

Issue Brief

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The "Two States" Controversy and the Basic Treaty
Between East and West Germany

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Abstract

The current "two-state theory" controversy stems from deep disagreements over constitutional principles, the nation-state relationship, North Korea's nature, and assessments of both the international environment and the future of the North Korean regime. It also reflects divergent answers to the concrete question of how to deal with security threats. In a political landscape where North Korea policy sharply divides progressive and conservative camps, it is naive to expect a single, tidy resolution to this dispute. What is striking, however, is that both sides now cite the Basic Treaty between East and West Germany—each selectively—as a precedent supporting their position. In negotiating the Basic Treaty, West Germany tried to respect, internally, the constitutional mandate for unification and the national imperative of reunification, while at the same time accepting the inescapable reality of “two states” as a framework for peaceful coexistence with East Germany. Korean discussions of two-state theory or a "basic agreement" confront two inescapable realities: the Republic of Korea's constitutional unification imperative and shared national history; and the de facto, internationally recognized existence of two states. The German treaty reflected that era's political-legal ingenuity in balancing these tensions, enabling long-term coexistence. Rather than partisan battles over the "two states" label, South Korea should cultivate practical wisdom for Peninsula coexistence—starting from a shared recognition of the contradictory reality of division.

Keywords

Two States, Two Hostile States, Peaceful Coexistence, Basic Treaty between East and West Germany

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Since North Korea advanced its “two hostile states theory” in late 2023, the “two states” debate persists unabated. In South Korea, positions have polarized: some insist that any two-state theory is categorically unacceptable; others argue that the two-state reality must be acknowledged. With Pyongyang poised to codify the two hostile states theory at the 9th Party Congress and the 15th Supreme People’s Assembly in 2026, the controversy will almost certainly deepen.

This brief proceeds in three steps. First, it outlines the main strands of the current debate. Second, it examines how both camps selectively invoke the Basic Treaty between East and West Germany. Third, it offers several observations that may be helpful in reframing the discussion.

South and North: Two States or One Nation-State?

Opponents of the two-state theory—whether framed as “hostile” or “peaceful”—generally advance the following points:

First, they argue that any two-state theory violates the unification mandate set out in the Constitution of the Republic of Korea. Second, they view the two-state theory as an anti-national abandonment of unification, and as a violation of the special inter-Korean relationship already affirmed in past North-South

agreements. Third, they contend that accepting a two-state framework would remove a key driving force for the development of inter-Korean relations. Fourth, they warn that South Korea's justification for involvement in North Korean issues—including denuclearization—would be undermined. Fifth, they fear that a two-state logic would foreclose the possibility for South Korea to intervene, diplomatically or otherwise, in the event of a grave contingency in North Korea.

Proponents reject North Korea's "two hostile states" rhetoric but stress reality:

First, they note that the existence of two Korean states is already an established international reality. Simultaneous admission to the United Nations, and the fact that many countries maintain diplomatic relations with both Seoul and Pyongyang, are cited as hard evidence that the world already treats the peninsula as divided between two states. Second, they argue that if inter-Korean hostility is to be reduced and peaceful coexistence achieved, mutual recognition of each other as states is a necessary starting point. In their view, this logic is not alien to, and can be squared with, existing inter-Korean agreements. Third, they stress that North Korea's fear of "unification by absorption" must be addressed. Fourth, they portray mutual recognition and peaceful coexistence between two states as part of a long-term preparatory process for eventual unification, not as its negation.

The divide reflects differences on at least three levels: how to interpret the Constitution's unification clauses; how to conceptualize the relationship between "the Korean nation" and "the Korean state(s)"; and how to judge the nature and prospects of the North Korean regime. Layered on top are contrasting readings of the international environment and different preferences for how to manage concrete security threats. In short,

it is not a debate that will be disarmed by a single clever formula.

What deserves attention here is something else: both camps, despite their opposing conclusions, have turned to the same historical case—the Basic Treaty between East and West Germany—to justify their positions.

Reading the Basic Treaty between East and West Germany: One Precedent, Two Narratives

North Korea’s “two hostile states” rhetoric has revived interest in East Germany’s two-nation, two-state theory from roughly half a century ago. In South Korea, the idea of negotiating a “basic agreement” between the two Koreas has also resurfaced under the current government, bringing the German Basic Treaty back into the discussion as a reference point.

Each side in the Korean debate has constructed its own narrative around the German case. Those who oppose any two-state theory insist that, in the process leading up to the Basic Treaty, West Germany never recognized East Germany as a separate state in the full sense. They point, in particular, to four points.

First, Article 8 of the treaty provided for the establishment of “permanent representative offices” rather than embassies—an institutional formula deliberately short of full diplomatic recognition. Second, even after the treaty entered into force, West Germany continued to regard residents of the German Democratic Republic as German citizens. Third, in connection with the treaty, the Federal Constitutional Court reaffirmed the Basic Law’s orientation toward unification. Fourth, East-West economic transactions were still treated, at least in part, as internal transactions rather than foreign trade.

By contrast, those who accept the two-state reality highlight the elements in which East and West Germany mutually recognized each other as states. The arguments supporting this claim can be summarized as follows. First, terms used in the Basic Treaty itself—phrases such as “both German states (beiden deutschen Staaten)” and references to “respect for territorial integrity (territorialen Integrität)”—are read as explicit confirmation that the two sides recognized each other as independent states. Second, following the conclusion of the treaty, both East and West Germany were admitted to the United Nations, cementing their status as two separate UN member states under international law. Third, each German state subjected the treaty to domestic ratification procedures and registered it with the UN Secretariat, following standard treaty practice.

If all of these points are historically accurate, what were East and West Germany at the moment the Basic Treaty was concluded? One state, or two? It is difficult to force the answer into a simple binary. A more accurate description might be that West Germany, internally, maintained its constitutional orientation toward unification and its claim to represent Germany as a whole, while externally accepting the reality of two existing states in its dealings with East Germany. In other words, it preserved the imperative of national reunification and the unification mandate of its Basic Law, yet acknowledged an unavoidable two-state reality as the framework for peaceful coexistence.

Recommendations

With respect to the two-state theory debate and the pursuit of a basic agreement between the two Koreas, South Korea inevitably faces the following two imperatives. One is the spirit of South Korea's Constitution regarding the mandate for unification and

the history of the nation that the two Koreas share. The other is the undeniable reality that the two Koreas already exist as two separate states. North Korea's two hostile states theory is merely reaffirming this reality.

South Korea must first accept the fact that neither the constitutional spirit nor the two-state reality can be ignored or denied. In a reality where two conflicting imperatives exist, attempting to justify only one position is ultimately self-defeating. The process of concluding the Basic Treaty between East and West Germany should also be viewed as the product of the wisdom of the German people of that era, who broke through the conflicting imperatives they faced. And that wisdom became the cornerstone for the long-term peaceful coexistence of East and West Germany. Theodor Adorno (1903-1969), the German philosopher who advocated "negative dialectics," also emphasized that in a contradictory reality, what is needed is an attitude of enduring such contradictions rather than insisting on false consistency. Rather than engaging in wasteful and partisan internal debates over the two-state theory, South Korea should cultivate practical wisdom for peaceful coexistence between the two Koreas, grounded in a shared recognition of the contradictory reality of division.

The views and opinions expressed in this report are those of the author(s) and do not necessarily reflect the official position of INSS.