

A Comparative Study of the Meaning and Cases of Territorial Provisions in the Constitution

**Үндсэн хууль дахь нутаг дэвсгэрийн заалтуудын
агуулга ба практик хэрэглээний харьцуулалт**

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[Abstract]

In comparison, territorial regulations, which are a component of the state, vary depending on the circumstances of each country. Dealing with the territory is different depending on the reasons that have characteristics of each country. Each country's constitution has different backgrounds and contents of territorial provisions, but it can be categorized and reviewed according to the contents of the regulations. In particular, in the case of a divided country, the division of the territory is premised, and the integration of the people along with the integration of the territory is a prerequisite for unification. Overcoming division requires a solution to the fateful task of integrating separate territories.

In the case of the Korean Peninsula, in light of the situation in which South Korea and North Korea are divided, the unification of the two Koreas is set as a fatalistic goal as the same nation. In the process of overcoming division and completing unification, territorial integration, which is governed separately, involves the legal nature of inter-Korean relations and the legal status of the two Koreas to each other. In our case, inter-Korean relations are called special relations in that they are viewed as domestic legal relations within the nation, not international legal relations between countries. North Korea tries to establish inter-Korean relations as an interstate relationship, but South Korea still has not approved North Korea as an international legal state. Still, based on the specificity of inter-Korean relations, North Korea maintains that it has a dual character of being an anti-state organization and a counterpart in exchange and cooperation.

In the case of a divided country, as it presupposes the will and agreement of the other party, opinions on the value and effect of each stipulated territorial provision work strongly. In order to overcome the division, it is important to make a judgment in consideration of the historical, normative, and unification principles that the territorial provisions traditionally contain. It is significant that the territorial provisions of Korea, a divided country, are compared with those of other divided and disputed countries. Constitutional territorial provisions have been revised along with unification with their own meaning according to the background. In the process of German unification, the territorial provisions of the Old West German Basic Law have great implications in that they eventually functioned as the constitutional basis for German unification

This study examines the importance and value of constitutional norms for the territory, which is one of the constituent elements of the state under the constitution, and classifies the types of territorial provisions of major

countries to examine each characteristic. Through this discussion, we examine the meaning and type of territorial provisions in each constitution, and re-examine the meaning and value of territorial provisions under the constitution in the situation of division in Korea.

[Keywords]

Constitution, Territorial Provision, Unification, Divides Countries, Inter-Korean Relation, German Unification.

I. Introduction

The Constitution is defined in various ways according to its concept definition and classification. In its own sense, the Constitution is referred to as the basic law on the organization and composition of the state, and is referred to as the original meaning held by most countries. Therefore, all countries consider the Constitution to be the best law in domestic law, and it stipulates the basic composition system and order of the state as a basic law on the organization and composition of the state.¹ Depending on the environment of each country, the Constitution contains characteristics such as the historical, political, and ideological orientation of the country concerned.

Although the Constitution has changed according to the trends of the times and the national environment, many countries have generally stipulated basic matters on sovereignty, people, and territory as components of the state in their constitutions. Comparatively, territorial regulations, which are a component of the state, determine whether or not to have provisions according to the circumstances of the state. It can be seen that each country has different ways to cope with the national territory due to various reasons. In this respect, although the background and contents of the territorial provisions are different, they can be categorized according to the contents of the regulations. In particular, in the case of a divided country, the division of the territory is premised, and the integration of the people along with the integration of the territory is a prerequisite for unification. Overcoming division requires solving the fateful task of integrating separate territories.

Discussion on the constitutional territorial provisions is of great interest to discuss the meaning and normality of the territorial provisions of the Korean Constitution (Article 3). In particular, in the background of inter-Korean unification and the development of discussions, the pros and cons of the normality of territorial provisions and the theory of improvement are one of the key issues that develop according to the development of inter-Korean relations and the possibility of unification progress.² As is well known, in the case of the Korean Peninsula, in light of the situation in which South Korea and North Korea are divided, inter-Korean unification is set as a fatalistic goal as the same nation between the two Koreas. In the process of overcoming division and completing unification, territorial integration, which is governed separately, involves the legal nature of inter-Korean relations and the legal status of the two

¹ Sung Nak-in, *Constitutional Law*, Seoul: Bobmunsa Publ., 2024, p. 17.

² For discussions on the territorial provisions of the Korean Constitution (Article 3), see Do Hoe-kun, *Inter-Korean relations and the Constitution*, Ulsan University Press, 2009.

Koreas to each other. In our case, it is called a so-called special relationship in that it is viewed as a domestic legal relationship within the nation, not an international legal relationship between countries.³ In the case of a divided country, the constitutional provisions on territories have the meaning of establishing the legal relationship between division and unification.

Recently, under the direction of Kim Jong-un, the President of the State Affairs Commission of the Democratic People's Republic of Korea, North Korea defined inter-Korean relations as 'two hostile countries', ignoring the specificity of the existing inter-Korean relations and arguing that it was set as an international legal relationship between countries. Accordingly, it is pursuing a transition of the existing unification policy with South Korea. Even the terms "nationality and unification" are being removed from all documents. In response, South Korea still maintains that it does not approve North Korea as an international legal state. Still, based on the specificity of inter-Korean relations, North Korea maintains that it is an anti-state organization and a counterparty to exchange and cooperation. South Korea has not changed its legal status and nature toward North Korea from its existing attitude. In this situation, the consideration of the meaning of territorial provisions under the Korean Constitution is one of the unification norms of the two Koreas and is meaningful for discussing the normality and development of territorial provisions.

This study examines the importance and value of constitutional norms for the territory, which is one of the constituent elements of the state under the constitution, and classifies the types of territorial provisions of major countries to examine each characteristic. Through these reviews, I examine the meaning of constitutional territorial provisions and re-examine the meaning and value of constitutional territorial provisions in the situation of division in Korea peninsular. In addition, when territorial provisions are stipulated in the existing constitution, we analyze the part that passively evaluated the meaning of territorial norms in relation to the possibility of disputes with neighboring countries. As a result, we intend to contribute to the development of constitutional theory and actual research by examining the normative meaning and possibility of change in the constitutional territorial provisions of major countries.

³ Je Sung-ho, *Inter-Korean Special Relations Theory*, Seoul: Hanul Academy, 1995. The Inter-Korean Special Relations stipulated in the Inter-Korean Basic Agreement reached by the two Koreas that "the South and the North are tentatively formed in the process of unification, not in the relationship between the country and the country." (Preface).

II. Concept and meaning of the territorial provisions of the Constitution

1. Territory and territorial sovereignty

An area refers to the scope of a country's sovereignty and includes territories, territorial waters, and airspace. In general, it is used in the same meaning as a territory. In other words, an area refers to an area and space in which the 'territorial sovereignty' of the state is exclusively exercised. Each country stipulates the scope of territory in its own law, and it is placed under the sovereignty of that country.⁴ Accordingly, the sovereignty or supreme power over the territory is called the territorial sovereignty. Territorial sovereignty refers to the absolute and exclusive dominant power that the state can exercise over all citizens and objects in its territory within the scope permitted by domestic and international law.

Territory is a concept that includes territories, territorial waters, and airspace in a narrow sense. The Constitutional Court of Korea recognizes the rights to territories (territorial rights) as the subject of constitutional complaints.⁵ Here, territorial rights refer to the rights a state has over its territory. It means that a country has all the powers over its territory. It is also expressed as territorial sovereignty or the right of territory. In principle, a state's territory under international law is a 'space exclusively controlled by the state', and that space consists of territories, territorial waters, and airspace. Here, territory in a narrow sense is defined by determining the scope of the land. Territorial waters refer to the waters to which a country's sovereignty extends. Depending on the environment of each country, it is claimed as 3 nautical miles, 6 nautical miles, 12 nautical miles, etc., and are not unified. Territorial waters include coasts, continental shelves, and exclusive economic zones, and each country's regulations are different. In terms of international law, it is defined as 'United Nations Convention on Maritime Law'. Air space is the sky of a territory and territorial waters, and the scope is generally within the controllable range. Violations of laws and regulations related to customs duties, immigration control, and hygiene can be cracked down in relation to the scope of the territory and territorial waters. Each country is regulated by laws and regulations on border

⁴ Sung Nak-in, *Constitutional Law*, *ibid*, p.99.

⁵ Korean Constitutional Court on March 21, 2002, 99 Heonma 139, etc. Even if territorial rights are not individual basic rights of the people, the Constitutional Court of Korea is taking the position of seeing them as one of the basic rights for the realization of basic rights guarantees. Constitutional petitions cannot be filed independently based solely on territorial provisions. In order to remedy the rights against infringement of the basic rights of the people, which is the source of the legitimacy of all national powers, the right to the territory is composed of territorial rights, such as territorial rights, and this is regarded as one of the basic rights subject to constitutional complaints.

crossing, immigration control, hygiene and quarantine between countries.⁶

According to the traditional theory of the elements that make up a country, territory is one of the most important elements of expressing the national identity of a country along with its sovereignty and people.⁷ This shows that in the light of the discussion of the three elements of the classical state, territorial provisions are a key element of a country. Therefore, territorial provisions are standardized in the constitutions of many countries. Territorial provisions traditionally contain the following meanings. First, the territorial provisions under the constitution contain the meaning of confirming and enhancing the national identity of the country. In addition, it has the meaning of clarifying the scope of jurisdiction of the country by determining the scope of the territory (territorial sea, airspace), which is one of the most important components of a country. And it has the meaning of an expression of the will to protect the territory. In terms of legal effect, the effect of the territorial provisions of the Constitution as a domestic law, is also limited domestically. With the recent development of international law, the increasing number of countries that stipulate continental shelves, territorial waters, and exclusive economic zones in the Constitution is an example of how the Constitution goes in accordance with international law, not ahead of it.⁸

2. States and territories

The definition of the state contains a multiparty concept, so it is not easy to say it in one word. However, the state is generally referred to as “a group of people combined by the highest power that governs a certain area,” which can be said to be a definition according to the classical three elements of the state that defines the state. According to this, the state must have the governing organization and the right to govern based

⁶ Sung Nak-in, *Constitutional Law*, *ibid*, pp. 99~100.

⁷ As a fundamental variable that constitutes national identity, the territory is specified as the first of historical territories, common myths and historical memories, common collective attack culture, common legal rights and obligations for all members, and common economy. See Anthony D. Smith, *National Identity*, London: Penguin, 1991, pp. 9-14. Meanwhile, Gertjan Dijkink, *National Identity and Geopolitical Vision: Maps of Pride and Pain*, London & N.Y.: Routledge, 1996; Do Hoe-kun, “A Study on Territory Clause of the Constitutions in Comparative Constitutional Perspective,” *Bubcho* (Legal profession), No. 638, Seoul: Korean Lawyers Association, Ministry of Justice, 2009. 11, pp. 318-319.

⁸ Ireland resolved territorial disputes through treaties between related parties and revised the territorial provisions of the Constitution in accordance with the treaty. It can be said that this is an example of how the Constitution cannot surpass international law. At the time of independence, Cyprus resolved territorial issues in advance through treaties; Do Hoe-kun, “A Study on Territory Clause of the Constitutions in Comparative Constitutional Perspective,” *op. cit.*, p. 319.

on the people, territories, and sovereignty to form a state.⁹ Here, the people mean all the natural people that make up the state, the territory must be able to comprehensively dominate a certain area, and sovereignty must be the highest power that controls the preceding elements.¹⁰ According to the traditional state component theory, territory is one of the most important elements of expressing the identity of a state along with sovereignty and the people. This shows that in the light of the discussion on the three elements of a classical state, territory is a key element of the state. Therefore, many countries around the world contain territorial provisions in their constitution. Many countries around the world seek to confirm the legitimacy of the state through territorial provisions, determine the scope of the territory, and clarify and present a strong will to defend it. In this respect, territorial provisions under the constitution traditionally contain the following meanings. First, the territorial provisions of the Constitution contain the meaning of confirming and enhancing the national identity of the state. It also includes the meaning of clearly determining the scope of jurisdiction of the state by determining the scope of the territory (area), which is one of the most important components of the state. It also strengthens internal solidarity by expressing its will to protect the country's territory. At the same time, it adds meaning to express the outside its determination to protect the country. That is, it also has the meaning of protecting the supreme sovereignty internally and expressing the establishment of independence externally.

3. Alteration of territory

The territory is changeable. The reasons for territorial change may include natural changes such as territorial preoccupation, territorial formation due to natural phenomena, or subsea submersion, but the cases are not common. Changes in territories are often made by means of annexation, trading, exchange, and ceding of territories by treaties between countries. In connection with the change of territory, legal problems arise due to disagreements on the nationality and status of residents, and decisions on applicable laws and regulations. In particular, in the case of a divided country, problems may arise regarding specific issues of applicable laws and regulations due to the unification and integration of separate territories. Depending on the method and type of unification, the legal definition issue may appear in various ways. For example, in the case of East and West Germany, by the agreement of East and West Germany (*Vereinigungsvertrag*), the socialist system and order of the East Germany were converted to a democratic system and order, and

⁹ Georg Jellinek, *Allgemeine Staatslehre* 3, Aufl., 1913, Nachdruck, 1976, S. 180.

¹⁰ Sung Nak-in, *Constitutional Law*, *ibid*, p. 88.

unification was achieved in accordance with Article 23 (*Beitritt*) of the West German Basic Law (*Grundgesetz*). The incorporation of former German territories into the unified German Federation was basically extended to the former West German Basic Law and the former East German region. In this regard, even in the case of the Korean Peninsula, the issue of determining the application of laws in unification is an important task in that the laws of the two Koreas are in effect in each region according to the method of unification between the two Koreas. Politically, two Koreas are politically opposed to liberal democracy and socialism, and there is a big difference between market economy and socialist planned economy in terms of economy. In this respect, the unification of the two ideologies and systems of the two Koreas is an issue that must be dealt with in connection with the issue of territorial unification.

III. Examples and types of territorial provisions in each country's constitution

1. The scope of a discussion

Many countries around the world have territorial provisions in their constitutions. However, territories stipulated in a country's constitution often have the possibility of conflict and conflict due to conflicting views in the process of determining the boundary line or border with neighboring countries. In this respect, each country tends to take a cautious position in the content of territorial regulations. Therefore, some countries reduce the meaning of territorial provisions or respond with passive content. However, although there are differences in the degree of norms, it is generally analyzed that many countries stipulate the content of territories in the constitution. Therefore, the contents and characteristics of territorial provisions can be classified and compared in several ways. In general, territorial provisions under the constitution tend to specify the content of the regulations in more detail. The territorial provisions of the constitutions of each country can be classified and examined in terms of content. Currently, there are 193 UN member states.¹¹ Among the constitutions of these countries, excluding countries with the unwritten constitution,¹² it is categorized and examined focusing on the presence or absence of territorial provisions of major countries among those that have a written constitution.¹³ Major countries that do not have territorial provisions in

¹¹ <https://www.un.org/en/about-us/growth-in-un-membership>. Growth in United Nations membership | United Nations.

¹² The United Kingdom, Sweden, Israel, and New Zealand are unwritten constitutional states, and there are no prestigious provisions in the constitution and no territorial provisions.

¹³ For the classification of countries that do not have territorial provisions, see Do Hoe-

the constitution amount to more than 60 countries,¹⁴ including the United States, Japan, Spain, the Netherlands, Thailand, Poland, Saudi Arabia, and the Central African Republic. In particular, North Korea does not have territorial provisions in the socialist constitution. But it is scheduled to stipulate territorial provisions in the socialist constitution in the process of establishing relations between countries in the establishment of a normal state in North Korea and the relationship with South Korea.¹⁵

2. Types of territorial provisions under the Constitution

The constitution of a country with territorial provisions can be divided into cases where there are only simple regulations according to the regulations, relatively active regulations on territories, detailed territorial scope is set and stipulated, and specific regional and spatial units are listed.

(1) A case with a principal territorial provision

Although the constitution provides for territorial regulations, it is a case where the contents are not specific and are basically declared and stipulated. For example, only simple principal expressions such as territorial integrity, territorial indivisibility, inviolable, etc. are used with respect to the territory.¹⁶ This includes France,¹⁷ China, Brazil,¹⁸

kun, "A Study on Territory Clause of the Constitutions in Comparative Constitutional Perspective," *ibid.*, pp. 295~302 re-appropriation.

¹⁴ The cases of a country without a constitutional territorial clause are Armenia, Bahamas, Bahrain, Barbados, Benin, Bolivia, Cameroon, Central African Republic, Chad, Congo (Republic of Brazzaville), Côte d'Ivoire, Cyprus, Djibouti, Dominica (Commonwealth of), Egypt, El Salvador, Fiji, Gabon, Greece, Grenada, Guinea, Hungary, Iceland, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Liberia, Luxembourg, Mali, Mauritania, Mauritius, Morocco, Nauru, Netherlands, Niger, North Korea, Norway, Oman, Poland, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Singapore, Solomon Islands, Spain, Thailand, Togo, Tonga, Tunisia, Turkey, United States, Uruguay, Vanuatu, Yemen, Zambia, Zimbabwe, etc. Do Hoe-kun, *op. cit.*, p. 295 re-appropriation.

¹⁵ North Korea's supreme leader, President Kim Jong-un, declared inter-Korean relations to be two hostile countries and required the socialist constitution to stipulate provisions on North Korea's territory. However, the constitution has not confirmed the territorial provisions and their details.

¹⁶ Do Hoe-kun, "A Study on Territory Clause of the Constitutions in Comparative Constitutional Perspective," *ibid.*, pp. 296-297 re-appropriation.

¹⁷ The French Constitution stipulates the types, powers, and organizations of local governments in the territory (Articles 72 to 74-1), and even lists the names of important French foreign territories such as *Guadeloupe, Guyane, New Caledonia, and Antarctica* (Articles 72~73). However, while detailed regulations are provided for overseas territories, the regulations for mainland France are simple.

¹⁸ The Brazilian Constitution has a relatively provision for general principles of territory in a chapter called 'territorial', but there are no specific provisions on the scope of the territory.

Chile, Denmark, Finland, Indonesia, Kazakhstan. Slovakia, Kazakhstan, Uzbekistan, Libya,¹⁹ and Mongolia.²⁰

(2) A case of defining the basic scope of a territory

This is an example of setting a basic scope for a territory. This is the case when territorial waters, airspace, continental shelves, and exclusive economic zones are actively defined for the territory, but the details based on the principles of general international law are described and the specific scope of the territory is not specified. Countries such as Peru,²¹ Vietnam, Laos, and Suriname fall under this category.

(3) An example of a specific scope of territory

This is the case in which the scope of the territory is stipulated in relatively specific and detailed in the Constitution. The provisions of these countries contain the following various formats and contents. It takes the form of specifying and specifying generally important place names in a way that defines the scope of a territory, specifying and defining latitude and longitude, specifying the time of independence, etc. in a timely manner, and specifying specific treaties on the territory.²² These types of constitutions stipulate the scope of territorial waters, airspace, continental shelves, etc., mixing the above-mentioned cases. In particular, island countries and countries including islands are included in this case. Major countries corresponding to this include Azerbaijan, Cambodia, Haiti, Columbia, Georgia, Costa Rica, Honduras,²³ and Venezuela.²⁴

(4) Case where the constituent parts of the territory are listed and prescribed

¹⁹ The Libyan Constitution stipulated that the territory belonged to Africa [Principles] Libya is an Arab, democratic, and free republic in which sovereignty is vested in the people. The Libyan people are part of the Arab nation. Their goal is total Arab unity. The Libyan territory is a part of Africa. The name of the country is the Libyan Arab Republic (Article 1).

²⁰ The Mongolian Constitution stipulates the scope and inviolability of the territory (Articles 2 ~ 4).

²¹ The Peruvian Constitution stipulates sovereignty and jurisdiction over seas up to 200 nautical miles, effectively expanding the scope of the territorial waters (Article 54).

²² Do Hoe-kun, "A Study on Territory Clause of the Constitutions in Comparative Constitutional Perspective," *ibid.*, p. 298.

²³ The territorial provisions of the Honduran Constitution show their content characteristics. It is analyzed as the most detailed regulation among the world's constitutions, including details that may be determined by law. It stipulates arbitration decisions, treaties, and rulings by the International Court of Justice on border decisions between neighboring countries such as Guatemala, El Salvador, and Nicaragua, lists the names of specific islands, and even stipulates in detail how to measure the extent of the territory's inviolable, inviolable, territorial, airspace, seabed, continental shelf, access zone, and exclusive economic zone (Articles 9 ~ 14).

²⁴ The Venezuelan Constitution clearly stipulated the jurisdiction of territory, excluding foreign interference in territory and resources (Articles 10 ~ 15).

This is an example of a territory stipulated by listing its constituent states or regions in the Constitution. This type is widely adopted by federal and city-states. In general, it has the advantage of clarifying its membership and withdrawal from the Union and clearly defining the scope of its territory. Countries that fall under this category include Australia,²⁵ Austria, Belgium, Canada,²⁶ India, Malaysia, South Africa, Switzerland, Yugoslavia (Serbia and Montenegro), Ukraine, Andorra, and Liechtenstein. Germany also falls under this category, but it will be dealt with later in the case of divided countries.

3. Types and characteristics of territorial provisions

While examining the types of constitutional territorial provisions of countries around the world, characteristic matters can be analyzed in several ways. The contents are summarized as follows. First, it can be seen that the position where territorial provisions are placed in the constitution is usually the front part of the preamble or principal rule. As an element of the state, it reflects the nature of the regulations on territorial sovereignty.

Second, the content of territorial provisions tends to determine the scope of relatively detailed territories when newly independent countries or constitutional amendments are made in addition to countries with principal provisions. This trend can be seen in independent countries with the system transition of socialist countries in the early 1990s, and there are many cases that reflect international legal regulations on territorial waters and seas.

Third, as cooperation between countries expands, the principles and order of respect for international law and international cooperation are reflected in territorial regulations. With the recent development of

²⁵ Australia recognizes the Commonwealth of Australia Constitution Act (Preamble), enacted on July 9, 1900 as a federal state, as a preamble to the constitution. The full text of this law lists the constituent units that make up Australia. The text of the constitution has provisions on federal accession procedures or territorial changes (preamble, Articles 121 and 122).

²⁶ After the Canadian Federation stipulated (Article 5) that it was composed of four provinces (Province) when the Constitution was enacted in 1867, it accepted the providence and the territory through constitutional amendments (Article 146) and legislation until 1999, and now consists of 10 provinces (Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Alberta, Saskatchewan and Newfoundland), and two provinces (the Yukon Territory and the Northwestern Territory). Therefore, some units belonging to the Canadian Federation and are not listed in the Constitution. Of these, units not specified in the Constitution are recognized as law by constitutional mandate (the Alberta Act, 1905, the Saskatchewan Act, 1905, The Manitoba Boundaries Extension Act, 1912, 1930, The Yukon Territory Act, 1898, etc.). Do Hoi-kun, "A Study on Territory Clause of the Constitutions in Comparative Constitutional Perspective," *ibid.*, p. 301 re-appropriation.

international law, more countries are stipulating continental shelves, territorial waters, and exclusive economic zones in the Constitution. The Constitution does not allow territorial provisions to violate the framework of international law agreements. For example, Ireland resolves territorial disputes through treaties between the parties concerned and amends territorial provisions of the Constitution according to the treaties. This is an example of showing that territorial provisions under the Constitution do not violate territorial provisions under international law. Cyprus is a case of resolving disputes by establishing territorial issues as treaties at the time of independence.²⁷

Fourth, most countries in the form of federal states stipulate territorial provisions. The constitution of the federal state stipulates most of the territorial provisions by factors for specifying the scope of the constituents and local governments of the Federation and for setting the scope of federal jurisdiction through accession and withdrawal. However, it can be pointed out that the United States, a federal state, is known as a constitution without territorial provisions, but this is not necessarily the case. The 1787 U.S. Constitution listed all 13 colonial democratic names at the time (Article 1, Paragraph 2, No. 3. How the House of Representatives composition lists all 13 states and the number of lawmakers). According to this, this constitution corresponds to an example of listing constituent units. However, when the Federation expanded later, the reason why the name was not added to the constitution was that, as a result, there were far more constituent units not listed than the constituent units listed in the constitution. As a result, it became known that the U.S. Constitution had no territorial provisions.

Fifth, island nations have relatively active territorial provisions. Japan has no territorial provisions, Indonesia has only principled regulations and is entrusted to the law, the Philippines and Cuba have relatively detailed territorial ranges, and Madagascar and Sri Lanka have constituent units listed in the Constitution. Island countries do not have a certain tendency, but countries with various islands, such as the archipelago, may list the names of major islands or clarify boundaries by latitude and longitude. This is the case in countries adjacent to the South Pacific and the Caribbean.

IV. Constitutional territorial provisions of divided and disputed countries

In the case of divided countries and disputed countries related to unification, having territorial disputes in relation to the meaning of territorial provisions or having specific provisions in the Constitution in

²⁷ Do Hoi-kun, "A Study on Territory Clause of the Constitutions in Comparative Constitutional Perspective," *op. cit.*, p. 311.

anticipation of their possibilities can be found.

1. Territorial provisions of the West German Basic Law before German reunification

The Framework Act on West Germany was enacted to reflect the nature of the provisional constitution from the basis of legal recognition of the division of Germany after World War II to unification. The Framework Act on Old West Germany stipulated the proposition of German reunification (professional) and established unification regulations that established the method of incorporation (Article 23) and the method of enacting a new constitution (Article 146) as a method of unification. East Germany promoted a national unification policy on the premise of nationality for the former West Germany. There were no constitutional provisions on specific territories. As a result, the unification of East and West Germany was completed in a way that the former German states were incorporated into the German Federation in accordance with Article 23 of the former West German Framework Act. With the extinction of East Germany and the extended application of the former West German laws to the former East German region, unification was achieved in a normative and peaceful manner. As mentioned earlier, the Framework Act on Old West Germany sets unification as the goal and presupposes a temporary effect only in the former West German region until unification is achieved, and Article 23 lists and stipulates the names of states constituting the former West German Federation. After German unification, the Basic Law of Germany was revised to correspond to the unification situation, such as deleting Article 23.²⁸

2. The territorial provisions of the Irish Constitution

Ireland was subjugated to the United Kingdom in 1801 and in the process of independence in 1921, six of the 32 counties in Northern Ireland remained in the United Kingdom due to differences in race, religion, etc. Ireland did not recognize this and stipulated in the 1937 Constitution that “the territory consists of the entire island of Ireland and its annexed islands and territorial waters” (Article 2). Northern Ireland was also defined as Irish territory. The conflict over Ireland’s territory was nominally resolved by the Belfast Agreement on April 10, 1998.²⁹ The Irish Constitution (1998 June 3), as

²⁸ Park Jeong-won, “Legal Challenges for the Integration of the Korean Peninsula,” Park Jeong-won, ed., *Korean Peninsula Integration and The Future of Peace in Northeast Asia – Focusing on the Case of German Unification*, Seoul: Academy of Korean Studies Press, 2020, pp. 247~248.

²⁹ The Good Friday Agreement contains solutions to Northern Ireland’s problems through peaceful procedures, such as deciding the constitutional status of Northern Ireland by referendum and revising the territorial provisions of the Irish Constitution (Articles 2

amended under the agreement, changed the territorial provisions to “Island of Ireland, including islands and seas” and “Island of Ireland,” which are somewhat abstract compared to the previous constitution. However, by stating that “the unity of all those who share the territory of the island of Ireland is the firm will of the Irish people” (Article 2), it shows that they have not yet given up their will to unify Northern Ireland.

3. Territorial provisions of the Cypriot Constitution

The country, which was a British colony in the early 20th century, gained independence in 1960 but has been divided since 1974 due to conflict between Greek and northern Turkish descent on the island. The southern region is a Cyprus Republic recognized by the United Nations,³⁰ and the northern region is a Turkish Republic of Northern Cyprus under the support of Turkey, but it has not been recognized internationally yet. Cyprus does not have territorial regulations in the constitution, but at the time of the independence agreement, the territory was determined by treaties between related parties such as Britain, Greece, and Turkey. Since the constitution and treaties at the time of 1960 were still in effect, the de facto North Cyprus region is still a part of the Cyprus territory, but it is not exercising de facto control. The UN’s proposal for federal integration has also failed, and division and conflict continue.

4. The territorial provisions of the Chinese and Taiwanese constitutions

The Chinese Constitution defines Taiwan as part of China’s territory, followed by the expression “the great achievement of the unified motherland.” This shows that unification with Taiwan is unfinished and aims for unification with Taiwan. In response, the Taiwan Constitution provides a principle provision that “the territory of the Republic of China according to the unique river and river cannot be changed without a resolution of the National Assembly” (Article 4). In this regulation, it may vary depending on the interpretation of “the unique river and river” but the territorial provisions of the Chinese and Taiwanese constitutions are legally in conflict. China and Taiwan are showing differences in the method and content of final unification while solidifying the cooperative relationship between the two sides.

5. The territorial provisions of the Korean Constitution

The Korean Constitution has a territorial provision stipulating that “the territory of the Republic of Korea shall be the Korean Peninsula and and 3).

³⁰ UN S.C.Res. 541(Nov. 18, 1983).

its annexed islands” (Article 3). This is related to the special political situation and situation of the division of the Korean Peninsula. In accordance with the territorial provisions, the Constitution and laws of Korea apply to the area north of the armistice line, and our sovereignty and sovereignty extend to this. In fact, the area north of the armistice line is an ‘unclaimed area occupied by a North Korean puppet group’, and thus the North Korean regime becomes an ‘anti-state organization’ that hinders the exercise of sovereignty by the Republic of Korea. While the Republic of Korea and the Democratic People’s Republic of Korea were divided on the Korean Peninsula, in the process of pursuing unification, the two Koreas stipulated norms for the promotion of unification policy in their respective constitutions. The North Korean Constitution did not provide specific territorial provisions. Based on the territorial provisions of the Constitution, Korea gives the meaning of sovereignty and jurisdiction over the entire Korean Peninsula and claims to be the only legitimate government on the Korean Peninsula.³¹ This territorial provision is one of the important constitutional norms that Korea has consistently defined since the establishment of the government and the enactment of the Constitution. Discussions on the normality and change of Korea’s territorial provisions have been raised as the unification situation changes. Territorial provisions can be interpreted in various ways and can have various meanings according to changes in the times and political situation.

Since the establishment of the Peaceful Unification Clause (Article 4) in the Constitution of the Constitution of Korea in 1987, theories on territorial provisions including abolition and revision have been raised. However, the difficulty of constitutional amendment is resolved by the constitutional interpretation theory that the territorial clause and the peaceful unification clause are in a normative and harmonious relationship in accordance with the practical limitations of the legislative theory. In reality, a policy that pursues peaceful unification in a confrontational and sudden manner called absorption and unification is needed based on the basic free democratic order as stipulated in Article 4 of the Constitution. In Korea, unification is accepted as a national and national task directly presented by constitutional norms. Despite realistic limitations, it is by no means something to be given up or reserved. The fact that the

³¹ In the process of enacting the Constitution of Korea, the Constitutional Fundamentals Committee of the first National Assembly confirmed the territorial provisions by slightly revising the constitution, and passed the National Assembly plenary session without amendment. The rationale was the theory of legal government that the Republic of Korea is the only legitimate government on the Korean Peninsula approved by the U.N. General Assembly immediately after the establishment of the government, and the theory of absorption and unification by South Korea. Since then, the territorial provisions have continued unchanged not only to the first constitution but also to the current constitution.

provisions of the establishment of the Korean Constitution (Article 3) impose “responsibility for unification” on the state and the people along with the provisions of peaceful unification (Article 4) is the reason for acknowledging the strong normality. To secure the effect of the provisions of peaceful unification (Article 4) that stipulate unification-oriented efforts under the current constitution in Korea, discussions on territorial provisions (Article 3) should develop in a unification-oriented direction.³²

V. Conclusion

Many countries around the world have territorial provisions corresponding to their characteristics in various ways rather than cases in which each constitution does not have territorial provisions. Through territorial provisions, the historical and geographical characteristics of each country can be analyzed. Under the constitution, territorial provisions are basically limited to domestic areas within the scope of domestic legal effect in terms of effectiveness. At the same time, there are cases in which international legal territorial disputes and conflicts arise depending on the interests of neighboring countries to which the territory is bordered. In this case, the involved countries may amend their territorial provisions to resolve conflicts and disputes surrounding the territory. The clause of provisions for setting the scope of territory in a country’s constitution has been understood as a somewhat passive response in that it contains potential for conflict and conflict in international relations. However, although there are differences in the degree of norms, it is analyzed that many countries clarify the identity of the country by stipulating the content and scope of the territory in the constitution. In general, territorial provisions under the constitution tend to specify the content of the regulations in more detail. In particular, it can be seen that the meaning of territorial regulations is more emphasized than in the case of the constitution created by the independence of Eastern European countries by the transformation of socialist countries.

The international community is experiencing separation and integration as it suffers regional disputes. There is an example of the Yugoslav Republic and the Serbia-Montenegro Federation.³³ The constitution will

³² Park Jeong-won, “Legal Challenges for the Integration of the Korean Peninsula,” *ibid.*, pp. 242~245.

³³ In 1992, the Federal Republic of Yugoslavia was composed of Serbia and Montenegro, which were separated and independent from the former Yugoslavia along with Macedonia and Croatia after the collapse of the communist bloc. After the Kosovo crisis, the newly enacted constitution changed the national name to the State Union of Serbia and Montenegro (State Union of Serbia and Montenegro) on February 4, 2003, and the former Yugoslavia was extinguished by the separation and independence of Montenegro and Serbia on June 3, 6, 2006. The constitution of the Serbian-Montenegro Federation

bring about the creation or change of territorial provisions according to the territorial changes that are newly formed during military conflicts and wars. In the Korean Constitution, territorial provisions have greater meaning and characteristics in relation to division and unification than territorial provisions of other countries. As the environment of division and the conditions for unification change, the necessity of judging the normative nature of territorial provisions and discussing amendments increases. In the case of a divided country, opinions on the value and effect of each stipulated territorial provision work strongly as it presupposes the intention and agreement of the other party. In order to overcome the division, it is important to make a judgment in consideration of the historical, normative, and unification principles traditionally contained in territorial provisions. It is significant that the territorial provisions of Korea, a divided country, are compared with those of other divided and disputed countries. Constitutional territorial provisions have been revised along with unification with unification with their own meaning according to their background. In the process of German unification, the provisions on the territory of the Old West German Basic Law (*Grundgesetz*) have great implications in that they eventually functioned as the constitutional basis for German unification.

Throughout the world's constitution, discussions on the examples, types, and characteristics of territorial provisions stipulated in each constitution are considered insufficient. Moreover, discussions on the effectiveness and normative of territorial provisions are also a task to be dealt with in earnest. I look forward to more in-depth research in this field, thinking it is a constitutional research project to be examined in the future.

includes Kosovo, which had not exercised practical jurisdiction in its territory. Do Hoekun, "A Study on Territory Clause of the Constitutions in Comparative Constitutional Perspective," *op. cit.*, p. 318.

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