1. Preface

Japan’s political leaders have continually insisted that Japan’s rule of Korea from 1910 to 1945 was legal. According to an unofficial survey by the Korean government, there have been at least twenty-six instances of “unacceptable statements” by the Japanese government from 1951 to the end of 1995, 1951 being the year of Prime Minister Yoshida Shigeru’s statement at the first ROK-Japan talks. Such frequent remarks by Japan’s political leaders have upset the Korean government as well as the Korean people each time, causing serious diplomatic problems and jeopardizing future relations between the two countries. Why has there been no change in Japan’s view of its past, even though half a century has passed since Korea was liberated from Japanese rule?

When Japan’s political leaders have commented on the “annexation” of Korea, their arguments generally fall into one of two types:
(1) Japan’s annexation of Korea was fully legal, carried out for the sake of peace in Asia. There was nothing wrong about the annexation either morally or legally.

(2) Japan may have moral or ethical responsibilities for its aggression, but there are no legal responsibilities.

Argument 1 summarizes the view of the Japanese people at the time of the “annexation,” while argument 2 reflects their current views based on a new understanding of that period. At the time of the annexation, Japan’s leaders tried to show that the annexation was conducted “amicably” between two equal countries and that there were no irregularities in the relevant documents. The public statements of the Japanese government said that its motive for the annexation was to help Korea. Japan portrayed Korea as a weak country that was constantly threatened by the aggressions of China and Russia and argued that the very existence of Korea was a threat to peace in East Asia. Japan claimed that the annexation of Korea, after defeating both China and Russia in war, brought peace to East Asia and contributed to Korean development through Japan’s reforms of its government. Such a view can even be found in *Daitoa senso sokatsu* (A Survey of Wars in the Greater East Asia Region) which was published in August 1995 by the Historical Review Committee of the rightist faction of the Liberal Democratic Party.

In shifting from argument 1 to 2, Japan has abandoned the claim that it annexed Korea for the sake of peace in Asia; however, there is no difference between the two arguments on the issue of its legality. According to argument 2, Japan’s annexation of Korea was completely lawful, although it may have been morally wrong. The Japanese government maintains that the two diplomatic agreements that put Korea under Japanese rule, the “Convention of 1905” and the “Treaty of Annexation of 1910,” were perfectly legal. Though unacceptable to Koreans, this view seems to be accepted by liberal, educated people in Japan. One example is a speech given in 1997 by Japanese Prime Minister Murayama,
who was expected to bring in a new age in Korea-Japan relations as a member of the Socialist Party. He caused a controversy in Korea when he spoke at the Japanese Diet and denied any legal wrongdoing in Japan’s annexation of Korea. While he did apologize for the annexation, his apology only concerned Japan’s moral wrongdoing. There are very few educated people in Japan who acknowledge both Japan’s moral and legal responsibilities.

How should Koreans, the victims of the annexation, respond to the reluctance of Japan’s leaders and intellectuals to admit their legal culpability? Various responses should be considered, but all must clearly understand the extent of illegalities in those events and convey them to the Japanese. In order to contribute to such a project, this article will focus on introducing recent research that details the facts surrounding the forced transfer of Korean sovereignty to Japan and demonstrates the coercion involved in the provisions of the treaties.

Among the Japanese, there are those who believe that Japan’s “annexation” of Korea was simply a result of the imperialism of the age and refuse to view the annexation as a “crime.” They reason that Japan is not at fault because, in an age of the survival of the fittest, the fact that the stronger Japan annexed the weaker Korea was perfectly acceptable at the time. Such a logic was demonstrated in a resolution passed by the Japanese Diet in June 1995, on the 50th anniversary of the end of World War II, that admitted Japan’s wrongdoing in its colonial rule and aggressions. Despite the admission, the Diet claimed that the annexation must be seen “in the context of the numerous colonizations and aggressive acts in modern world history.” While such statements seem to reduce greatly the responsibility that Japan has to bear, Japan’s forceful seizure of Korea’s sovereignty cannot be defended by an appeal to the logic of an earlier form of imperialism.

Japanese imperialism was different from that of the Western powers whose aggressions were a product of the external expansion of their capitalist economies. It would be more accurate
to say that Japan pursued traditional aggressive methods for the sake of its own capitalist development. The Japanese government had for a long time sought to seize the Korean peninsula. When Korea began to show definite progress in modernizing, Japanese leaders became worried and moved quickly to achieve their goals in Korea. They declared war on Russia and used it as an opportunity to use military force to take over the Great Han Empire (Taehan Cheguk). Since the seizure of Korea’s sovereignty was carried out with such coercion, evidence of force, deceit, and illegality can be discovered in the process of annexation. This article aims to contribute to correcting the accepted wisdom about the annexation by analyzing the concrete facts surrounding the negotiations of the forced treaties.

2. Problems in the Forced Treaties

Japan’s aggressive designs on Korea can be traced to the rise of “national studies” (kokugaku) during the Edo period. Perhaps because Toyotomi Hideyoshi’s invasion of Choson in 1592 had been unsuccessful, hostility against Korea was pervasive in Japan. After returning from the war, soldiers spread many stories about the war which increased the animosity toward Koreans. While the educated elite in Japan at the time admired and preferred the products of Choson’s culture, national studies, with its strongly chauvinist tendencies, spread the historical view that Japan was superior to Choson, beginning in the 18th century. Scholars of national studies provided support to such feelings by treating legends and myths as if they portrayed actual historical events. These legends and stories described how Japanese deities and emperors ruled Korea in ancient times and how Korean kings and aristocrats submitted to Japan. Transmitted as if they were
historical facts, such stories pandered to the animosity toward Korea that was prevalent among commoners in Japan.

The feelings of superiority toward Choson later developed into various theories of aggression such as “Chosen koryak ron,” “Seikan ron,” “Daito gappo ron,” and “Datsua ron” in the late 19th century after Korea opened its ports to the West. These theories served as the intellectual background for the Sino-Japanese War in 1894 and the Russo-Japanese War of 1904. The connection between these two wars and the national studies of the Edo period weakens Japan’s claim that its seizure of Korea was simply a result of its capitalist development and imperialism of the late 19th century. Japan was the victor of the Sino-Japanese War, because of the “Triple Intervention” of Russia, France, and Germany, it ended up not gaining any economic benefit from it. After the war, Japan suffered a severe recession for several years. In addition, realizing its main objective of the war, the seizure of Korea, became much more difficult after the pro-Japan cabinet fell after King Kojong of Korea, worried about Japan’s influence in Korea, moved to the Russian legation in 1896 to conduct official duties there.

After returning to his palace, Kojong changed the official name of the country to the “Great Han Empire,” as part of an effort to emphasize Korea’s status as an independent nation. At the same time, he actively pursued the Kwangmu Reforms to establish a sound economic and military basis for the state that would preserve Korea’s autonomy. From 1896 to 1903, the Great Han Empire steadily carried out various preparations for industrialization. For Japan, the progress by Korea meant that its opportunity to seize Korea was fading; therefore, Japan obstructed every

2. There needs to be detailed research on the relationship between Japan’s policy of aggression and its capitalist development to determine which preceded the other.
effort of the Korean government to purchase arms or obtain foreign loans. In the end, Japan’s cabinet resolved in December 1903 to declare war against Russia and thus finally achieve its goal of domination over Korea. Japan decided to go to war with Russia because Korea was using Russia to protect itself from Japan and also because it wanted to bring in Russia’s enemies, Great Britain and the U.S., as its allies and so to avoid repeating past mistakes such as the “Triple Intervention.” Great Britain and the U.S. viewed Japan’s aggression toward Russia as a way of achieving their own goals and actively supported Japan’s efforts.

When Japan started the war with Russia, it also quickly dispatched the “Temporary Military Contingent to Korea” (Kankoku rinji hakentai), which had already been mobilized, to begin preparations to undermine Korea’s sovereignty. As the tide of the war became favorable to Japan, the military contingent speeded up its operations. The majority of Japan’s military forces passed through Inch’ŏn and Seoul on their way north. Under such pressure, Korea was forced to sign the first of the agreements that deprived Korea of its sovereignty. The “Temporary Military Contingent” was soon renamed the “Permanent Military Force in Korea” (Kankoku chusatsugun) and stationed in Seoul, and its function was to provide the military force needed to coerce Korea into accepting the successive agreements that Japan pursued. At the time, international law did not question the validity of unequal peace treaties concluded between the victor in a war and the defeated nation; however, it stipulated that treaties signed under military threat directed against State representatives were null and void. Since Great Britain, the U.S. and the other powers did not desire a declaration of war against Korea, Japan had to resort to the latter method, i.e., forcing treaties on Korea.

After the Russo-Japanese War, Japan forced Korea to accept the following diplomatic agreements with the purpose of occupying Korea:

(2) Agreement, Aug. 22, 1904 (No title—First Japanese-Korean Agreement)
(4) Korean-Japanese Agreement, July 24, 1907 (Japanese-Korean Agreement)
(5) “Treaty of Annexation,” Aug. 22, 1910 (Treaty Regarding the Annexation of Korea to the Empire of Japan)

* The titles in parentheses are those used by the Japanese government.
* “No title” means that there was no original Japanese title at the time.

These agreements involved coercion and the use of force with the objectives of usurping the right to use territory (1) and diplomatic rights (2+3), taking over domestic affairs and the military (4), and annexing the country (5). Until now, Korea’s efforts to nullify these agreements have focused more on Japan’s use of a military threat in concluding the compacts than on their procedural illegalities. Korea’s position has been based on the fact that under international law, diplomatic agreements are null if the representative of one side was threatened by the other. Among the five agreements, the “Convention of 1905” has received the most attention because it was the most important and because coercion and the threat of force were evident in the negotiations. Although Japan has insisted that the “Treaty of Annexation” had no legal flaws in its procedures or form, Korea has argued that it should be nullified because it was based on the “Convention of 1905.” Recently, detailed research has demonstrated that there were many problems in the form and procedures of the agreements in addition to force and coercion. This paper will discuss these issues for each of the agreements.3

3. The following sections are based on these three articles: “The ‘Convention of

Soon after Japan declared war on Russia in February 1904, Japan forced this protocol in Korea, and it was signed on February 23. The Korean government had expected the outbreak of hostilities as early as August 1903, but because there was no military draft system, it was considering proclaiming itself a neutral country. When Japan’s preparations for war were accelerated at the end of 1903, the Korean government declared neutrality on January 21, 1904. On February 6, Japan severed all diplomatic relations with Russia and declared war. Ignoring Korea’s declaration of neutrality, Japan occupied Korea, by dispatching five battalions of the “Temporary Military Contingent to Korea” which had already been mobilized. After these troops arrived in Seoul, reinforcements also passed through the city on their way north, heightening the atmosphere of threat and violence.4 Coerced upon the Korean government under a state of

4. The scale and organization of the Japanese forces stationed in Korea were as follows. The “Temporary Military Contingent to Korea” mainly consisted of the 1st Infantry Battalion of the 14th Regiment, the 2nd Battalion of the 47th Regiment, the 1st Battalion of the 24th Regiment, and the 2nd Battalion of the 46th Regiment, which were all from the 12th Division. These were the main forces that made up the contingent, and additional battalions were to be sent from each regiment for support if necessary (Commander: Infantry Commander of the 23rd Brigade, Major General of the Army, Kikoshi Anbou). The “Temporary Military Contingent to Korea” was renamed the “Permanent Military Force in Korea on March 11 (Nihon gaiko bunsho [Diplomatic Documents of Japan], supplemental book to Vol. 36 and 37, Russo-Japanese War, pp. 83-88, chapter 1, “Severing National Ties.” Keijo fushi [History of Seoul], volume 1, chapter 3. Japanese General Staff Office, ed., Nichiro Senekishi [History of the Russo-Japanese War]. The contingent secretly sailed from Sasebo military port on 2:30 a.m. on February 6, with a fleet of around 60 ships under the command of Vice Admiral Togo Heihachiro. Together with the troops headed to the Russian front, the contingent arrived in Inch’on late in the afternoon on February 8 and began
military occupation, the protocol was marked by the following problems:

(1) The date given on the protocol is February 23, 1904; however, according to *Nihon gaiko bunsho* [Diplomatic Documents of Japan], Komura Jutaro, the Japanese Foreign Minister, sent a complete draft of the protocol to Hayashi, the Japanese Minister to Korea, by telegram on February 25, 1904 (*Nihon gaiko bunsho*, vol. 37, no. 1, item 5, 381, Feb. 25, “Memo for Immediate Circulation on the Japanese-Korean Protocol”). The fact that the draft was delivered to the Japanese minister in Seoul two days after the date of the protocol suggests that the protocol did not follow the necessary legal procedures. A similar situation occurred in the negotiations for the Agreement of 1904.

(2) The protocol clearly states in Article 3 that “The Imperial Government of Japan definitely guarantees the independence and territorial integrity of the Corean Empire.” However, after only one

moving ashore at 5:30 p.m., completing the operation by the morning of February 9. The landing force was divided into two separate groups. The 2nd Infantry Battalion of the 46th Regiment and the 2nd Battalion of the 47th Regiment went to Seoul under the command of Commander Kikoshi. This advance force arrived at Seoul Station at 11:30 a.m. on February 9 and began making shows of force. Following the advance force, additional Japanese troops continued to arrive at various Korean ports to supplement the “Temporary Military Contingent” and to reinforce the troops up north at the Russian front. Roads between Inch’ŏn and Seoul were filled with Japanese soldiers and military supplies, and key buildings in Seoul were used as barracks for the Japanese troops. Book five of Maech’on yarok, written by Hwang Hyon, described the situation in Korea as follows: “The Japanese troops that landed in Inch’ŏn number 50,000 and had over 10,000 horses. They set up eighteen military camps all over Seoul, including at Ch’angdok Palace, Munhuijŏn hall, Wongu’dan, Chogyong Palace, Kwangjewon garden, and other government offices. They purchased hundreds of houses outside the West Gate and turned them into horse stables. They set up tents to sleep in by the banks of the Han River, and the smoke from their cooking fires could be seen for miles around. In the southern part of the country, Japanese forces passed through Tongnae and arrived in Taegu, passed through Namhwa on the way to Namwon, and passed through Kunsan on the way to Chonju. In the western part of the country, they occupied Pyŏngyang and Samhwa, and in the northern part, they landed at Wonsan and Songjijin. They marched northward toward Liaodong while maintaining a constant distance from each other.”

5. See Yi Tae-jin, “The ‘Convention of 1905’ Had No Title.” (listed in Note #3)
year, on November 17, 1905, Japan deprived Korea of its diplomatic rights, one of the most important rights of an independent nation, by forcing Korea to sign the “Convention of 1905.” Because this convention expressly violated Article 3 of the Protocol of 1904, the convention should have had no legal force, as was pointed out in a 1906 paper by Francis Rey, a French scholar of international law. Sources reveal that the Japanese government had no intention of protecting the independence of Korea even though it was guaranteed in the protocol. At a cabinet meeting held in May, the Japanese government passed a resolution on “Japanese Policy toward Korea” (Nihon gaiko bunsho, vol. 37, no. 1, pp. 351-356). The resolution stated, “Since the existence or fall of Korea is directly tied to the security of the Japanese Empire, [we] cannot allow another country to take over Korea. This is the reason that we have been making every effort to help Korea maintain its independence and territorial integrity.”


When the tide of the Russo-Japanese War became favorable for Japan, it forced Korea to sign this agreement. The agreement contained the following three items:

(a) The Korean Government shall engage a Japanese financial advisor to be recommended by the Japanese Government.
(b) The Korean Government shall engage a foreigner recommended by the Japanese Government as diplomatic advisor.
(c) The Korean Government shall previously consult the Japanese Government representative before concluding treaties with foreign powers and dealing with other important diplomatic affairs.

Korea strongly refused to sign the agreement because item (c)

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6. Rey’s paper has been translated into Korean by Ch’oe Chong-go and Nam Hyo-sun with the title “The Korean Empire’s Legal Status based on International Law” in Yi Tae-jin, ed., op. cit.
meant that Korea had to transfer its diplomatic rights to Japan. As a result, Japan decided to group items (a) and (b) together and take care of them first, while item (c) would be handled in separate negotiations. Thus, items (a) and (b) were signed by the Korean Ministers of Finance and Foreign Affairs on August 19 while negotiations on item (c) were still going on. The Korean government offered stiff resistance because the “Japanese Government representative” stipulated in item (c) would have had the same powers as the Resident-General who was later stationed in Korea as a result of the “Convention of 1905.” The central figure in the resistance was the emperor himself. After lengthy negotiations, Yun Ch’i-ho, the Deputy Foreign Minister of Korea, signed the document on August 22, on the condition of taking the word “representative” out of the term “Korean Government representative.” Because of the coercion involved in the negotiating process, the agreement contained the following problems:

(1) In the beginning, negotiations were conducted for the conclusion of a “memorandum,” but at the end, the Japanese side suddenly changed it into an “agreement.” Under international law, documents resulting from negotiations among nations are classified as “treaties,” “agreements,” or “protocols.” For a treaty, the sovereign of a nation must issue full powers to the head negotiator who then has the authority to conduct negotiations on behalf of the nation. Agreements and protocols become official if the full powers are included in the final document. However, memoranda, which do not fall into the category of official diplomatic documents, do not have either full powers from the nation’s sovereign leader or any mention of full powers in the

7. See Yi Tae-jin, “The ‘Convention of 1905’ Had No Title.”

8. At the beginning the Protocol of 1904 (according to the original kept by Korea), there is the following statement: “Emperor Kojong’s Deputy Minister of Foreign Affairs and Chief of the General Staff Yi Chi-yong, and Hayashi, the Special Proxy Representative of the Empire of Japan, accepted their respective appointments and agreed to conclude this protocol.”
Figure 1. The original document of the memorandum known as the “First Japanese-Korean Agreement.” There is no notification of the proxy representative either at the head or end of the document. The fact that this document is only kept by Japan (The Diplomatic Record Office of the Ministry of Foreign Affairs) supports the argument that this did not take the steps necessary to an official diplomatic agreement. All the documents relating to Korea’s foreign affairs since the Russo-Japanese War are kept at the archives of Seoul National University, Kyujanggak. However, the documents relating to the “First Japanese-Korean Agreement” are nowhere to be found.

actual documents. A memorandum is adopted with only the signature and official title of the person participating in the negotiation (see Figure 1). Accordingly, a memorandum has less authority as a diplomatic agreement than the other three kinds. Items agreed upon in a memorandum apply only to those nations explicitly mentioned in the document, and when the content of a memorandum affects a nation not mentioned, another official document is required.

There was no official title on the document of this agreement; furthermore, there was also no mention of full powers. The
agreement simply listed the three items agreed upon and was signed by the diplomatic officials of the two countries concerned. Throughout the negotiations, official reports sent between the Japanese Foreign Ministry and the minister to Korea referred to this document as a “memorandum” not an “agreement.” On August 22, after all three items in the document were agreed upon, Japan notified the American and British governments of the result of the negotiations. When they did, however, the Japanese government suddenly changed the name of the agreement and called it an “agreement” (Nihon gaiko bunsho, vol. 37, no. 1, item 6). This change was made to assure the U.S. and Great Britain, countries that Japan would need as allies in the future, that both Japan and Korea recognized the agreement as an official diplomatic agreement. In order to hide its flaws, the titles “Japanese-Korean Agreement” and “First Japanese-Korean Agreement” were later added to the document after the conclusion of the negotiations.

These maneuvers by Japan convinced the U.S. and Great Britain that Korea had truly turned over its diplomatic rights to the Japanese government. After the “Convention of 1905” was forcibly concluded in November 1905, Min Yong-ch’an, a Korean diplomatic minister, visited Elihu Root, the U.S. Secretary of State, to request assistance against Japan under the terms of the Treaty of Amity and Commerce of 1882 between Korea and the U.S. Although Min visited Root in an official, albeit secret, capacity, as ordered by Emperor Kojong, Root officially denied help, saying that Korea forfeited official diplomatic rights under the Agreement of 1904 (Root to Min, Dec. 19, 1905, “Note to the Korean Legation,” National Archives). Having misrepresented the actual

9. Professor Dennet also believed that the Korean Empire willingly subjected itself to the rule of Japan through the Agreement of 1904. Therefore, he believed that the person who betrayed Korea was Emperor Kojong himself, not President Roosevelt as the Korean people believed (Dennet, T. Roosevelt and the Russo-Japanese War: A critical study of American policy in Eastern Asia in 1902-5, 1925 (1959).) His statements were made without knowledge
situation to the U.S. and Great Britain, Japan secretly requested that the two countries recognize the Japanese protectorate of Korea and so concluded the Taft-Katsura Secret Agreement with the U.S. (July 27, 1905) and the Second Anglo-Japanese Alliance (August 12, 1905). It is evident that these two secret agreements played a decisive role in enabling Japan to turn Korea into a protectorate. It is shocking that these important diplomatic agreements were, in the end, based on deliberately falsified documents.

(2) As they did with the Protocol of 1904, the Japanese Foreign Ministry sent a complete draft of the agreement, entitled “Nikan kyouyaku” (Japanese-Korean Agreement) to the minister to Korea on September 4. However, the agreement had already been signed on August 22, some ten days earlier. The Foreign Ministry also instructed the minister to Korea to tell the Korean government to announce the news of the agreement in the September 5 issue of the Kwanbo (Official Gazette) and also to inform other countries as well (Nihon gaiko bunsho, vol. 37, no. 1, item 6, 418, September 4, “Note on the Announcement of the Japanese-Korean Agreement”). The directives of the Foreign Ministry, after the agreement was signed, is clear evidence that it was concluded under coercion from Japan. In conclusion, this agreement, strictly speaking, never existed in reality; therefore, Korea should be compensated for all the damages caused by later diplomatic agreements based on it.


Although the idea of a protectorate of Korea has been discussed among political leaders around the time of the Sino-Japanese War, it was first mentioned at the level of government policy at a cabinet discussion on the Russo-Japanese War on December 30,
1903 in a resolution on policy toward Korea. Under the premise that “Korea must be placed under Japanese control even by military force,” the Japanese government decided to establish a mutual alliance or some sort of protection treaty with Korea, as it had done during the Sino-Japanese War. With the Russo-Japanese War developing favorably for Japan, it began to implement its plans to turn Korea into a protectorate. Japan had already received the approval of both the U.S. and Great Britain through its secret agreements with both countries in July and August of 1905, respectively. However, the Japanese encountered stiff resistance from the Korean government; as a result, the final agreement contains the following flaws and problems:

1. It is hardly necessary to mention that this agreement also was coerced under the threat of military force. In a cabinet meeting on October 27, 1905, Japan decided on an eight-item guideline for turning Korea into a protectorate and even prepared a draft of an agreement which was attached to the guidelines. Item 6 contained an order that Hasegawa, the commander of the “Military Force Stationed in Korea,” would provide military assistance to Hayashi, the minister plenipotentiary to Korea, and Item 7 stated that reinforcements would be quickly sent from Japan if necessary. These two items show that the Japanese government planned, from the beginning, to use military force to conclude the agreement. After these preparations were completed, Japanese troops surrounded Kyongun Palace (currently Toku Palace), where the emperor was residing, on November 17, 1905 and even entered the negotiating room to threaten the Korean officials there. There exists an official Japanese document that reported on the army’s actions; it noted that Japan dispatched its police and military police to Kyongun Palace on the pretext of guarding the Korean ministers and did not remove them despite the protests of the Korean emperor (*Jukan nihon koshikan kiroku*

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10. See Yi Tae-jin, “The ‘Convention of 1905’ Had No Title.”
(2) Because there was no decision on the form corresponding to the importance of the agreement, it contains many flaws in its form and procedures. From the very beginning, Japan anticipated that it would be difficult to get Korea’s approval for the protectorate and decided to use more forceful methods. Such intentions are demonstrated by Item 8 of the guidelines established at the October 27th cabinet meeting:

If it appears that Korea will never agree to sign the compact, as a last resort, Japan will unilaterally notify the Korean government that the compact has been completed. At the same time, Japan will explain to the other nations of the world why it had to use force to conclude the compact. Furthermore, Japan will reassure other nations that their financial and industrial interests within Korea will not be affected at all.

Item 8 shows that the plan of the Japanese government was to prepare for the worst possible situation. Thus, a draft of the agreement was prepared as an “agreement” rather than as a formal “treaty.” In general, important matters such as the transfer of diplomatic rights should be covered by a treaty instead of just an agreement. For a treaty to be official, it must have the following three documents:

(a) Full powers, issued by the sovereign of a country to the head representative, that gives express authority to conduct negotiations on behalf of the country (See Figure 2-a).
(b) Signatures on the treaty itself of the head representatives from both sides.
(c) Instruments of ratification from the sovereigns of both nations (See Figure 2-b).

Because Japan had expected resistance from the Korean government, they themselves did not expect to receive all of the documents. This was the reason that Japan originally prepared an
Figure 2-a. A proxy statement issued by King Kojong for the representative to the 1882 Treaty of Chemulp'o (Property of the Diplomatic Record Office of the Japanese Ministry of Foreign Affairs).

Figure 2-b. A ratification statement by the Japanese emperor Meiji on the Choson-Japanese Amity Treaty of 1876 (Property of the Diplomatic Record Office of the Japanese Ministry of Foreign Affairs).
“agreement” rather than a “treaty.” As an agreement that was concluded by force, it contained flaws in its fundamental aspects. The “Convention of 1905” contained only a document of the agreement; it did not have full powers or the emperor’s instrument of ratification. Therefore, it lacked the fundamental items necessary for it to serve as a diplomatic agreement that covers such an important matter as the transfer of diplomatic rights.

(3) The Japanese government vacillated between pursuing a full treaty or an agreement and, at the last moment, chose to use the form of an agreement. In the last-minute confusion, Japanese officials forgot to give it a proper title (see Figure 3). Although the Japanese expected fierce resistance from the Korean government and had prepared a draft of an “agreement,” it still pressured Korea to accept a “treaty” at the beginning. Japanese officials initially used “Kankoku gaiko itaku joyaku” (Treaty to Transfer Korea’s Diplomatic Rights) as the official title for the document, as

![Image of the Convention of 1905](image_url)

Figure 3. The first (right) and last (left) pages of the “Convention of 1905” between Korea and Japan. The first line where the title should have been was left blank.
confirmed in the telegrams sent to and from Seoul and Tokyo after November 17. When Ito Hirobumi paid a visit to Kojong, Ito requested that Kojong issue full powers to the Korean representative, showing that Japan wanted negotiations to lead to a treaty if possible. Kojong refused to the end to comply with such requests, and Korean officials also put up stiff resistance when the cabinet was forced to convene. Therefore, proceeding with their original plan, Japan presented Korea with a draft of an agreement and pressured the Ministry of Foreign affairs to sign it. In all communications between Seoul and Tokyo after November 22, the document was always referred to as an “agreement” not a “treaty.”

The “Convention of 1905,” by which Japan gained a protectorate over Korea, was concluded on November 17 as an agreement; however, the first line of the agreement, where the title should have been, was left blank. Because the nature of the agreement was still undecided during preparations of the document, the space for the title was left blank even though the draft of the document was completed. In the midst of all the confusion of Japan’s military coercion and Korea’s resistance, the blank space remained unfilled. It is possible that Japan intentionally avoided using the term “agreement” since it was not suitable to a situation of this magnitude, even after they had agreed on making it an “agreement.” For whatever reason, the “Convention of 1905,” the document that brought about the greatest tragedy in modern Korean history, had no title attached to it. Titles were all attached subsequently to “The Second Japanese-Korean Agreement,” the “New Japanese-Korean Agreement,” and the “Protectorate Treaty of 1905” in order to hide its flaws.

(4) When Japan notified the U.S. and Great Britain of the agreement’s conclusion, it changed the status of the document. The Japanese government translated it into English and then notified the two countries of its conclusion on November 22. In the translation, the agreement was called a “convention,” a term that was not in the original. One would expect that the translation
should not have a title if it is missing in the original. If some sort of title was necessary, it should have used “agreement” which was the proper term. Since the term “convention” is usually used for special matters such as postal agreements, admissions to the Red Cross, and copyright protection, it has more importance than an “agreement.” By using the term “convention” instead of “agreement” in the translation, Japan was acknowledging that an “agreement” was inappropriate to deal with matters of such significance as the transfer of diplomatic rights. It should be noted that even “conventions” are rarely used to cover political matters.

(5) During the last stage of negotiations for this “agreement,” Japan used force to obtain the signature and seal of Korea’s Foreign Minister on the document. Escorted by military police, Maema Kyosaku, the official interpreter for Ito Hirobumi, entered Korea’s Ministry of Foreign Affairs and confiscated the official seal of the Minister of Foreign Affairs. After forcing the minister to sign the document, the Japanese affixed the seal themselves (Hwangsong sinmun, 9th year of Kwangmu, November 25; Nihon gaiko bunsho, vol. 38, no. 1, item 11, 287, “Note on the newspaper article regarding the signing of the Japanese-Korean Agreement”). The signing of the agreement was a clear instance of force and coercion. The fact that the Foreign Minister did not bring his seal to negotiations where Korea was being forced to accept the agreement shows that he was not attending in the capacity of the representative of his country. In fact, Kojong had never appointed a representative for the negotiations as he had not acceded to Ito Hirobumi’s request to issue full powers. As will be discussed below, Kojong later wrote, “I never allowed the government to affix the official seal on that document” in the official letters he sent to nine heads of state in June 1906. While Hayashi’s title was given in the document as “Minister Extraordinary and Plenipotentiary of the Japanese Empire,” Pak Che-sun’s official title was “Minister of Foreign Affairs.” Japanese military force compelled him to sign the document, but he did so only as a
member of the Korean cabinet. As Kojong himself mentioned in his letters, an agreement that has no full powers and instrument of ratification and that contains such flaws clearly has no legal force.


After the “Convention of 1905” was concluded, all foreign legations in Korea returned to their respective nations at Japan’s request. Faced with such circumstances, Kojong turned to the sovereign leaders of the countries with which Korea had earlier established treaties of friendship or commerce. On at least five occasions over the next few years, Kojong requested their help in recovering Korea’s diplomatic rights. Because the emperor’s palace was surrounded by Japanese spies and troops, all his efforts had to be carried out covertly. When he realized that his efforts would likely fail because of the lack of cooperation of the U.S. and Britain, he planned to ask for the assistance of the International Court at The Hague by sending a special delegate to the Second Hague Peace Conference in June 1907. When this plan was revealed, Japan declared that Kojong had committed treason and that sending a delegate to The Hague was a violation of the “Convention of 1905.” It used this opportunity to force Kojong, who had continuously resisted Japan’s efforts to colonize Korea, to abdicate on July 22. Early in the morning on July 22, the Japanese Resident-General ordered the 1st battalion of the 51st regiment of the “Military Force Stationed in Korea” to enter the palace and arrest all the key supporters of the emperor under the pretext that the officers of the emperor’s Imperial Guards were plotting to assassinate the pro-Japanese members of the Korean cabinet, including Yi Wan-yong. Japan decided that the crown

11. See Yi Tae-jin, “The Residency-General’s Seizure of Emperor Kojong’s Official Seal and the Forgery of Kojong’s Signature” (see note 3).
prince would be easier than the emperor to manipulate and control in completing their seizure of Korea. Kojong continued to resist the Japanese, but the crown prince was still recovering both physically and mentally from a recent attempt to poison him.

Claiming that a new emperor ascended to the throne on July 22, Japan demanded a new agreement from Korea on July 24. The objective of this agreement was to transfer not only Korea’s diplomatic rights but also its internal rule to the Resident-General who would function as the regent of the emperor. Since this agreement was concluded under coercion in a situation where Kojong did not recognize the “Convention of 1905,” it contains even more problems than the previous agreements discussed above.\(^{12}\)

(1) Because preparations for the new agreement involved the emperor’s abdication and the dissolution of the Imperial Guards, more Japanese troops were necessary. On July 21, the Japanese government decided to dispatch an additional brigade to supplement the “Military Force Stationed in Korea.”

(2) Ito Hirobumi, Resident-General of Korea, and Yi Wan-yong, Prime Minister of Korea, signed and affixed their official seals on the document. Significantly, neither one used the official title of “Plenipotentiary Representative” (see Figure 4). Since the position of resident-general was established after the “Convention of 1905,” the title had no meaning to Korea, which rejected the validity of the convention. The Korean representative would have needed full powers from the new emperor, as demanded by Japan. However, as was true for the “Convention of 1905,” such documents have not been found yet for this agreement. Kojong was in conflict with Japan by maintaining the position announced in the imperial edict of July 18 that stated that he had handed over only administrative duties to the crown prince. Therefore, it is unlikely that the “new emperor” had appointed a plenipotentiary representative.

\(^{12}\) Ibid.
(3) For a matter like the transfer of domestic rule — as with the transfer of diplomatic rights, an agreement must follow the forms and procedures of a formal treaty in order for it to have legal force. However, it was handled as an informal agreement completely for the sake of Japan’s convenience. Just like the “Convention of 1905,” this agreement contains neither full powers nor an instrument of ratification.

(4) After this agreement was concluded, Resident-General Ito Hirobumi had virtually complete authority over domestic affairs, having become like the regent of the emperor, and committed the following illegal acts. On July 31, Ito committed forgery by authoring an imperial edict to dissolve the Korean army in the emperor’s name, which he then had translated and announced in Korean. Between October 18, 1907 and January 18, 1908, he enacted sixty pieces of legislation that dealt with the reorganization of the government and deprived Korea of control of government finances. Ito overlooked or arranged matters so that
officials of the Residency-General’s Document Section could forge the emperor’s signature.

2.5. Treaty Regarding the Annexation of Korea to the Empire of Japan (August 22, 1910)

The most important basis for Japan’s claim for the legality of the annexation of Korea is this treaty which was signed on August 22, 1910 and proclaimed on August 29. To this day, Japan claims that there were no irregularities in the form of this treaty. However, it has been revealed that there was a decisive flaw in the final step in acquiring the Korean emperor’s approval of this treaty.\textsuperscript{13}

Perhaps aware of the problems with the previous agreements, Japanese officials in charge of the treaty took utmost care to make sure that it had no flaws. They believed that the problems of the previous agreements would all be cured if the annexation treaty was concluded properly, thereby terminating the earlier agreements with it. The original documents related to the treaty are kept in the archives of the Kyujanggak at Seoul National University and are as follows:

(a) A proxy statement from Emperor Sunjong to Prime Minister Yi Wan-yong.
(b) A treaty text signed and sealed by the plenipotentiary representative from both sides.
(c) A memorandum from both sides to proclaim the treaty and an imperial edict to announce the annexation of Korea to Japan.
(d) An imperial ordinance from Emperor Sunjong announcing the annexation of Korea to Japan.

These documents constitute all the necessary conditions for a treaty; there is the proxy statement, the treaty itself, and an imperial ordinance that was used as a ratification statement. There

\textsuperscript{13} See Yi Tae-jin, "The Treaty Regarding the Annexation of Korea to the Empire of Japan and the Forgery of the Royal Edict."
even is a document from both representatives agreeing to use the announcement of imperial ordinances from both emperors instead of a ratification statement. Although it seems that these documents would be enough to substantiate claims for the legality of the treaty, examination of its contents reveals that there is a significant flaw in document (d).

In a top-secret document, Terauchi Masatake, the third Resident-General who was in charge of treaty negotiations, described the events that led to the treaty. Terauchi asked Yi Wan-yong for as much cooperation as possible because he wanted the treaty to be concluded through mutual agreement rather than according to “time-honored custom” whereby the treaty would simply be read in front of the emperor. After many secret communications between the two, they were successful in obtaining full powers (document a) from Emperor Sunjong on August 22. Although there are records that show that Sunjong may have resisted initially, he affixed the imperial seal and signed his name on the full powers. Yi Wan-yong then brought the full powers to Terauchi’s office and drafted and signed the treaty there; therefore, there were no problems with the actual form of the treaty. The next problem was obtaining a document that could serve as an instrument of ratification. Since Korea would no longer exist once the treaty was announced, there would be no time to obtain ratification of the treaty, the final procedure for its approval. To solve this problem, the representatives of both sides prepared a document in which they agreed to issue an imperial ordinance from both emperors announcing the annexation in place of an instrument of ratification. In article 8 of the treaty text prepared by Japan, it was provided that the treaty had already been approved by the emperors of both countries. However, it is nonsensical to announce a treaty’s approval beforehand since a treaty cannot be valid until its contents are ratified. The two sides agreed to issue the imperial edict as a way of belatedly handling this problem. In any event, this was how the imperial edicts by
the two emperors came to replace the ratification statements. However, there is no signature over Sunjong’s official seal in the original of the imperial message that is kept in the archives of the Kyujanggak. Citing the Agreement of 1907, Japan ordered on November 18, that all official documents in Korea must be composed according to Japanese convention and have a signature as well as an official seal (see Figure 2-b). Since then, all official documents requiring the emperor’s approval followed this procedure. The full powers (document “a”) also had the emperor’s signature, albeit shaky, written over the official seal (see figure 5). All the imperial edicts, orders, and statutes from Sunjong’s reign that are kept in the Kyujanggak have the emperor’s seal and signature, with the sole exception of the final imperial message that announced Korea’s annexation. There was also no signature, only a seal, on duplicates of the edict that the Government-General of Korea later produced for propaganda (see Figure 6). The same can be confirmed in the *Choso choyak kup pomnyong* (Imperial Edicts, Treaties, and Laws) which was published by the Residency-General of Korea on September 8, 1910. All the relevant

Figure 5. A proxy statement issued by Emperor Sunjong, allowing Korean Prime Minister, Yi Wan-yong, to act as a “Plenipotentiary Representative” of the Korean emperor. Sunjong’s signature is clearly visible over the official seal.
documents, including the Japanese emperor’s edict, have both seals affixed and signatures, except for the Korean emperor’s proclamation edict, appended at the very end of the volume, which had only a seal (see figure 7).

Because all domestic matters had to be submitted to the prior approval of the Resident-General since the Agreement of July 23, 1907, the Korean emperor’s official seal was in his possession. Therefore, the seal alone is not sufficient to demonstrate that the emperor gave his approval to the treaty. There were only two days between the drafting of the imperial edict and its planned
Figure 7. Choso choyak kup pomnyong (Royal Edicts, Treaties and Laws), published by the Residency-General of Korea on September 8, 1910, included the Japanese emperor’s royal edict (right), announcing the annexation of Korea to the Empire of Japan and the royal edict (left) by the Korean emperor. On the latter Emperor Sunjong’s signature is clearly missing.

announcement (August 27-29). The U.S. and England had been notified in advance about the announcement of the annexation. The only possible explanation for the emperor’s missing signature is that he resisted the efforts to force him to sign it during those two days. Unable to miss the deadline that they had announced to the international community, Japan submitted the document affixed with only the seal that was kept by the Residency-General. If this interpretation is correct, it means that the Korean emperor did not approve of the “annexation” and that, therefore, the annexation of Korea had no legal foundation.

A detailed analysis of the five agreements that Japan forced from Korea in order to seize its sovereignty leads to the conclusion that Japan’s annexation of Korea does not need to be nullified because it never occurred. In the case of the “Convention of 1905,” nullification may have been necessary, but now that all the coercion, military threats, deceit, and manipulations have been revealed, it would be closer to the truth to argue that it never was
legal. Without a legal annexation, Japan’s thirty-six year rule of Korea was, of course, an illegal occupation. If one accepts the illegality of the annexation, then there is no longer any need to continue the discussion between the two countries on when the agreements became nullified.

3. The Movement to Nullify the Forced Treaties

Japan’s seizure of Korea’s sovereignty after the Russo-Japanese War was carried out with force and coercion through the five agreements discussed above. Although Korea had known of Japan’s intentions at least six months earlier, it was too weak militarily to prepare an effective defense. As soon as Kojong assumed power in 1872, he started efforts to build up Korea’s armies. However, the country was in such political turmoil after the Soldiers’ Riot of 1882 that even the smallest efforts were unsuccessful. When the country became an independent state and its financial situation improved after the proclamation of the Great Han Empire, efforts to reform the military began to produce much anticipated results. However, even at the turn of the 20th century, Korea’s only true military force was the 14,000 troops of the Imperial Guards. The Imperial Guards had sufficient strength to defend the capital, but Korea was still not able to begin building an army and navy for national defense. In May 1903, Kojong issued an imperial edict ordering preparations to create the first military draft system ever with the purpose of establishing an army and navy. By the end of the year, the situation in Japan already became worrisome. Since Korea lacked a strong military force, it had to rely heavily on diplomatic means to respond to external threats. Anticipating the outbreak of hostilities between Russia and Japan, Kojong personally dispatched an official letter
to the Russian czar on August 15, 1903, requesting an alliance with Russia. As an alternative, he also considered the possibility of declaring Korea a neutral country. When it became clear that Japan would declare war on Russia, Korea quickly proclaimed its neutrality to the foreign powers on January 1904. However, Japan sought to obstruct Korea’s proclamation of neutrality and finally declared war on February 6.

As Japan started the war with Russia, it also kidnapped Kojong’s supporters such as Yi Yong-ik, Hyon Sang-gon, Yi Hak-kyun, and Kil Yong-su, the officials behind the neutrality proclamation, and brought them to Japan. After this was carried out, Japan presented Korea with the diplomatic agreement that became the Protocol of 1904. The protocol contained a provision that allowed Japan the use of Korean military bases, but it also clearly guaranteed Korea’s independence. However, the guarantee was nothing more than a stratagem that Japan used to draw Korea to Japan’s side since the outcome of the war was still unclear at the time. When the tide of the war became favorable to Japan, Japan pressured Korea in August 1904 for negotiations for a new agreement, clearly revealing its aggressive intentions toward Korea. In article 3 of the draft of the agreement, Japan demanded that the Korean government had to consult in advance with a representative of the Japanese government concerning Korea’s relations with other countries. Kojong vehemently opposed this demand. Japan used military threats and succeeded in obtaining the signature of the acting Minister of Foreign Affairs on the condition that the term “representative” be omitted. When Japan informed the U.S. and England about the agreement, it changed the title of the document from “memorandum” to “agreement” and made it appear that Korea had willingly transferred its diplomatic rights to Japan. Furthermore, on the basis of this agreement, Japan concluded secret agreements the following year with these two countries that acknowledged Japan’s right to establish a protectorate over Korea, and in November, Japan coerced Korea to
accept the “Convention of 1905” which made Korea’s protectorate status official.

Kojong was persistent in expressing his opposition to the convention that deprived Korea of its diplomatic rights. In audiences with the emperor or in their memoirs, some Japanese officials later noted that Kojong had agreed to the provision that the protectorate would last only until Korea could support itself and that Kojong had delegated his authority to the cabinet. Even if these statements were true, they have no legal force because they do not appear in any document. The documents do show clearly Kojong’s opposition to the protectorate. Kojong’s efforts to nullify the “Convention of 1905” were centered on the U.S. and the other Western powers, and it was carried out in the following six stages:14

(1) November 26, 1905: Kojong sent a letter to Homer B. Hulbert asking him to convey to the U.S. government a message that the convention was essentially invalid. Hulbert forwarded this letter to the Deputy Secretary of State, but his efforts were ignored.

(2) November 22-30, 1905: Through Elliot, an attorney for the Seoul office of Collbran & Bostwick Development Co., Kojong sent a confidential letter and a carte blanche to Allen, the U.S. minister to Korea, who happened to be in the U.S. at the time.

(3) December 11, 1905: Kojong ordered Min Yong-ch’an, Korean minister to Paris, to go to the U.S. to meet Elihu Root, the U.S. Secretary of State. In a December 19 letter, Root refused Korea’s request for assistance.

(4) January 29, 1906: In order to prevent the imminent establishment of the Residency-General of Korea, Kojong made a request of the other powers that they be co-protectors of Korea for a period of five years. Kojong expressed his desire through Douglas Story, a reporter for the British newspaper, The Tribune.

(5) June 22, 1906: Through Homer Hulbert, Kojong sent letters to the heads of state of each of the nine countries with which Korea had signed treaties of commerce and amity and requested that

they send their consuls to Korea again since the “Convention of 1905” was invalid. He also revealed Korea’s desire to petition the International Court at The Hague.

(6) April 20, 1907: Kojong sent a special envoy to the Second International Peace Conference at The Hague to inform the nations of the world about the invalidity of the “Convention of 1905.”

Immediately after the “Convention of 1905” was forced on Korea, Kojong actively began efforts to nullify the convention, focusing his efforts on the U.S. as shown above. The U.S. was the first country with which Kojong concluded an equal treaty of commerce and amity in order to break away from the Chinese world order and to enter the new world order as an independent state. The ministers and personal advisors sent from the U.S. had increased Kojong’s trust in the U.S. had also demonstrated its willingness to keep its promise of “good offices” as indicated in the Korean-U.S. Treaty of Amity and Commerce of 1882. When Korea tried to send Pak Chong-yang as the first Korean minister to the U.S. in 1887, the U.S. blocked China’s efforts to prevent his departure. In view of its past efforts to aid Korea, the U.S. should have felt a duty to help Korea in the new crisis it was facing. However, the U.S. government was extremely uncooperative to Korea’s efforts to nullify the “Convention of 1905.” The U.S.’s attitude was a result of a change in foreign policy that occurred when a Republican administration came to power.

There were significant differences in the foreign policies of the Democratic and Republican administrations after the 1880s; in general, the Republicans adopted much more aggressive policies than the Democrats. For example, while Democrat president Grover Cleveland (1885-1889, 1893-1897) opposed a military occupation of Hawaii, Republican Theodore Roosevelt (1901-1909) supported the claims of American plantation owners and carried out a military occupation there. After the Spanish-American War, the Republican administration pursued an aggressive policy of
expansion in the Pacific, seeking to occupy the Philippines. Since a military occupation of Hawaii and the containment of Russian expansion became important to the U.S., it actively supported Japan in the Russo-Japanese War. Kojong’s diplomatic efforts toward the U.S. failed not because he was ignorant of international affairs and put too much trust in the U.S. but because of the change in U.S. foreign policy after the change of administration.

Kojong explicitly explained the reasons why the “Convention of 1905” was invalid in Kojong’s personal letters mentioned above. The leaders he wrote to were not chosen randomly, but they were the heads of the nine states with which Korea had concluded treaties of commerce and amity.  

The reasons he gave were as follows:

1. The signatures of some ministers were not obtained properly but through intimidation.
2. Kojong never authorized the Cabinet to sign the document.
3. The cabinet meeting for the signing of the convention was not conducted according to the laws of Korea, but Japan forcefully convened the meeting by detaining the ministers.

After pointing out these facts, Kojong stated that the convention was automatically nullified because it was in violation of international law. Kojong’s arguments were impeccable in terms of international law; however, his letters never reached the heads of state. His efforts were too little to overcome the international status that Japan gained after its victory in the Russo-Japanese War. As a final effort, Kojong sent an envoy to the Second International Peace Conference to expose Japan’s brutality, but Japan forced Kojong to abdicate, claiming that his acts were in violation of the “Convention of 1905.”

Emperor Kojong’s resistance was ineffective in the face of

15. Professor Kim Ki-sok was the first to confirm that the original letter by Kojong is kept in the Library of Rare and Manuscript Documents at Columbia University. See the article mentioned in note 14.
Japanese military power, but his efforts were not meaningless. Even though he was forced to abdicate, he continued to be a symbol of the Korean people’s resistance against Japan. Even after the annexation, his subjects continued to trust and to be loyal to their emperor. Most of the resistance movements, both domestic and overseas, had the objective of restoring the sovereignty of the Great Han Empire. When a rumor spread in January 1919 that Kojong had been poisoned to death by the Japanese, nationwide demonstrations broke out. While Kojong was alive, there was no resistance group that officially renounced the Great Han Empire. Kojong occupied a central place in the history of modern Korea as it changed from a dynasty to an empire to a republic in its efforts to resist foreign threats and preserve its existence as an independent state.

Even foreigners argued that Japan’s annexation of Korea was unlawful. A few months after the conclusion of the “Convention of 1905,” Francis Rey, a French legal scholar, published a paper entitled “The International Situation of Korea” (“La Situation Internationale de la Coree, Revue Generale de Droit International Public, Tome XIII, 1906), in which he strongly denounced the convention as illegal according to international law. Rey pointed out two reasons why the convention had no legal force. First, the Korean representative was coerced to sign the document, and second, Japan ignored its duty to guarantee Korean independence and the integrity of its territory as agreed to in the Protocol of 1904.

Rey’s article was not the end of interest in Korea in the international legal community. In 1927, the American Society of International Law asked Harvard Law School to prepare a draft convention on international treaty law. The Harvard Law School report, which was submitted in 1935 (Supplement to the American

Journal of International Law, vol. 29, 1935), followed Rey's arguments closely and cited the “Convention of 1905” as one of four historical precedents of a treaty that was legally invalid because the representative of one side was subjected to coercion. The judgment of the international legal community was acknowledged by the United Nations after World War II. In a 1963 report to the General Assembly on international treaties, the U.N. Commission on International Law accepted the arguments of the Harvard Law School report on the illegality of treaties concluded through force or coercion.  

The international legal community's view on the illegality of Japan's annexation of Korea was not unrelated to the efforts of Korea, led by Kojong, to nullify the treaty and all the other agreements before it. The Great Han Empire had employed several foreign advisors such as Laurent Cremazy, a French jurist, and their efforts were probably what made research by international law scholars such as Francis Rey possible. In this context, the U.N. General International Law Commission's 1963 decision to acknowledge the invalidity of the “Convention of 1905” can be seen as the culmination of Kojong's efforts to nullify the agreements. The resistance movement, originally led by Kojong, had never ceased even at the international level.

17. The four historical precedents were as follows: a) The surrounding of Poland's Diet in 1773 to coerce its members into accepting the treaty of partition, b) The coercion used on the Emperor of Korea and his ministers in 1905 to obtain their acceptance of a protectorate treaty, c) The surrounding of the national assembly of Haiti by the United States military in 1915 to force its members into ratifying a convention, and d) The obtainment by force of the signatures of President Hacha and the Foreign Minister of Czechoslovakia for a treaty establishing a German protectorate over Bohemia and Moravia. Yearbook of the International Law Commission, 1963, vol. II. Documents of the fifteenth session including the report of the Commission to the General Assembly, United Nations.
4. Conclusion

In 1951, Korea and Japan began negotiations to settle their past grievances, and after numerous meetings, the two countries concluded the ROK-Japan Treaty on Basic Relations as well as several other agreements in June 1965. They “considered the historical background of the relationship between their peoples and their mutual desire for good neighborliness and for the normalization of their relations on the basis of the principle of mutual respect for sovereignty.” Article 2 of the treaty explicitly stated, “It is confirmed that all treaties or agreements concluded between the Empire of Korea and the Empire of Japan on or before August 22, 1910 are already null and void.” However, Korea and Japan have held completely different views on the meaning of the phrase “already null and void.”

The Korean government clearly stated its position that all agreements concluded before 1910 were invalid; it declared that “the Annexation Treaty of August 22, 1910 and all previous agreements concluded between the Great Han Empire and the Empire of Japan were null and void regardless of their title and regardless of whether they were concluded between the two governments or the two emperors” (Government of the Republic of Korea, “Commentary on Treaties and Agreements between the Republic of Korea and Japan,” 1965). On the other hand the Japanese government took the position that all past agreements became null and void on August 15, 1948 when the Republic of Korea was founded, claiming that the Annexation Treaty of 1910 and all preceding agreements were valid at the time of their conclusion (Response by Fujisaki, director of the treaty office of the Japanese government, to the Special Committee of the House of Councilors). The different views on the point of time that the agreements were nullified led to a difference of opinion on the
financial payment that Japan would make to Korea. Korea viewed it as a reparation for the illegal 36-year occupation of Korea, while Japan saw it as a congratulatory donation for Korea’s independence.

Considering the importance of the 1965 Treaty, discussion on differences between the two sides has been woefully insufficient up to now. Rather than addressing past wrongdoings, the agreement was concluded with the main issues left undecided. The failure to resolve these issues is one of the main reasons that Japanese political leaders have continued to make “unacceptable statements” even half a century after Korea’s liberation. The ROK-Japan Normalization Treaty of 1965 is generally seen as a combination of the interests of U.S. policy in Northeast Asia and the economic development policies of Park Chung Hee’s military regime. With the Allied victory in World War II, the U.S. originally planned to hold Japan responsible for the war in order to make Japan a democratic state. However, after China became communist in the late 1940’s, the U.S. felt that it was necessary to revive Japanese industry and allow capitalist development in order to use Japan as a bulwark against the southward expansion of communism. It was generally assumed that the South Korean economy would develop through Japanese assistance. Under this policy, the U.S. allowed the bureaucrats from the prewar period to form the Liberal Democratic Party and to return to power, and it also encouraged Korea to enter into talks with Japan to settle past grievances. These events were the background to the start of talks between Korea and Japan in 1951.

At the time, the Syngman Rhee regime adopted vehemently anti-Japanese policies and refused U.S. requests to enter into negotiations with Japan. Korea began to accept U.S. policy during the Third Republic, which was formed through the military coup of May 1961. The military regime declared that economic development was the justification for the coup; therefore, they needed capital to carry out such policies. This was one reason that
Korea found it difficult to ignore U.S. requests to enter into talks with Japan. Korea also had little choice because the U.S. was extremely critical of the justification for the coup. Korea-Japan talks began to progress rapidly after the conclusion of the Kim-Ohira Memorandum in 1963 which settled the amount of the "Economic Assistance Fund" that Japan would pay to South Korea. After the treaty documents were drafted and exchanged in 1965, the Korean government managed to maintain a bit of national pride in its interpretation of the phrase "already null and void," but it cannot avoid the responsibility for the problems and controversy caused by the treaty. At the time, many people criticized the treaty as unsatisfactory and opposed the government’s approval of it. Above all, the Korean government made a serious mistake by losing the opportunity to change the Japanese people’s view of Korea. Is it still possible to argue that everything was settled with the Normalization Treaty of 1965? While proclaiming to resolve the past grievances between the two countries, the Normalization Treaty left many key issues unresolved. The intellectuals and political leaders should not view these issues as part of an unalterable past but should stake their honor and conscience and seriously examine these issues again. It would be irresponsible to avoid reopening discussion on the treaty if it is agreed that the treaty has worsened nationalist sentiments and has not narrowed the difference between the two countries’ positions on their past history. Even if the treaty is viewed only as an agreement between two governments, it should be reexamined because it may cause problems that can affect the future of the relations between the two countries. Furthermore, the situation that led to the Normalization Treaty has not remained unchanged. The U.S.’s Northeast Asia policy after 1950 marked the end of the movement to nullify the "Convention of 1905" and the beginning of a new period of history. Supported by scholars of international law, the movement that had been led by the resistance of Kojong and his subjects came to be recognized by the U.N. General
YI: The Annexation of Korea Failed to Come into Being~

Assembly; it was then succeeded by a new period of history whose focus was the struggle against communism. However, the U.S.'s Northeast Asia policy was not permanent and has changed during the past thirty years. U.S. policy began to change after the mid-1980s with the end of the cold war, and the political dominance of the Liberal Democratic Party in Japan, which was supported by this policy, also came to an end. The end of the cold war made it apparent that Korea and Japan still had not resolved their past grievances. Within the long history of mutual relations between the two countries, the period of American influence was actually only a brief moment in time. If the situation in the past prevented certain issues from being resolved or even discussed, there should be renewed efforts to find a fundamental solution to these problems, and a fundamental solution can be achieved only if there is respect for the truth. It is impossible to exaggerate the importance of investigating the true facts of the unfortunate relations in the past between the two countries.

The officials involved in the 1965 Normalization Treaty ignored the position taken by the U.N. General Assembly in 1963 on the “Convention of 1905.” Such actions clearly show how the movement to nullify previous treaties and agreements between the two countries became superseded by the exigencies of the U.S.'s policy that sought to create an anti-communist block in Northeast Asia. While it is true that the resolutions of the U.N. General Assembly are not legally binding, they are significant in establishing what is justice in international relations. It is all the more necessary to keep in mind the significance of the U.N. International Law Commission’s resolution since popular sentiment and relations between both countries have worsened because of the “unacceptable statements” by Japanese politicians. While the U.N. International Law Commission followed international standards of justice and accepted the facts about the events surrounding the treaties, the Normalization Treaty disregarded international justice and the facts of history, yielding to the needs
of a temporary situation. Since it has become clear that such facts can no longer be ignored, there needs to be an effort to focus on the main issues again. Such an effort will be the only way to find a fundamental solution to these problems.

Up to now, the debate on the legality of Japan’s annexation of Korea has focused on the nullification of the agreements. Examples include Kojong’s efforts to nullify the “Convention of 1905” and the controversy on the phrase “already null and void” in article 2 of the 1965 Normalization Treaty. However, recent research on the five agreements leading to the annexation suggests that the focus of the debate should be changed from determining when the protectorate treaty became “null and void” to showing that the annexation never took place. So many instances of coercion, deceit, and illegalities in the procedures and drafting of the documents have been revealed that it is impossible to argue that the annexation ever took place legally. And if the annexation never took place, then it will no longer be necessary to argue about nullification because it is not necessary to nullify an event that never happened. In addition, since Japan’s thirty-six year rule of Korea was based on an annexation that never took place, then the illegality of Japan’s occupation is even more evident.

If Japan accepts the fact that its occupation was illegal, then it must pay reparations to Korea. However, it was not my intention to get more reparations from Japan when I argued that the two countries must resolve their past grievances. Rather, once the illegality of the annexation is accepted, there can be other ways of handling the issue of reparations. For example, the South Korean government will not require any further monetary reparation, but the “Economic Assistance Fund” that Japan paid according to the Normalization Treaty should be declared a “reparation” rather than a “congratulatory donation” for independence. Also, there can be discussion on the issues of reparation for individual damages and for North Korea. The future of relations between the two countries will depend on whether the Japanese government will
acknowledge the coercion and deceit committed in the process of annexation, whether it accepts the illegality of its harsh thirty-six year rule of the “colony,” and whether it will make proper reparations as a sign that it accepts responsibility for its past actions.