Korea and Japan should Not Fall in the Pitfall of the Old Treaties: An Answer to the Treatise by Prof. Yi Tae-jin

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1. Introduction

Prof. Yi Taejin of Seoul National University published his article “Annexation of Korea Failed to Come into Being” in the July and August issues of the journal Sekai. He demonstrated that the validity issue of the old Korean-Japanese treaties signed in and before 1910 (the annexation treaty and earlier treaties) had never been resolved by the Korean-Japanese Treaty of 1965, but is still being discussed by Korean scholars. Needless to say, the invalidity of the old treaties was argued until the last minute of the 1965 negotiations between the two countries. As Prof. Yi reminded us, the Korean government maintained that the new treaty must include a clause to confirm the nullity of all the treaties concluded between the two governments in and before 1910. The Japanese government, however, argued that the old treaties had been legally valid until the liberation of Korea on August 15, 1945. The treaty of 1965 did not clarify the timing of invalidation of the old treaties because neither side was willing to compromise. Article 2 of the
treaty simply stated, “It is confirmed that all the treaties and agreements concluded between the Japanese Empire and the Great Korean Empire on and before August 22, 1910 are already null and void.” The two countries explained the meaning of the phrase, “already null and void,” differently in their respective parliaments. The treaty itself notes that one must refer to the original English version when a problem in interpretation arises.

According to the Japanese government (Atomiya, chief of the Asia department, Foreign Ministry), the term “already” was inserted because the old treaties and agreements had previously been valid. According to the Korean government (Yi Tongwon, Foreign Minister), however, the phrase “null and void” in international law most strongly expressed the annulment, and the term “already” did not mean validity of the treaties at any particular point of time. We can conjecture, based on the memoir by Ambassador Kim Dong Jo who led the negotiations, that the Koreans proposed the insertion of the term “already” as a reward to the Japanese who had offered to compromise on other issues. According to Kim, the term allowed room for varying interpretations depending upon one’s viewpoint. In other words, the two countries understood, from the beginning, that this critical sentence would be interpreted in two different ways, according to the viewpoint of each country. As Prof. Yi appropriately stated, “The new treaty did not resolve the problem of the past, but rather left its central issue unresolved.”

The Korean government began to show a slight change in their approach to this issue with the administration of President Kim Yong-sam. When Prime Minister Murayama spoke in the Lower House on October 5, 1995 of his belief that Japan signed and carried out the treaty of annexation with Korea legally, Korea’s Foreign Minister summoned the Japanese Ambassador in Korea to convey his view that the treaty was invalid from the beginning as it was forced upon Korea against its will. In response to such reactions from Korea, Murayama clarified his view on October 13
as follows: “The annexation treaty was signed against the historical background of that age. Although it was concluded legally, our country needs to reflect deeply upon its ramifications. I do not believe that the two parties were on an equal footing when they concluded the treaties.” Thirty years ago, Prime Minister Sato Eisaku stated that the old treaties were signed and concluded as a result of the will of the two countries as equals. Murayama should be commended as his views reflect the facts behind the old treaties more closely.

Yet, because Murayama did not deny the legality of the old treaties, the Korean parliament reacted strongly against his statement and demanded that the Japanese government acknowledge the invalidity of the old treaties from inception. Thus, the old treaties continue to cause political problems as well as academic controversies. These are some of the historical problems the two countries face as President Kim Daejung prepares to pay an official visit to Japan. The fact that the majority of the Japanese believe these problems are long gone demonstrates the depth of the difference between the two countries.

Prof. Yi’s articles have drawn renewed attention to the issue of the validity of the old treaties. Apparently, his involvement in this subject began when he discovered that the Korean-Japanese Convention of 1905, which had deprived Korea of its diplomatic rights, held no seal or signature by Emperor Kojong, Korea’s sovereign at the time. Prof. Yi’s article in Sekai offers valuable information to those of us in Japan. The Korean parliament confirmed in its recent session that the Korean-Japanese Convention of 1905 had been void since its inception as it had been forced upon Korea, had had no signature or seal by Emperor Kojong, and had been called a “forced treaty” by him. We can see that Prof. Yi’s argument is not unique in Korea.

Prof. Yi has also pointed out that no ratification was exchanged after the signing of the Convention in 1905. According to him, along with the coercion, this constitutes another ground for
annulment. Another point he mentions is that Foreign Minister Pak was not given full powers. Because he considered the treaty of 1905, among the five old treaties, as the clearest case of the use of coercion and threat, and focused his discussions on it, I will deal mainly with the validity of this particular treaty from the standpoint of international law. The Korean-Japanese Convention of 1905 was a cornerstone for Japan’s annexation of Korea in 1910. If this treaty turns out to be invalid, the treaties that followed may lose their legal foundation.

I have learned much from Prof. Yi’s article, including Emperor Kojong’s protest and appeal to the international community and the possibility that his edicts were falsified. Given the limited space, in this paper I will be unable to respond to all the points he made regarding the five treaties.

2. The Validity of the Japanese-Korean Convention from the Viewpoint of International Law

As the title of his article, “The Annexation of Korea Failed to Come into Being” indicates, Prof. Yi furthers the previous arguments in Korea by arguing that, legally considered, the old treaties never even came into being. He writes, “there was so much coercion, falsehood, and legal violation in drafting and signing the treaties that we cannot acknowledge their legal validity” and concludes, “we need to shift gears from arguing the invalidity of the protectorate treaty to discussing the inexistence of the annexation.” Yet, in international law, if a treaty is determined to be invalid, say, because duress was applied, it is considered void from the beginning (void ab initio) and in this sense non-existent. Thus, his argument that the treaties never existed is not new. In any case, we need to reexamine from the viewpoint of
international law whether or not the Convention of 1905 was legally concluded.

Prof. Yi gives two reasons why the Convention is invalid. First, the Koreans were forced to sign by military threat. Second, despite the gravity of its contents, the Convention lacked appropriate formalities, including full powers issued to signers and ratification by the emperor. The contents, of course, were those of a protectorate treaty including the transfer of Korea’s diplomatic functions to the Japanese government. We must now discuss these points in detail.

2.1. Was duress used in the conclusion of the Korean-Japanese Convention?

The question is what type of duress was used in what manners. Today, international treaties are regulated by the Vienna Convention on the Law of Treaties, to which both Korea and Japan have become parties. It specifies two conditions that nullify a treaty: duress applied to state representatives (Article 51) and duress applied to the state through the threat of use of force in violation of the principles of international law embodied in the United Nations Charter. Although this stipulation normally does not apply to international treaties that were concluded before the Vienna Convention (the principle of non-retroactivity), exceptions can be made for rules of customary international law (Article 4). According to the customary international law of the time when the Korean-Japanese Convention was signed, duress to state representatives alone was recognized as a ground for nullifying treaties. At that time, international law did not prohibit war as a means of resolving international conflicts, and therefore a strong state’s forcing a weak state through military threats or exercises did not invalidate a treaty. The logic behind this is that, if treaties forced on a state were void, most of the peace treaties signed by the defeated would be invalid. If that were the case, the only way to conclude war would be through military conquest. In sum, we
need to determine which category of duress Japan applied to Korea at the time of the Convention when discussing its validity.

Prof. Yi describes in his article the decisions made by the Japanese cabinet on October 27, 1905 and the succeeding events including actions by the Japanese army. According to him, on November 17, 1905, the signing date of the Convention, the Japanese army surrounded Toksu Palace, the Korean emperor’s residence, and marched into the room where the Korean ministers were meeting. Many heavily armed soldiers were stationed at various locations throughout Seoul to keep an eye on the people. Here, I would like to look at the sequence of events surrounding the signing of the Convention in more detail. The Japanese government dispatched Ito Hirobumi as special envoy to work closely with Minister Hayashi, who was already stationed in Seoul. Ito entered Seoul on November 9, and the Convention was signed by the early morning of November 18. Thus, one may say that it took the Japanese ten days to have the Convention signed by the Korean government; the actual negotiations, however, were much briefer. Although Ito was granted an audience with Emperor Kojong and conveyed a message from Emperor Meiji on November 10, he was unable to exchange words with him on that day. Kojong was apparently avoiding Ito with a pretense of illness. When Ito was given another audience with Kojong on November 15, he presented the draft convention and pressured Kojong to approve it, saying that it was a “final draft with no room for changes.” With Kojong’s consent, negotiations between Hayashi and Foreign Minister Pak began on November 16 and continued the next day. In the course of the negotiations on November 17, the Korean government requested that it be given time for a council in the presence of Kojong. Ito became so impatient by 8:00 p.m. that he joined the council together with General Hasegawa and asked each minister’s opinion in a threatening manner. The Convention was consequently signed at 1:00 a.m. on November 18; the actual negotiation and signing took two short
days. Minister Hayashi described the way the Convention had been signed in his telegram to Foreign Minister Katsura: “Although they understood that they could not help this treaty in the current circumstances, none of them volunteered to support it...” Thus, no one can claim that the Convention was signed voluntarily by two equal partners.

Because the validity of past treaties is determined by international law contemporaneous with them, we cannot judge the Convention by the standards of today’s international law. The validity of the Convention depends on whether the kind of duress that international law at that time forbade was applied to Korea. The only duress clearly forbidden then was coercion of a state representative into signing a treaty by threatening to reveal his past wrongdoings or by putting a pistol to his head. As far as I see, the Japanese government tactfully pressured the Korean government to sign without resorting to such drastic measures. (It is said that *Kanmatsu gaiko hiwa* written by Captain Nishisajin Kingyo, who accompanied Ito in Korea, mentions that when Prime Minister Han was taken to a separate room, Ito looked at other Korean ministers and said that Han would be murdered if he continued to be stubborn. Although this would be the kind of threat prohibited by international law, I have been unable to verify this source.) As Prof. Yi pointed out, the Japanese government had already secured, prior to 1905, international approval of its hold on Korea, as seen in the Taft-Katsura Agreement with the United States, the Second Anglo-Japanese Alliance with Great Britain, and the Portsmouth Treaty with Russia.

Although it is clear that Japan pressured Korea at this crucial moment, we must examine the circumstances in more detail to see whether they applied duress to the Korean representatives. I have already mentioned that according to international law of the day duress applied to a state itself did not nullify treaties; we need to discuss this point further. Because a state is composed of individuals, “duress to a state” usually indicates duress applied to
State organs such as its sovereign or minister. Thus, in some cases it is not easy to delineate between duress to a state and duress to its representatives. The Korean-Japanese Convention is probably one of such cases. If one says that only duress to the state was applied, for instance, he must demonstrate that this duress was not directed to its representatives. It is doubtful that international law of the time provided adequate standards in this respect. Nevertheless, it is clear that the state that seeks invalidation of a treaty bears the burden of proof with specific evidence. For instance, Iceland appealed to the court of international law in 1973 regarding its documents exchanged with Great Britain in 1961. According to Iceland, Britain applied duress by its naval demonstrations in 1961, as they violated the 12 nautical mile fishing zone established by the Irish government in 1958. The court dismissed this claim because Ireland failed to provide specific evidence of the alleged duress.

Part of the evidence that Prof. Yi provides is Emperor Kojong’s campaign to invalidate the Convention. He argues that Kojong’s personal letters sent to the nine heads of the states with which Korea had official relations testifies to the invalidity of the Convention. In it, Kojong stated three points: the Japanese government employed duress at the time; he had not authorized the Korean government to sign the Convention; and his council was held not based on Korean laws but as a result of Japan’s abduction of the ministers. He maintained that the Convention was against the international law and consequently void. However, I hear that this letter, which was sent to the Russian Czar on June 22, 1906 and later discovered at Columbia University, has not been confirmed as an authentic document as it only bears an unregistered seal and lacks a signature. I would only like to say that we await further study of this document as I have no capacity to evaluate it. Prof. Yi states in another paper that Kojong, following his abdication, mentioned in a December 1914 letter to the German Emperor that the Japanese had taken away his
imperial seal. Again, we must await further studies that may clarify the loss of his official seal.

Prof. Yi argues that Kojong’s campaign to invalidate the Convention was finally rewarded by the United Nations’ General Assembly’s recognition of this matter in 1963, based on reports made earlier by Harvard University. It is true that, in discussions by the U.N.’s International Law Commission, the special rapporteur Waldock referred to the Korean-Japanese Convention as an example of duress to state representatives. Yet, this does not prove that the U.N. acknowledged it. As the commission’s reports were not final decisions but only preparatory discussions, it is inappropriate to use this report to conclude that the U.N. has acknowledged the use of duress in the process of signing the Convention. In fact, the commentary to Article 48 in the U.N.’s final draft for the 1969 Vienna Convention on the Law of Treaties (regarding duress to state representatives) in 1966, which condensed the final reports by the commission, does not refer to the Korean-Japanese Convention. Based on this, in March 1993, the Japanese government stated that this view had not gained a consensus in international society (Mr. Tanba, head of the department of treaties, Foreign Ministry).

2.2. Did the Convention lack appropriate legal formalities?

According to Article 9 of what amounted to a rudimentary constitution of the Korean Empire (*Daehan Jeguk Gukje*) of 1899, the emperor had the right to sign international treaties. Article 18 of Edict 1 of 1894 required the imperial signature and seal for the ratification of treaties. Prof. Yi argues that the Convention is void since it was only signed and sealed by Foreign Minister Pak of Korea and Minister Hayashi of Japan, and not by Emperor Kojong. According to him, the Convention, as it was a protectorate treaty, must observe the formalities of official treaties: full powers issued by the sovereign; original documents signed by both parties; and ratifications signed by the sovereigns. The Convention
clearly did not meet the requirements for an international agreement dealing with such important matters as the transfer of diplomatic rights of a state.

Prof. Yi assumes that a treaty of this importance must have appropriate formalities including ratification. Yet, if ratification had been required of the Convention, it should have had such a stipulation. We know that there was no such stipulation. Apparently, the matter of ratification was not discussed between the two governments before signing, and thus no agreement existed regarding this matter. The Japanese government apparently did not think the Convention was the kind of treaty that required ratification. Because the Convention transferred Korea’s diplomatic rights to Japan, protection of Korean nationals overseas became a responsibility of the Japanese government. When inquired by the Japanese minister to Great Britain on November 28, merely ten days after the signing of the Convention, Foreign Minister Katsura instructed him to protect Korean nationals because “the Korean-Japanese Convention has already taken effect, which requires that Japanese consuls and representatives protect the interests of Korean nationals overseas.”

Therefore, the issue of ratification that Prof. Yi raised must be discussed at the domestic level. We need to know whether Korea had regulations and customs to distinguish treaties requiring ratification from the other treaties. Yet, even if the Convention fell in the category of treaties requiring ratification in Korea, this does not determine its status. Ratification is a process that ensures approval by the state, represented by its competent authorities, before the treaty is established in the international community. However, the validity of a treaty is ultimately determined by international law, not by domestic law.

It is true that treaties are signed based on national constitutions. This does not mean that constitutional provisions of a state should be recognized and respected as such on the international level. One may assert the invalidity of a treaty
because its contents are in conflict with those of the national constitution, or because its procedures violated the constitution. However, according to international law, a conflict with the contents of the constitution does not justify invalidating a treaty that was properly concluded, as seen in Article 27 of the Treaty of Vienna. Regarding procedural violations, there are three opposing views. The first view is that treaties concluded through the procedures that violated the national constitution are void since international law acknowledges that the constitution determines the competent authorities and procedures of signing treaties. The second view is that all treaties appropriately signed by the standards of international law are valid regardless of the procedures required by the constitution. The third view distinguishes “known” procedures (what is naturally known to the other state) and unknown procedures and maintains that violation of the former nullifies the treaty while the other does not. Prof. Yi seems to take the first view. The Treaty of Vienna, however, takes the second while it partially incorporates the third (Article 46) based on international precedents. Although we cannot apply the Treaty of Vienna directly to the case of the Korean-Japanese Convention, we must note that its stipulation supports the customary rule that treaties violating constitutional procedures are still effective. International law is not on the side of Prof. Yi.

The Korean-Japanese Convention was published in Korea’s official gazette on December 16, 1905. This is problematic when we assume that, from the Korean point of view, the Convention was void from its inception. If domestic law had required the emperor’s ratification, the release of the Convention to the public should have been withheld until such ratification was gained. Still, one could argue that there was Japanese pressure behind the release, just as behind the signing, of the Convention. If the Japanese had pressured the Korean government to that extent, then they should have been able to obtain Kojong’s ratification in the same manner. I would like to await historical studies on these
matters.

Prof. Yi makes an issue of the absence of Foreign Minister Pak’s full powers. However, international law generally assumes that a foreign minister, as well as a prime minister, fully represents his state without having to be given full powers when negotiating and signing treaties. Thus, it is not necessary for a foreign minister to produce full powers. Even if he is unable to produce full powers when asked by the other party, international law still requires that he be treated as a legitimate representative. Issuing of commissions to foreign and prime ministers did take place in the past. For instance, since the peace treaty with the United States in 1951 was significant, the Japanese government designated its prime minister as plenipotentiary. When Korea was annexed to Japan, Emperor Sunjong appointed Prime Minister Yi Wanyong to be plenipotentiary. The reason why the Korean-Japanese Agreement of 1904 and the Convention of 1905 lack full powers is because they simply did not take the form of treaties concluded by individuals with full powers. According to international law, the parties involved can freely select the form of treaties. The contents of the treaties may influence but not determine the form.

If Korea’s domestic law required its prime minister and foreign minister to be given full powers when concluding treaties, then, the lack of such documents at the time of the Convention did violate the law. Still, that does not nullify the treaty, as explained earlier. Prof. Yi argues that the fact that Foreign Minister Pak did not bring his seal to the meeting with Ito indicates that Pak did not consider himself to be the state representative and that Kojong never designated him as plenipotentiary to the negotiations. This may be significant only in terms of Korea’s domestic law. Pak’s not taking the seal with him may be an expression of his resistance to the Japanese. As a result, it took the Japanese two additional hours to obtain the Foreign Minister’s seal on the Convention; the procedure was concluded in the early morning of November 18.
Finally, I would like to briefly discuss the title of the Convention. Prof. Yi states that the term “agreement” was more appropriate when translating the Japanese term “kyoyaku” although giving no English title may have been more appropriate as the original text had no title. He says that conventions are usually technical treaties such as postal conventions, Red Cross conventions, and conventions on copyrights, although they are a step higher than agreements. However, in international law, there is no rule governing the title of each treaty. Besides, conventions are not necessarily for technical agreements since some of them concern broad topics such as the law of the sea and the law of treaties. The relationship between conventions and agreements is not always hierarchical. Also, Japanese and English terms are not specifically linked in translation. The important treaty between the U.S. and Japan regarding Okinawa and other islands is an “agreement,” and the widely-signed treaties concerning tin, sugar, and the establishment of international agricultural funds are also “agreements.”

3. Between Historical Studies and International Law

Some things have changed since the conclusion of the Korean-Japanese treaty three decades ago while other things have remained the same. The most drastic change has been the collapse of the Cold War structure, which had necessitated this treaty. I hear that the Koreans were compelled to conclude it as they needed Japan in the Cold War, even though they resented their earlier colonial rule. Today, the tension of the Cold War is gone while the resentment toward Japan persists. As Prof. Yi points out, the historical problem between the two countries has returned to its original state so that they together will need to resolve it. He
also states that acceptance of the Convention of 1905 as simply a part of history does not resolve the problem, because, as far as this subject is concerned, the gap between the two countries is widening. I agree that now is the time that we must invest our hearts and minds in examining these problems.

When the content of the Korean-Japanese treaty was discussed in the Japanese Diet in 1965, Prime Minister Sato asked its members not to be excessively concerned with the past because he “wished to look to the future without preconceived notions.” I cannot help thinking that he confused the issue of bringing final closure to the two countries’ past with his wishful thinking. Although it is true that we should look to the future, we still need to complete our tasks from the past. We must not use the future as an excuse to forget the past. As the former Assistant Foreign Minister Sunobe once said, the future is an extension of the present, which is an extension of the past. We cannot deny that Japan conducted awful acts in Korea and that we have not handled this matter well. We must be reminded that even today the Koreans are bringing up this subject. In this respect, we should listen to what Prof. Yi has to say. According to him, Japan’s violation of Korea’s sovereignty cannot be brushed aside as simply an aspect of imperialism. Through the Korean-Japanese Convention of 1905 Japan thrust upon Korea a status of protectorate unwanted by its people. Consequently, Korea’s diplomatic rights were transferred to the Japanese resident-general. When the Treaty of Annexation was proposed in 1910, the resident-general was in a position to instruct the Korean government to sign it because it fell in the category of diplomatic matters. This is the way Japan established its control over Korea. Prof. Yi’s main argument is that legally speaking Japan’s annexation of Korea did not take place at all, as Japan’s action amounted to an act of “aggression” carried out under the flimsy legal guise of several treaties. We cannot counter his argument by simply positing that international law at the time benefited the
strong. Yet, if we deny the logic of international law and side with Prof. Yi, we hold Japan responsible for these defects in international law. Students of international law must seriously wrestle with this dilemma.

This paper may not advance the Korean-Japanese dialogue as much as I intended to do so from the viewpoint of international law. My conclusions are quite different from Prof. Yi’s, particularly regarding the Convention of 1905, as he would never accept the argument that the Convention was valid from the viewpoint of international law. However, I would like to emphasize that I disapprove of the Japanese colonial rule over Korea even though I do not consider the treaties as null and void from their inception. The denial of the treaties’ validity and the disapproval of colonial rule are two different issues. I disagree with the view that a condemnation of colonial rule should result in an invalidation of legal measures, as I believe that legal discussions must be kept separate from historical discussions. If the two must coincide, there is no need for legal studies of the past.

When arguing about the validity of the old treaties between Korea and Japan, one must take pains to ensure that their legal perspective is not meant to approve of Japan’s control over Korea. The view that regards colonial rule as “legally valid but morally wrong” should be distinguished from the view that approves the rule as “simply valid.” Ariga Nagao, a renowned scholar of international law at the time of the Korean-Japanese Convention, justified the transfer of diplomatic rights and other matters between Korea and Japan by arguing for the validity of the treaties. Unlike this old view, today’s view that sees the treaties as “legally valid but morally wrong” does not seek to legitimatize Japan’s aggression and colonial rule. Yet, Prof. Yi may consider these two varied views identical as they both legitimatize the treaties that ensured Japan’s aggression and colonialism. Even so, we need to make efforts to continue the dialogue between the two countries.
One last question I would like to raise is whether the issue of bringing final closure to the two countries’ past consists solely of the issue of the treaties’ validity. I do not believe that the larger historical issue between the two countries can be reduced to the discussion of the validity or invalidity of these treaties. Yet, I understand that the Koreans may have a different view, as demonstrated by Prime Minister Chong Ilkwon’s speech to the National Assembly following the signing of the 1965 Korean-Japanese Treaty. He said, “Although we cannot possibly alter past events, we must never acknowledge them. The only way to recover our pride and honor is to make Japan recognize that the old treaties that had justified its aggression were null and void.” If we discuss past occurrences within the framework of their legal validity or invalidity, we are forced to focus only on related elements and to ignore the rest. What the two countries must discuss is not legal issues based on narrowly selected facts, but the cruelty of the colonial rule and the ways to compensate for it.

I have no conclusive suggestion as to compensation for the past. I would like to quote from German President Richard von Weizsacker’s speech upon his visit to Prague. He spoke of the unfortunate past between Germany and Czechoslovakia, including the Munich Pact and Nazi seizure of Bohemia and Moravia:

We do not intend to abuse the past to defend ourselves and condemn the crimes of others. Doing so would not help us make progress toward the future. If we hope to come together in peace and friendship, we must be sincere and honest enough to face the past. Your country’s great philosopher Comenius said, “One must begin by acknowledging one’s own mistakes.” ... In this sense, we hope to face the past, and to treat its consequences, as conscientiously as possible. It is crucial to eliminate the deep-rooted distrust, stemming from past wounds that still bring pain. Open-mindedness comes only from neighborly exchange. We want to remind ourselves that your country’s first president Tomas G. Masaryks said, “Falsehood is the companion of violence.” Hatred and hostility have been resolving themselves since we began our efforts to live together in truth. Life grows based on truth. (Yamamoto Osamu, trans., Kako no kokufuku:
These words demonstrate points we must remember when trying to overcome the negativity in Korean-Japanese history. Prof. Yi made a similar point when he stated that true solutions come from a reverence for truth, and that we cannot overemphasize the importance of the search for truth between our two countries. Many events from the past have caused distrust between our two countries. We Japanese must identify our most serious crimes and ask ourselves how we can compensate for them. I hope that the Japanese politicians reflect deeply upon this matter as they prepare to receive President Kim Daejung upon his visit to Japan. We will never succeed in building true friendship without such soul searching. This matter requires continuous attention even after his visit is complete.

Of all the issues Prof. Yi raised in his article, I discussed only the issue of the validity of the Korean-Japanese Convention of 1905 from the viewpoint of international law. I expect to receive many reactions to this paper. It is my hope that many historians and scholars of international law participate in this dialogue to help expand our discussion.