

Decoding the “Free Democratic Basic Order” for the Unification of Korea*

Hannes B. MOSLER

Abstract

This article examines interpretations of the free democratic basic order (FDBO) in South Korea regarding the task of unification. The interpretation of the FDBO is a central issue in discussions around unification, because actors are bound by it in a fundamental sense, and also because conceptually it has the potential for bringing together the two Koreas in a peaceful and democratic way. The article first investigates the historical context in which the specific introduction and change of the FDBO in the constitution and other closely related legal norms occurred. Secondly, the article examines the diverging definitions of the contents and application of the FDBO with respect to unification by reviewing related Constitutional Court decisions as well as authoritative legal scholarship that comments on the matter.

Keywords: free democratic basic order, Korean unification, constitution, liberal democracy, constitutional interpretation, translation

* This article is a revision of the paper presented at the 24th IPSA (International Political Science Association) World Congress of Political Science, Poznań, Poland, July 23–28, 2016. I thank Prof. Yong-ho Kim (Inha University) and Prof. em. Hyug Baeg Im (Korea University) as well as Prof. Heike Hermanns (Gyeongsang National University) for their helpful comments and advice. I also would like to extend my gratitude to the three anonymous reviewers for their comments and suggestions that helped to improve the original draft.

Hannes B. MOSLER is Assistant Professor at the Graduate School of East Asian Studies and the Institute of Korean Studies, Free University of Berlin. E-mail: hannes.mosler@fu-berlin.de.