ratified.

In particular, the Benelux countries tried to overcome wide disparities within their economies.³³ Also, their integration process was legally mandated very precisely to build an economic union in the initial stage (1944-1960) as “a union [BEU] within a union [EU].”³⁴ Their successful journey could be a guiding navigation for the following economic integration between North and South Korea.

2. Korean Economic Integration: A hypothetical four-stage model

Economic integration may be defined as “a process of eliminating restrictions on international trade, payments, and factor mobility between the economic units belonging to different nations; viewed as both a process and a state of affairs.”³⁵ Such economic integration would result in uniting two or more national economies in a preferential trade area.³⁶ It is caused by close interdependency between national economies.³⁷ Economic integration would generally follow four steps according to the degree of integration: free-trade area; customs union and common market; economic union; and single market (monetary union).³⁸ Based on empirical research including the BEU, the authors would suggest a four-stage hypothetical model of inter-Korean economic integration (Table 2).

Table 2: A four-stage model of Korean economic integration³⁹

Stage	Policy	Institution	Model
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³² Marcel Meerhaeghe, *A Handbook of International Economic Institution* (Springer: Berlin, 1966) 180-181. See also Benelux in a Nutshell, https://web.archive.org/web/20071117092723/http://www.benelux.be:80/en/bnl/bnl_instelling_en.asp.

³³ Ibid. See also Lee, above n. 28, at 229.

³⁴ Treaty establishing the European Community art. 306. It provides: “The provisions of this Treaty shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, of between Belgium, Luxembourg and The Netherlands, to the extent that the objectives of these regional unions are not attained by application of this Treaty.”

³⁵ Robert Carbaugh, *International economics* (Cengage Learning: Boston, 1985) 171.

³⁶ Bela Balassa, *The Theory of Economic Integration* (Routledge: London, 1961) 2.

³⁷ Ibid. See also Victoria Curzon, *The Essentials of Economic Integration* (Springer: Berlin, 1974) 13.

³⁸ Lee, above n. 28, at 244.

³⁹ Ibid. at 247 (Table IX-1).

KFTA	Elimination of protective internal taxes and other charges; promotion of bilateral trade, small-scale joint ventures; joint infrastructure building	Policy coordination in various industries	EFTA / NAFTA / Kaesong Industrial Complex
KCU & KCM	1) Elimination of all tariffs and other forms of trade restrictions between the parties, and 2) establishment of uniform tariffs and other regulations on foreign trade.	Common institution like council	EEC/CARICOM/EUCU
KEU	Harmonisation of fiscal, legal, and social policies under a common authority under the principle of separation of economy and politics	Secretariat	EU/BEU
KSM	Common economic and social policy and common currency unit	Central Bank of Korea & Korean Common Currency	EU since 1992

A. KFTA

The first stage is to build up a “free-trade area” on the Korean peninsula, where the two Koreas agree to remove all restrictive duties between them. A free-trade area (FTA) is “a group of two or more customs territories in which the duties and other restrictive regulations of commerce are eliminated on substantially all the trade between the constituent territories in products originating in such territories.”⁴⁰ It is more flexible than the customs union because an FTA member can reach further preferential trade agreements with non-members while a member of the customs union could only do so with existing members.⁴¹

An FTA may discriminate against non-members by offering a more favorable tariff only to members, thereby violating the principle of most-favored-nation (MFN) treatment under the GATT/WTO framework. To reduce the discriminatory effects of the FTA, the GATT only allows FTA as exceptions to MFN treatment in the case that substantially all trade is free among members, and trade barriers with nonmembers is not higher on average after the FTA.⁴² Though an FTA may divert some trade, they are regarded as effective supplement to multilateral trade liberalization because they promote economic freedom and policy coordination among the members.⁴³ An FTA also produces significant economic benefits. According to Professor Ali M. El-Agraa, the possible sources of economic gain for FTA can be attributed to the following factors:

(a) enhanced efficiency in production made possible by increased specialisation in accordance with the law of comparative advantage; (b) increased production levels due to better exploitation of economies of scale made possible by the increased size of the market; (c) an improved international bargaining position, made possible by the larger size, leading to better terms of trade; (d) enforced changes in economic efficiency brought about by enhanced competition; and (e) changes affecting both the amount and quality of the factors of production due to technological advances. Beyond the CU level towards economic union level, further sources of gain become possible due to: (f) factor mobility across the borders of member nations; (g) the co-ordination of monetary and fiscal policies; and (h) the goals of

⁴⁰ GATT 1947 art. XXIV 8(b).

⁴¹ See generally James Lake & Halis Yildiz, ‘On the different geographic characteristics of Free Trade Agreements and Customs Unions’ (2016) 103 *Journal of International Economics* 213-233.

⁴² GATT 1947 art. XXIV.

⁴³ Edward Hudgins, ‘Regional and Multilateral Trade Agreements: Complementary Means to Open Markets’ (1995) 2(15) *Cato Journal* 231-241.

near full employment, higher rates of economic growth and better income distribution becoming unified targets.⁴⁴

An FTA does not set a common external tariff on nonmembers as a customs union does. However, with differences in tariffs, an FTA is usually “characterised by the enforcement of complicated rules of origin.”⁴⁵ A good is eligible for favorable tariffs in the FTA only if it originates there and rules of origin (ROOs) specify the conditions required for origin to be granted.⁴⁶ More importantly, an FTA can “focus on the specific interests of the participants.”⁴⁷

If launched, the Korean Free Trade Area (“KFTA”) would introduce simple and easy forms of economic exchange such as trade of commodities and small-scale joint venture businesses without restructuring the economic institutions and system⁴⁸ between the two Koreas. The first step would be to eliminate protective internal taxes and other charges⁴⁹ in order to set up the basic environment for economic cooperation.⁵⁰ The conclusion of KFTA has its undeniably favorable conditions. First, the two Koreas have the advantage of geographical proximity, and are highly compatible in terms of language, historical traditions and cultural values. Second, the two Koreas are economically complementary in terms of labor and industrial structures. For example, the enterprises in the former Kaesong Industrial Complex were mainly labor-intensive enterprises. There, South Korea opened banks, hospitals and other service enterprises, while North Korea provided lower-cost labor.⁵¹ Third, although the total import and export of goods of South Korea is about 400 times that of North Korea,⁵² there is basically no competition in commodity trade between the two Koreas, but a strong basis for cooperation.⁵³

In addition to bilateral trade, small-scale joint ventures should be promoted. Pursuant to Article

⁴⁴ Ali El-Agraa, ‘The Theory of Economic Integration’ in Fritz Machlup (ed), *Economic Integration Worldwide* (Springer: Berlin, 1994) 34.

⁴⁵ Carlo Altomonte & Mario Nava, *Economics and Policies of an Enlarged Europe* (Edward Elgar Publishing: Cheltenham, 2005) 37.

⁴⁶ Kala Krishna, *The Princeton Encyclopedia of the World Economy* (Princeton University Press: New Jersey, 2009) 502-505.

⁴⁷ Primo Braga & Alexander Yeats, ‘Minilateral and Managed Trade in the Post-Uruguay Round World’ (1994) 3 *Minnesota Journal of International Law* 233-234.

⁴⁸ John Lambrinids, *The Structure, Function and Law of A Free Trade Area* (Stevens: Las Vegas, 1965) 19-22.

⁴⁹ Convention establishing the European Free Trade Association of 1960 (EFTA Convention) arts. 3-5, <https://www.efta.int/sites/default/files/documents/legal-texts/efta-convention/Vaduz%20Convention%20Agreement.pdf>. The EFTA Convention provided all kinds of fiscal charges such as revenue duties, internal taxes and other internal charges on goods.

⁵⁰ Lee, above n. 28, at 248.

⁵¹ Introduction of Kaesong Industrial Complex (开城工业园区), https://baike.baidu.com/item/开城工业园区/9366341?fromtitle=开城工业区&fromid=7009304&fr=aladdin&ivk_sa=1022817p.

⁵² UNData, *Data on the Economic Indicators of North Korea in 2018*, <http://data.un.org/en/iso/kp.html>. See also UNData, *Data on South Korea's Economic Indicators in 2018*, <http://data.un.org/en/iso/kr.html>.

⁵³ Dongzin Li & Yunlin Zhang, ‘China-Japan-South Korea FTA Construction and Prospects [李冬新、张蕴岭：《中日韩FTA构建与前景》，载《东北亚学刊》2021年第2期]’ (2021) 2 *Journal of Northeast Asian Studies* (李冬新、张蕴岭：《中日韩FTA构建与前景》，载《东北亚学刊》2021年第2期).

XXIV of the 1947 General Agreement on Tariffs and Trade, the two Koreas may agree on the basic conditions of removing trade barriers and promoting economic cooperation between them. This stage is considered to have already been attempted by the former Kaesong Industrial Complex and small scale inter-Korean economic cooperation. The building of infrastructure such as joint road or railway construction would be a firm base for KFTA at this initial stage.

The two Koreas can conclude a Closer Economic Partnership Agreement (CEPA) by referring to the 2003 CEPA signed between mainland China and Hong Kong, and promote phase liberalization of trade and investment.⁵⁴ It is suggested to establish the inter-Korean FTA within the framework of the WTO. Although the North Korea has not yet joined the WTO,⁵⁵ the WTO has established a series of internationally accepted rules for world trade, which could be applied to inter-Korean trade and investment. Learning from the failed negotiations between the EU and Mercosur for a free trade agreement, it is critical to ensure a consensual basis for the (positive) assessment of an agreement's consequences, and to set a deadline for the negotiations.⁵⁶ Accordingly, it is necessary to build a multi-level normalized cooperation mechanism, including the leaders' meeting as the core, the ministerial meeting as an important component, and the non-governmental economic and cultural exchange as a supplement. Normalization of a multi-level exchanges would promote the negotiations for the economic cooperation projects between the two Koreas.

Furthermore, the inter-Korean political trust should be improved. Though an FTA can be established as a regional economic cooperation project without involving political issues, it is undeniably difficult to produce fruitful economic result lacking political trust. Since the US-DPRK relations was at a standstill, inter-Korean relations have remained frozen for a long time. For example, DPRK strongly condemned the US-ROK joint military drills.⁵⁷ Actually, South Korea cannot convince the US to exclude the restart of the Kaesong Industrial complex and Mt. Geumgangsan tourism project from the UN sanctions. As such, it is difficult to thaw political and economic standoff between the two Koreas without a breakthrough for reconciliation between the US and North Korea.⁵⁸

B. KCU & KCM

The second stage is the "customs union." Customs union is "a trade agreement by which a group of countries charges a common set of tariffs to the rest of the world while granting free trade among

⁵⁴ Soo-Ho Lim & Woojung Choi, 'Promotion Strategy and Economic Effect of an Inter-Korean CEPA' (2017) 7:20 World Economy Brief 1-4, <file:///C:/Users/USER/Downloads/WEB%2017-20.pdf>.

⁵⁵ Usually, negotiation takes about 10 years on average for new WTO members, and 10-15 years for the least developed countries. Since North Korea does not have a transparent economic and trade policy as a market economy system, it will have to spend a great amount of time and effort not only in preparing relevant data but also in accommodating the requirements of existing member countries for market opening and institutional improvement. See Jang Ho Cho & Yoojeong Choi, North Korea's Trade System and Implications for Inter-Korean CEPA, (2020) 20(6) World Economic Brief 10.

⁵⁶ Alfredo Robles, 'The EU and ASEAN: Learning from the Failed EU-Mercosur FTA Negotiations' (2008) 25(3) ASEAN Economic Bulletin 334-344.

⁵⁷ Laura Bicker, North Korea: Kim Jong-un's Sister Warns US Not to 'cause a stink', BBC NEWS (Mar. 16, 2021), <https://www.bbc.com/news/world-asia-56410625>. See also Shuyi Yang, North Korea Declared that North and South can't Talk until the ROK-US Military Drills Ceased (朝鲜喊话：韩美军演不停 北南无法对话), Xinhuanet (Aug. 12, 2019), http://www.xinhuanet.com/mil/2019-08/12/c_1210238526.htm.

⁵⁸ Nan Li, The trend of DPRK-US relations and South Korean factors under the epidemic, (2020) 2 Contemporary Korea [李柁:《疫情下的朝美关系走向以及韩国因素》,《当代韩国》2020年第2期).

themselves. It is a partial form of economic integration that offers an intermediate step between free-trade zones and common markets.”⁵⁹ In this stage, member States remove all tariff and non-tariff trade barriers among themselves as well as equalize the tariffs in trade with other countries.⁶⁰ Article XXIV of General Agreements on Tariffs and Trade defines a customs union as: [t]he substitution of a single customs territory for two or more customs territories, so that (i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and, (ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union; ...⁶¹

Different from a free trade area, a customs union provides for a common external tariff for members who “benefit from tariff coordination because they internalize the negative externality caused by tariff complementarity reducing each other’s export surplus.”⁶² Customs unions no longer need the complicated ROOs, and the goods can “generally be imported or exported between the members of the customs union without any tariffs.”⁶³ As the members in a customs union abandon their power to set autonomous tariffs, they surrender more of their sovereignty than that in a free trade area. Today, sixteen customs unions (4 with EU) are functioning.⁶⁴

So far, however, the only well-functioning customs union is that of the EU. Other customs unions are either incomplete or have not fully resolved political questions over the distribution of costs and benefits. For example, the EU-Turkey customs union excludes agricultural products; the Caribbean Community and Common Market (CARICOM) allows broad scope for tariff reductions and suspensions, as well as for national derogations; and the common external tariff in Mercosur does not cover all sectors, but includes special regimes for the automotive and sugar sectors.⁶⁵

The Korean Customs Union (KCU) should: (1) eliminate all tariffs and other forms of trade restrictions between the parties; and (2) establish uniform tariffs and other regulations on foreign trade.⁶⁶ Specifically, the KCU should at least contain the following contents. First, a common external tariff (CET) should be set at a level as recognized by both Koreas. The negotiations can be “long and involved.” For example, the EU spent “eleven years (1957-1968) to complete its common external tariff, and Mercosur members took four years just to agree on their non-agricultural common external tariff.”⁶⁷ Second, mechanisms for collecting the CET and the redistribution of collected revenues should be agreed. There are mainly two prevailing principles with regard to the management of customs revenue: one is the final destination principle, whereby the collected revenue belongs to the member of final consumption; the other is the principle of origin, whereby the collected revenue belongs to the member of duty collection or is transferred to a common fund

⁵⁹ See Customs Union, Britannica.com, <https://www.britannica.com/topic/customs-union>.

⁶⁰ Lee, above n. 28, at 246.

⁶¹ GATT 1947 art. XXIV 8(a).

⁶² Lake & Yildiz, above n. 42. See also N. Nergiz Dincer, Ayça Tekin-Koru & Pinar Yaşar, ‘Costs of a missing FTA: the case of Turkey and Algeria’ (2018) 45 *EMPIRICA* 489-505.

⁶³ Alan McCarthy, ‘Customs Unions - a Look at How They Operate in Practice’ *Lexology* (Oct. 16, 2019), <https://www.lexology.com/library/detail.aspx?g=1ca4aea1-d1f0-4cab-9e5e-5e090fcc7016>.

⁶⁴ The WTO RTA Database, https://www.wto.org/english/tratop_e/region_e/region_e.htm.

⁶⁵ Charley Coleman, *Leaving the European Union: Customs Unions - An Introduction*, UK: The House of Lords Library (Jan. 27, 2017), <https://researchbriefings.files.parliament.uk/documents/LLN-2017-0007/LLN-2017-0007.pdf>.

⁶⁶ GATT 1947 art. XXIV 8(a). See also *Ibid.* at 249.

⁶⁷ Coleman, above n. 66.

to finance common polices.⁶⁸ Obviously, the final destination principle requires higher management costs because it has to control goods once it enters into the CU territory. Therefore, taking the origin principle is a better choice for KCU in the primary stage. Third, within the KCU systems, two Koreas are required to ensure uniform application of the CET and other regulatory measures in a uniform and consistent manner on trade with non-members at the borders.⁶⁹ This would drive the two Koreas to build coordinated and harmonized tariff systems and procedures.

The KCU would be further developed into the Korean Common Market (KCM). It is a single internal market covering the two Koreas.⁷⁰ In this stage, both Koreas would be under the common jurisdiction of trade while maintaining separate political sovereignty.⁷¹

C. KEU

The third stage is an “economic union.” Economic union is “a form of trade integration between a number of countries that provides not only the common market features of free trade and factor movements, but also the unification of members’ general economic objectives in respect of economic growth, employment, etc., and the harmonization of monetary, fiscal and other policies.”⁷² In economic union, participating countries allow the free movement of goods, services, capital and labour. They also coordinate social, financial and trade policy,⁷³ but do not have a single currency. When an economic union involves unifying currency it becomes a monetary union.

Today, there are a number of economic unions in the world such as the EU, the BEU, CARICOM Single Market and Economy (CSME), Central American Common Market (CACM), Eurasian Economic Union (EAEU), and Gulf Cooperation Council (GCC).⁷⁴ These economic unions share some common characteristics. First, their target is the free movement of goods, services, capital and labor. For example, an economic union such as the EU and the BEU, with cross-border investments and worker movement as its key pillars, covers not only tradable industries, but also non-tradable sectors such as personal services and other non-tradable goods.⁷⁵ CSME, an initiative of CARICOM, is also committed to the free movement of capital, services, technology and skilled professionals within the region.⁷⁶

Second, economic unions have mechanisms for decision-making, implementation and dispute resolution. For example, CACM created two regional institutions: the Secretariat for Regional Economic Integration and the Central American Bank for Economic Integration,⁷⁷ and the Central

⁶⁸ Yasui Tadashi, ‘Customs Administrations Operating Under Customs Union Systems’ (2014) 29 WCO Research Paper 6-7, https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/research/research-paper-series/29_customs-unions_yasui_en.pdf?la=en&la=en.

⁶⁹ Ibid.

⁷⁰ GATT 1947 art. XXIV 8(a). See also Ibid. at 249.

⁷¹ Ibid. See also Dominik Lasok & John Bridge, *Law and Institutions of the European Communities* (Butterworths: New York, 1991) 438-439.

⁷² *Economic Union*, Collins Dictionary of Economics (HarperCollins: Glasgow, 2005).

⁷³ *Economic Union*, BDC, <https://www.bdc.ca/en/articles-tools/entrepreneur-toolkit/templates-business-guides/glossary/pages/economic-union.aspx>.

⁷⁴ Corporate Finance Institute, *Economic Union*, <https://corporatefinanceinstitute.com/resources/knowledge/economics/economic-union>.

⁷⁵ Alexander Monge-Naranjo, ‘A Theory of Economic Unions: A Comment’ (2019) 35 Federal Reserve Bank of St. Louis Working Paper 1-5, <https://research.stlouisfed.org/wp/more/2019-035>.

⁷⁶ Caribbean Community and Common Market, *CARICOM Single Market and Economy*, <https://caricom.org/projects/caricom-single-market-and-economy>.

⁷⁷ Jose Mendez, *The Princeton Encyclopedia of the World Economy* (Princeton University Press: New Jersey, 2009) 169-72.

American Economic Council, the group's chief policy-making organ, which meet every three months.⁷⁸ The EAEU heads of state comprise a governing body known as the Supreme Eurasian Economic Council; the executive known as the Eurasian Economic Commission; and the Court of the EAEU as the judicial body.⁷⁹ The highest decision-making entity of the GCC is the Supreme Council, which meets on an annual basis and consists of GCC heads of state. Decisions of the Supreme Council are adopted by unanimous approval. The Ministerial Council, made up of foreign ministers or other government officials, meets every three months to implement the decisions of the Supreme Council and to propose new policy. The administrative arm of the alliance is the office of the Secretariat-General, which monitors policy implementation and arranges meetings.⁸⁰

Third, economic unions harmonize economic and social policies to ensure an effective free movement of factors and coordination of macroeconomic policies, especially those related to dismantle cost-increasing barriers and market entry restrictions.⁸¹

The establishment of the Korean Economic Union ("KEU") first needs to have a clear goal of promoting the so-called four freedoms (free circulation of goods, services, capital and people), and build specific policy coordination mechanisms and institutions for the above goals. In order to realize the four freedoms, "at least three dimensions of potential costs/distortions have to be eliminated, namely the issues of market fragmentation, the associated regulatory framework, and the negative macroeconomic spillovers."⁸² Market fragmentation is mainly due to the presence of the non-tariff barriers (NTBs) such as different standard systems, licensing regimes, etc.⁸³ Unlike the customs unions aiming at eliminating tariff barriers, therefore, the KEU should take the removal of NTBs as one of main objectives. Besides, three principles - mutual recognition,⁸⁴ non-discrimination⁸⁵ and the right of establishment⁸⁶ - should be guaranteed for the creation of the KEU.⁸⁷

In addition to above principles, the KEU should build a set of regulatory frameworks to ensure that most economic policies are applied uniformly within the union. It means that a common set of rules have to be agreed by the two Koreas in order to harmonize national rules; a level playing field should be created for every market players in the KEU; and mutual confidence should be generated in the regulatory frameworks.⁸⁸ The KEU should harmonize the two Korea's fiscal, legal, and social

⁷⁸ Central American Common Market, Britannica, <https://www.britannica.com/topic/Central-American-Common-Market>.

⁷⁹ Investopedia, Eurasian Economic Union (EAEU), <https://www.investopedia.com/terms/e/eurasian-economic-union-eeu.asp>.

⁸⁰ Gulf Cooperation Council (GCC), <https://academic.oup.com/levels/collegiate/article/Gulf-Cooperation-Council/438729>.

⁸¹ European Commission, 'Completing the Internal Market' 1985 (28-9) White Paper from the Commission to the Council, <https://op.europa.eu/en/publication-detail/-/publication/4ff490f3-dbb6-4331-a2ea-a3ca59f974a8/language-en>.

⁸² Altomonte & Nava, above n. 46, at 67-8.

⁸³ Ibid. at 67.

⁸⁴ The principle of mutual recognition means that in an economic union, the legislation of another member state is equivalent in its effects to domestic legislation. This principle was first established by the European Court of Justice in 1979.

⁸⁵ 'Discrimination' is understood as different treatment on the basis of nationality under the same circumstances. See Treaty Establishing the European Community 1957 (TEC), art. 12.

⁸⁶ The right of establishment ensures the possibility for every national of a member state in an economic union to exercise his or her own economic activity in another member state. See TEC art. 43.

⁸⁷ Ibid.

⁸⁸ Altomonte & Nava, above n. 46, at 72.

policies under a common jurisdiction like the BEU.⁸⁹ It also needs to set up relevant institutions, including decision-making bodies (responsible for negotiation and legislation), executive bodies (promoting policy coordination and Implementation), and judicial organs (in charge of dispute settlement). In the process of integration, the KEU may start from the field of trade in goods which is relatively easier to coordinate, and then expand to the field of trade in services, such as transportation, telecommunications, energy and financial services, etc.

Even under the KEU, the two Koreas would not give up each national sovereignty. The KEU would be the most feasible step of inter-Korean economic integration before political unification, because neither North Korea nor South Korea would intervene in the other's political and ideological entity.⁹⁰ The BEU provides a substantial model because it has no supranational institution other than the Secretariat, which is directed by a secretary-general and acts for all executive institutions.⁹¹

D. KSM

The fourth stage is a single market, where the monetary policies of the two Koreas are unified with a common currency.⁹² The flows of products, services and factors between countries are on the same terms and conditions as within countries, and thus the resulting common area can be referred to as the "single market."⁹³ Single market promotes the upgrading of an economic union to a monetary union. All members of a monetary union would abandon their previous national currencies and share monetary sovereignty with other countries within the single market. In return, they would gain the benefits of "using a credible and stable currency within a large, competitive and powerful single market."⁹⁴ With the common currency, the single market becomes highly integrated "with no exchange rate risks (and the associated hedging costs for firms) or transaction costs for the conversion of one national currency to the other."⁹⁵

The idea of the single market originally derived from the Treaty of Rome signed in 1957 by France, Federal Republic of Germany, Italy, The Netherlands, Belgium and Luxembourg. It aims to comprise an area without internal frontiers in which goods, services, capital and persons move around freely between the member States.⁹⁶ In addition to the "four freedoms" (freedom of movement of goods, services, capital and persons), it includes measures considered to have an impact on the single market, such as taxation, employment, social policy, education, culture, public health, consumer protection, energy, transport, environment (except nature protection), information society and media.⁹⁷ This is a stage prior to the complete political unification. A good model is the European Union.

The "Maastricht criteria," elaborated in the Maastricht Treaty and to be fulfilled by member states

⁸⁹ BEU Treaty 1958 arts. 2(1), 6-7, 8(1). For details, *see* Lee, above n. 28, at 249; Meerhaeghe, above n. 33, at 183-198.

⁹⁰ Lee, above n. 28, at 250.

⁹¹ BEU Treaty 1958 arts. 33-34 & 36.

⁹² Lee, above n. 28, at 246.

⁹³ Altomonte & Nava, above n. 46, at 67.

⁹⁴ See the Five Presidents' Report, Completing Europe's Economic and Monetary Union, https://ec.europa.eu/info/sites/default/files/5-presidents-report_en.pdf.

⁹⁵ Altomonte & Nava, above n. 46, at 113.

⁹⁶ Treaty on the Functioning of the European Union (TFEU) art. 26. See EUR-Lex, Modernising and Deepening the Single Market: 12 New Growth Priorities, <https://eur-lex.europa.eu/EN/legal-content/summary/modernising-and-deepening-the-single-market-12-new-growth-priorities.html>.

⁹⁷ TFEU art. 114(1). See also Evgenia Kokolia, 'Strengthening the Single Market through informal dispute-resolution mechanisms in the EU: The case of SOLVIT' (2018) 25 Maastricht Journal of European and Comparative Law 108-117.

before joining the monetary union, may serve as a reference for establishing the KSM. In particular, the Maastricht criteria state that, in member states willing to participate in the single currency should apply the following:

1. the ratio of government deficit to gross domestic product must not exceed 3 per cent;
2. the ratio of government debt to gross domestic product must not exceed 60 per cent;
3. there must be a sustainable degree of price stability and an average inflation rate (observed over a period of one year before the examination for joining the EMU) which does not exceed by more than 1.5 percentage points that of the three best performing member states in terms of price stability;
4. there must be a long-term nominal interest rate which does not exceed by more than 2 percentage points that of the three best performing member states in terms of price stability; and
5. the normal fluctuation margins provided for by the exchange rate mechanism of the European Monetary System (in its post-1992 version) must have been respected without severe tensions for at least the last two years before joining the EMU.⁹⁸

The KSM can firstly consider to establish the Korean Monetary System (KMS) by referring to the European experience of establishing the European Monetary System (EMS).⁹⁹ It is nothing short of a mini-Bretton Woods system,¹⁰⁰ in which the currencies are fixed to a virtual currency, namely the Korean Currency Unit, made of fixed quotas of both Koreas' currencies participating in the system, roughly in proportion to each country's economic weight. Then, a Korean System of Central Banks (KSCB), which manages the monetary policy of the single market, shall be established. The following functions of the European System of Central Banks (ESCB) provide a good reference for the operation of the KSCB: (a) to define and implement the monetary policy of the single market; (b) to conduct foreign exchange operations; (c) to hold and manage the official foreign reserves of member states; and (d) to promote the smooth operation of payment systems.¹⁰¹ Via the KMS and the KSCB, the potential source of negative spillovers arising from uncoordinated monetary policies would be substantially reduced. Finally, the monetary coordination framework provided by the KMS will be replaced by the single currency.

In the KSM, the supranational authority would coordinate the common economic and social policy on behalf of each government.¹⁰² In this course, the KMS should be then set up on the basis of the common currency unit of Korea. A critical question here is how to stabilise the exchange rate between the currencies of the two Koreas.¹⁰³ Following the pattern of the EMS established by European Economic Community in 1979,¹⁰⁴ the common currency unit of Korea should comprise the currencies of the two Koreas. In this stage, the Central Bank of Korea, jointly managed by the two

⁹⁸ Altomonte & Nava, above n. 46, at 125. See also Maastricht Treaty 1992, Title VI (Economic and Monetary Policy).

⁹⁹ Altomonte & Nava, above n. 46, at 93.

¹⁰⁰ The Bretton Woods system was a target zone system of exchange rates, where the currencies had central parities pegged to the US dollar and the central banks were bound to maintain their currencies within narrow (1 percent) bands of fluctuations, with the possibility of realignments over time of the central parities, following negotiations among members. See Altomonte & Nava, above n. 46, at 92.

¹⁰¹ TEC art. 105, ¶ 2.

¹⁰² Lee, above n. 28, at 250.

¹⁰³ Ibid.

¹⁰⁴ Mads Andenas et al. (eds), *European Economic and Monetary Union: The Institutional Framework* (Springer: Berlin, 1997) 14-21.

Koreas, would be in charge of the management of the common currency of Korea.¹⁰⁵ The following roadmap proposed by the European Commission towards a complete economic and monetary union provide an excellent reference for the establishment of the KSM:

First, towards a genuine Economic Union that ensures each economy has the structural features to prosper within the Monetary Union. Second, towards a Financial Union that guarantees the integrity of our currency across the Monetary Union and increases risk-sharing with the private sector. This means completing the Banking Union and accelerating the Capital Markets Completing Europe's Economic and Monetary Union. Third, towards a Fiscal Union that delivers both fiscal sustainability and fiscal stabilization. Fourth, towards a Political Union that provides the foundation for all of the above through genuine democratic accountability, legitimacy and institutional strengthening.¹⁰⁶

The KSM could be a steppingstone in initiating a Northeast Asian Common Economic and Security Sphere including three northeastern prefectures of China, Far Eastern Russia and the two Koreas in the foreseeable future.

CONCLUSION

At the 2004 Wolf Prize ceremony, Israeli pianist and conductor Daniel Barenboim raised a serious question of whether occupying land and ruling over other people by force were consistent with the holy spirit of the Declaration of Independence of Israel,¹⁰⁷ which reads: "We extend our hand to all neighbouring states and their peoples in an offer of peace and good neighbourliness, and [...] cooperation and mutual help."¹⁰⁸ His remarks should be also applied to the current situation of the Korean peninsula. After North Korea's sixth nuclear weapon test in September 2017, President Trump and Chairman Kim Jong Un exchanged aggressive rhetoric, even referring to military attacks.¹⁰⁹ This escalated the mutual hostility and even military standoff between the two sides. Although such extreme hostility has calmed down since a series of negotiations including the US-North Korea summit in Singapore and the inter-Korean summit in Pyongyang, their accords were not successfully implemented.

Since President Biden began his term in early 2021, the US administration has tried to dialogue with North Korea. However, Washington has not yet fully presented a clear roadmap for the Korean peninsula peace process including denuclearization. Even both sides returned to the past stage of confrontation. As a fundamentally different option for the Korean peninsula peace-making, the authors have suggested a normative approach whose main idea is to set up common jurisdiction with a four-stage hypothetical blueprint for economic integration between the two Koreas. In this regard, the Benelux Economic Union has been referred to as a substantial model to follow because it is supposed the most visible and successful economic union for the two Koreas to set up before political reunification. Such a firm economic integration will be a platform of political trust in the future.

North Korea is not comparable to the former German Democratic Republic (East Germany); its regime would not be easily dissolved or changed as long as China is backing up. Thus, the best option is to build up peace as a system under international law.¹¹⁰ The initial step is to rehabilitate

¹⁰⁵ Lee, above n. 28, at 251.

¹⁰⁶ Above n. 95.

¹⁰⁷ Eric Yong Joong Lee, 'Editorial' (2017) 10 *Journal of East Asia and International Law* 336.

¹⁰⁸ *See* Declaration of Independence. <https://main.knesset.gov.il/en/about/pages/declaration.aspx>.

¹⁰⁹ Eric Yong Joong Lee, 'Will Trump's Military Option against North Korea Work? Legal and Political Restraints' (2017) 10 *Journal of East Asia and International Law* 452-455.

¹¹⁰ *Journal of East Asia and International Law* 'The "Peace Treaty" as a U.S. Doctrinal Option and Its Application to the DPRK: A Historical and Analytic Review' (2018) 51



the corridor of communication.

Considering that economic integration in Europe took about 40 years, real peace-making on the Korean peninsula is not easy, but will be painstaking in every step. On this course, however, the two Koreas could borrow the successful human experience of international economic integration, separating politics from economy such as in the BEU. If all parties share the common vision for peace in Korea as well as East Asia and try to march together keeping the great ideal in mind, even long-standing and ill-defined goals may come true earlier than expected. History gives a lesson that economic demands prevent the escalation of conflict.¹¹¹ It is the time to truly think of “peaceful coexistence” instead of “hostile balance.”