How can State Sovereignty be Surrendered with a Summary Treaty? In Reply to Prof. Unno Fukuju’s Criticisms

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1. Introduction

The Dialogue between Japan and Korea, started in July 1998 in the magazine Sekai (‘The World’), resulted in the exchange of five articles between four scholars within the space of a year. Although the ‘dialogue’ is still underway, as the writer of the article that started the series I feel the project has really borne fruit. This third article of mine is a reply to Prof. Unno Fukuju’s article “Prof. Yi’s ‘Annexation of Korea Failed to Come Into Being Reexamined,” published in the previous July edition of the journal Chuntongkwa Hyunshil (Tradition and Reality), 1999 Summer issue.

Prof. Unno has meanwhile published several criticisms of my articles via specialist scholarly journals, but this article is an easy-to-read arrangement of such criticisms aimed at the general reader. Prof. Unno’s work so far on Korean-Japanese relations in the modern period has been, for the lack of a better word, energetic. It seems that in his latest article too, there are at least
thirteen points in my assertions that he has indicated as being problematic. He has pointed them out in such a detailed fashion that it would be quite easy for the reader of his articles to gain the impression that my assertions are nothing more than a series of fallacies. It should be noted, however, that his assertions originate in differences in basic premise, among which there are very few on which we agree.

Firstly, for the new reader, I will give a brief introduction to my main arguments. The main point of my first article, *The Annexation of Korea Failed to Come into Being* (1998 July-August issue), was as follows. There were five diplomatic treaties forcibly demanded by the Japanese when, after the 1904 war with Russia, they began work on the seizure of Korean state sovereignty, namely, (1) Protocol (議定書) of the 23rd February 1904 (2) ‘First Japanese-Korean Agreement’ (第一次日韓協約) of the 22nd August 1904 (3) ‘Second Japanese-Korean Agreement’ (第二次日韓協約) of the 17th November 1905 (4) Korean-Japanese Agreement (韓日協約) of the 24th July 1907 (5) Korea Annexation Treaty (韓國倂合條約) of the 22nd August 1910. Out of these, numbers one through four merely took the form of a summary treaty (agreement) which was out of keeping with their subject matter, and several deceptions can be seen to have been perpetrated during the course of their preparation, even in the case of the only one to have taken the form of formal treaty (5), the Korean Emperor’s imperial ordinance. This ordinance corresponds to an act of ratification, unlike the edict of the Japanese Emperor, and was left unsigned, and so the annexation of Korea cannot be said to have been accomplished. In particular (3), being for the purpose of making Korea a protectorate, on all accounts should have had full powers issued and the text of the agreement ratified, but since there were no procedural due process steps taken, it cannot be said to be valid in international law.

In my second article, ‘Only the Treaties for the Invasion of Korea were Anomalous—A Reply to Prof. Sakamoto’s Criticism’
(1999 March issue), brought to light the following results obtained through comparative analysis. Namely, those from an analysis of fifty-six diplomatic compacts appearing in the journal of the Kokusai Hogakkai (the Japanese Society of International Law), the Kokusaiho Zasshi (Journal of International Law), from its inception in 1902 up until its reporting the ‘Annexation of Korea’ in 1911. It was confirmed to have been the established custom for those of the diplomatic treaties that covered matters whose weight corresponded to that of (3) and (4) above, all to have full powers issued and to undergo the necessary steps for ratification. Instances of important matters being dealt with by a summary treaty were only to be seen in agreements concluded directly with Korea or in agreements concluded with the Powers concerned seeking ex post facto consent for such agreements made with Korea for the purpose of seizing Korean state sovereignty, starting with the Anglo-Japanese Alliance of 1902. Thus the Japanese argument up to the present that the imperialist powers were all breaking the rules for treaties at the time can be seen not to tally with the facts. The Western Powers have on the contrary been verified as having been extremely fastidious about the forms and formalities involved in the conclusion of diplomatic treaties. The position of the Japanese with regard to the conclusion of treaties with the Chosŏn Korean government too had prior to the Sino-Japanese War, been to demand the Chosŏn side adhere to all formalities. The first deviation from formalities occurred when Japan demanded a treaty for an offensive and defensive alliance from Chosŏn when it directly challenged China through the build-up of its military at the time of the Sino-Japanese War of 1894. This was repeated in the five treaties mentioned above, which were forced as Japan embarked upon the Russo-Japanese War, giving us the context in which the violations of form started. These facts that have shown up in the formats and procedures of treaties mean that Japan indiscriminately used all means and method for the realization of its purpose of seizing the Korean
peninsula, and as a result, considering that the remaining violations in the related agreements have no precedent at all in the history of international treaties, the annexation of Korea by Japan cannot be viewed as having been accomplished in legal terms.

However, despite my demonstrating the above, Prof. Unno argues that the question of whether or not to have full powers and an article of ratification is not determined by the conventions or rules of international affairs, but by agreement between the parties involved. According to his assertions, the surrendering of state sovereignty is possible with a summary treaty concluded at intergovernmental level, not by an internationally recognized formal treaty. Is this really the case?

2. Prof. Unno’s Misunderstanding Regarding Treaty Format

An important basis for Prof. Unno’s criticism is the classification of treaty-type as presented in an inquiry conducted by the Treaty Department of the Japanese Ministry of Foreign Affairs on two occasions, in 1924 and 1937, and which was entitled Kakukokuniokeru Choyaku oyobi Kokusai yakusoku Teiketsuno Tetsuzukini Kansuru Seido (The System with Regard to the Procedure for Treaties and the Conclusion of International Contracts in all Nations) [the 1924 version expressed ‘Kakukoku’ (all Nations) as ‘Obei chuyo kakukoku’ (Major Western Countries), hereafter abbreviated to ‘Treaty System’). The same Treaty Department classified the diplomatic treaties that Japan had concluded in the meantime into the following three types: ‘treaties concluded according to the form of the exchange of ratification’ (Prof. Unno referred to this as type I), ‘international contracts concluded by
the sanction of His Majesty’ (type II), ‘international contracts concluded without requesting His Majesty’s sanction but concluded by the authority of the government’ (type III), etc. Prof. Unno said that according to this classification, it is a mistake to judge the ‘Second Japanese-Korean Agreement’ (‘Ulsa Protectorate Treaty’, 1905), which has been the subject of great controversy, as being void or as non-existent because of not having full powers or because it did not undergo ratification procedures. Further, he said that of the fifty-three international treaties that Chosŏn or Korea concluded with Japan, those belonging to type I are limited to three, ‘The Treaty of Amity Between Corea and Japan’ (1876) and its Protocol (1883), and the ‘Treaty of Annexation’ (1910), the others all belonging to types II and III. He said that the Ch’aemulp’o Treaty (30th August 1882) and the Hanseong Treaty (1885) which were concluded to address the consequences of the Imo Insurrection and the Kapshin Coup, also did have full powers issued but did not undergo ratification procedures.

Just how sound are Prof. Unno’s assertions? First of all, there is a problem with the nature of the ‘Treaty System’ inquiry itself. That is, since this classification of treaty type was made by the Treaty Department of the Japanese Ministry of Foreign Affairs at its own discretion, it is not guaranteed to be in line with international usage of the time. Let us consider the Treaty System inquiry in detail in order to make a careful judgment. Actually, the Treaty System inquiry itself has the character of a report on the results of an inquiry into how the three categories of ‘international contract’ adopted by the Japanese Ministry of Foreign Affairs were in use in other countries. In the first part, ‘Article 1’ (第1款), ‘Essentials of the Inquiry’ (調査要目), a guide to the inquiry is presented and the results of the inquiry are arranged in a chart at the end, but note should be taken of the following mentioned in the ‘Explanation of the Chart’ (一覽表解說). It was made clear that since the Western nations originally had different constitutions, it is impossible to draw conclusions just based on constitutional law,
and there are many unclear points in conclusions drawn from convention, so it is an impossible task to classify definitely the various nations’ systems for concluding treaties. This publication concludes with just ‘general classification based on the relevant provisions of constitutional laws or clear customary practice for reference in conducting treaty-related business.’ This implies that the Japanese government, as of 1924 and 1937, was in the process of endeavoring to confirm whether the international treaties Japan had made previously were internationally recognized. If we take a look at the ‘general classification’ chart, which was unavoidably compiled under such constraining circumstances, we see that the result is as follows.

Of the thirty-one countries investigated, those having a threefold classification system like that of Japan’s (eleven countries, including France) were classified as class 1; those types I and III only (fourteen countries, including Germany) classified as class 2; those with only types I and II (six countries, including the United States of America) as class 3; and each country’s state of affairs was concretely ascertained. Those countries that had concluded an international contract between governments or the government officials concerned corresponded to classes 1 and 2. However, according to the chart’s summary, clauses regarding territory-use rights, diplomatic rights, the right of rule etc., such as dealt with by the agreements that Japan forced upon Korea after 1904, were not prescribed as being concluded between governments or between the government officials concerned. The treaties that can be concluded at this level are agreements and international contracts pertaining to commercial intercourse or transportation valid for three years; or that can be abolished with six months’ notice (Hungary); purely administrative matters, the conclusion of which is entrusted to administrative agencies (Iran); those of a technical, administrative or technical-administrative nature, the application of which is the proper duty of government agencies (Italy); those regarding administrative matters and urgent
economic agreements pending ratification (Germany), etc.

One of those where inter-governmental agreement is recognized, but whose domain is judged “as being uncertain” was France. It is prescribed in the constitution that items relating to the interests and security of the state, peace treaties, commercial treaties, treaties imposing financial obligations, and treaties relating to the status and proprietary rights of French citizens abroad, are subject to the vote of both Upper and Lower Houses and that the president cannot cede, exchange or take over territory unless it is according to the law. (p. 168) In other words, this implies that when France concludes a treaty relating to these items, there is a principle that says that both sides must undergo the appropriate procedures. Accordingly, if France had proceeded with concluding the sort of treaty that Japan forced on Korea from 1904 on with some other country, this would have meant that it would take the form of formal treaty, and ratification would be achieved through the seeking of the opinion of the Upper and Lower Houses.

According to the Treaty System inquiry, it is a fact that the Japanese government had concluded international treaties of all three types. However, inter-governmental agreements of type III, even according to the investigations of the Treaty Department of the Japanese Ministry of Foreign Affairs, by international convention was limited to simply administrative items and was definitely not for such grave matters as the infringement of state sovereignty such as that forced upon Korea by Japan. This was already evident in my analysis of fifty-six international treaties presented in my previous article (Sekai, March 1999) and it is regrettable that Prof. Unno merely repeated his stock argument without making any reference to this.

Moreover, it is just the same with Prof. Unno’s understanding that the Chaemulpo Treaty (1882) and the Hanseong Treaty (1885), reparation treaties for the Imo Insurrection and the Kapshin Coup, had full powers issued but no ratification formalities concluded. As I made perfectly clear in this regard in
my original article, there was not only full powers issued, but also formalities corresponding to ratification. That is, since both treaties were concluded for Chosŏn to apologize and to make reparations for the burning down of the Japanese Legation and other damages, the Japanese conceded that it would be too much to ask for the Chosŏn monarch to issue an act of ratification, and so this was replaced with either the Japanese monarch only issuing an act of ratification (Chæmulpo Treaty), or by a message expressing gratitude for the dispatch of the Minister Plenipotentiary, Inoue Kaoru (Hanseong Treaty). In short, from the Treaty of Amity between Korea and Japan of February 1876 to the Hanseong treaty, for the six treaties with the purpose of eliminating Ching’s influence over Chosŏn Korea, Japan was meticulous over essential treaty details and forcefully demanded the same from Chosŏn. The change in attitude occurred in 1894 when, provoking war with China, Japan demanded an agreement for a defensive and offensive alliance from the Chosŏn government. At that time, convinced of its military superiority over Ching China and already plotting to make Chosŏn into a protectorate, the Japanese first demanded an anomalous agreement. Ten years later as the Russo-Japanese War was being provoked, the same technique once again came into play.

Prof. Unno, by stating that of the fifty-three treaties between Korea and Japan, there are no more than three belonging to type I, including the Treaty of Amity between Korea and Japan, and that the rest are all of types II and III, seeks to increase the general applicability of the latter. However, of the fifty three, apart from those presently under discussion, all concern administrative items that can be dealt with by a summary treaty and so it is not appropriate to elevate them to the same level as treaties touching on state sovereignty.

Prof. Unno places special emphasis on the Japanese-Korean Protocol, signed 23rd February 1904, as an example of an inter-governmental agreement. That is, Prof. Unno asserts that,
considering the fact that as a consequence of the Korean side demanding the issuance of full powers but then cancelling in January and February 1904, Japanese Diplomatic Minister Hayashi also requested that full powers be issued by his government and then requested this be changed to a signing mandate. Considering this, Prof. Unno argued that it can be seen that full powers granted by the Japanese Emperor were clearly distinct from a plenipotentiary mandate from the Japanese government. Even if such is the case, the distinction between the two is at any rate a Japanese distinction, and as we will see, cannot be said to be general international convention. Rather, what is to be viewed as significant here is that, as Prof. Unno pointed out, as soon as the Protocol was announced in The Official Gazette of the Japanese government on 27th February, fifteen members from the head of the Sumitsuin (Privy Council) downward submitted to the throne the following procedural error in violation of the constitution: that government authorities and the Ministry of Foreign Affairs had signed a treaty of such importance to the security of the empire without informing the Sumitsuin.

Prof. Arai Shin’ichi has brought to light the fact that while pursuing the Anglo-Japanese Alliance, Foreign Minister Komura Jutaro coaxed the British side to dispense with full powers in order to avoid the opposition of Ito Hirobumi, who was in control of the Sumitsuin. There was a great difference in policy between those who sided with Ito and wanted to seize the Korean peninsula via an agreement to exchange Manchuria and Korea, and the Komura camp, who sought to gain the Korean peninsula by superiority of force via a conflict with Russia under an agreement with the US and Britain. The Komura way of attaining this purpose was to commit a blunder in ignorance of international convention in the conclusion of the necessary diplomatic agreements under the protection of Britain and America. It is certainly not a coincidence that it was at just this period that the Japanese Society of International Law in Japan got its activities underway in real
earnest under the aegis of the Ministry of Foreign Affairs. Komura's method called for the wisdom of international law specialists for the realization of its purposes. It is regrettable that the authors of the articles relating to Korea in their journal gave the impression of exhibiting even more aggressive tendencies than the governmental authorities themselves. (Paik Chung-hyun & Yi Tae-jin, ‘The Japanese Society of International Law and Japanese Policies for the Occupation of the Great Han Empire,’ Seoul International Law Journal Vol. 16 No. 2, 1999)

Prof. Unno, to further bolster the international credibility of the inter-governmental treaties, cites examples of such inter-governmental treaties ‘possessed of exceedingly great political significance’ such as the Franco-Japanese Agreement (10th June 1907), and the Russo-Japanese Agreement (30th July 1907). However, these are nothing more than rule-breaking examples of treaties coaxed out of the two countries to approve Japan’s right of protectorate over Korea, and from a chronological standpoint also certainly do not provide international precedents for inter-governmental agreements.

In short, Prof. Unno’s opinions on ‘treaty format’ either err in understanding historical facts, or, by relying on the products of the Japanese government’s anomalous behavior of the time as absolute standard, are wholly lacking in credibility.


3.1. Summary Treaty, Lack of Title, Random Insertion of English Title etc.

(I) Prof. Unno took a position of complete disagreement on all
that I pointed out as problematic in the ‘Second Japanese-Korean
Agreement.’ My assertions were based on the principle that a
treaty for the transfer of a certain country’s diplomatic rights
should naturally have full powers and undergo procedures to ratify
the text of the treaty. To this he replied that the Japanese
government did not require full powers from the start, that is, it
was a type II treaty proceeding from the sanction of the emperor,
and as such, did not require full powers to be issued.

Prof. Unno cited the following as proof that the Japanese
government supposed the treaty to be of type II. He cites the facts
that the Japanese government had its sights on Pak Chaesun as
signer and so Special Envoy Ito Hirobumi, during an audience
with Emperor Kojong on the 15th of November, strongly demanded
that the Emperor ‘immediately call the Foreign Minister and do as
Japanese Diplomatic Minister Hayashi proposed, that is, issue a
decree that he hold a conference and that he signs,’ and that
Emperor Kojong, feeling awfully pressed, could not help but reply
to Ito ‘Let the Foreign Minister negotiate with the Japanese
Diplomatic Minister and propose the results of the negotiations to
the government, after the government has made its decision, have
them seek my sanction,’ ‘Have them take the measure speedily,’
with the result that the next day negotiations formally got
underway between Japanese Diplomatic Minister Hayashi and
Korean Foreign Minister Pak Chaesun. Moreover, although it
would not have been impossible to importune the Emperor for full
powers when he was already being threatened and coerced, Prof.
Unno says the reason that the Japanese did not do so, was
because they had already decided upon using the type-II
arrangement where full powers are not necessary. Problems with
Prof. Unno’s argument are as follows.

Firstly, I would like to point out that the fact of Ito Hirobumi’s
threatening, coercing and pressuring Emperor Kojong, which Prof.
Unno cites as evidence of a type II arrangement, amounts to a
clear ground for the treaty’s invalidity. If we look at the ‘Second
Japanese-Korean Agreement’ from the point of view of invalidity, then there could be no more perfect proof than the coercion revealed by Ito himself in the report of his mission.

Secondly, Prof. Unno interpreted that since Japanese Minister to Korea Hayashi, was designated Envoy Extraordinary and Minister Plenipotentiary according to the Japanese cabinet’s decision to ‘invest plenipotentiary powers for treaty conclusion in Envoy Hayashi,’ the grant of full powers by the Emperor became no longer necessary and said that this holds the ‘meaning that the decision was made to invest full powers at the government level.’ In this the following points have evidently been confused. He clearly classified this agreement as belonging to type II, but according to the cabinet’s decision the investment of full powers amounts to a type III. Do these confusions not arise from the unnatural nature of this type of classification? It is also totally unconvincing to cite words bandied about by Special Envoy Ito in his mission report as proof of full powers by the Korean Emperor. I would like to ask him once again if he really thinks that a state’s diplomatic rights can be transferred on the basis of these sorts of things.

Thirdly, has there really been an example of the surrender of a state’s diplomatic rights, that is, its being made a protectorate, using type II? Even by the results of the Treaty System inquiry (chart) which Prof. Unno regards as an absolute basis for the classification of treaty types, no example can be found at all. As will be stated later, by international convention, protectorate treaties are consistent in being type I. Prof. Unno’s type II is possible in circumstances where a monarch directly enters the negotiations; in such cases, separate full powers or ratification procedures become unnecessary by the sovereign’s direct signature on the text of the agreement. One such example is the protectorate treaty concluded between France and the Queen of the Société Islands in 1847. In the case of the ‘Second Japanese-Korean Agreement,’ if it had been directly signed and sealed by Emperor
Kojong, not by Foreign Minister Pak Chaesun, then the question of ratification would have never arisen.

(II) The first line of the ‘Second Japanese-Korean Agreement’ is empty where that title should have been written. Prof. Unno took a position of all-out dissension with my views on this also. I originally interpreted this to mean that the Japanese had supposed the title to be ‘Treaty for the Entrusting of Diplomatic Rights’ but had faced with such strong opposition from the Korean side that when the agreement went ahead in the face of such resistance, the column was left blank. I interpreted it as meaning that they had feared that if it were publicly announced that an item of such importance as the entrusting of a nation’s diplomacy to another nation had been dealt with by a summary agreement, then it would arouse suspicion in the international community. Thus, they had left it blank. I asserted that it was proof of such an act that even though there was no title on the original, they had adamantly used the word ‘Convention’ on the English translation prepared for the information of the governments of Britain and America.

Prof. Unno, while developing his ideas on the type II agreement as above in response to such assertions of mine, cited the “First Japanese-Korean Agreement” and the “Treaty for the Annexation of Korea” as examples of titleless agreements. In my previous article I pointed out that the “First Japanese-Korean Agreement” was nothing more than a simple memorandum between the officials in charge, the text of which did not even mention commissioning, but that in the process of being reported to the British and American governments, it was transformed into ‘Agreement.’ Further, the ‘Treaty for the Annexation of Korea’ did not have a title, but in its preamble, it specified the fact of annexation and so is not to be compared with the ‘Second Japanese-Korean Agreement.’ Notwithstanding this, Prof. Unno makes no mention of it at all and just goes on to cite these facts as a counter-argument, something that is hard to understand.
When one sees that he pointed out my interpretation of the term ‘Convention’ in the English translation to be flawed for the following reasons, it is clear that he has neglected to read my article. He added the following specific criticism of my argument that there were many points that made the Japanese feel uncomfortable over the direct use of the term ‘treaty’ and so they reverted to the term ‘convention,’ but regarding this term, ‘an example of its use for the political matter of the transfer of diplomatic rights, is almost nowhere to be found.’ That is, out of the eleven examples of protectorate treaties in the appendix of Ariga Nagao’s *Hogokokuron* (1906), there were seven with the title ‘treaty’ and four termed ‘convention,’ thus concluding that my assertion ‘does not tally with the facts.’

To be honest, it is only very recently that I have gained access to this book. I had looked for the book in the Central Library of Seoul National University, my place of work, but as it had been lost there was no way of obtaining it. About two months ago however, I learned that it was in the library of the school of law. The original names (in English or French) of the examples of protectorate treaties in the *Kokusaiho Zasshi* (Journal of International Law) that I made use of in my previous article were not listed and so it was difficult to distinguish whether they were titled ‘convention’ or not. In the appendix (*Hogojoyakushu* – ‘Collection of Protectorate Treaties’) of the 1906 edition of the *Hogokokuron*, the eleven treaty texts have all been retitled to their Japanese translation (and are all translated as joyaku – ‘treaty’). When the Privy Council of the Chosôn Government-General republished this book in 1936, they included the original French and English texts. According to this, as Prof. Unno pointed out, there are four that are specified as ‘convention.’ It is somewhat difficult for me at this very moment to discern differences from treaties based on the content of these conventions, but this is in no way detrimental to my argument. Many of those that I have thus far accessed have been things like postal agreements, which I
judged to be of a lower class than ‘treaty,’ but even if this does not definitely distinguish the two, this is no disadvantage to my argument. However, the term ‘convention,’ while being a ‘formal agreement,’ refers to something that is ‘less formal than a treaty’ and so there is clearly a difference. (The Reader’s Digest – Oxford Wordfinder, CLARENDON PRESS, Oxford, 1993)

Is it not, rather, much favorable to my argument that those agreements styled ‘conventions’ also make clear the fact of commission of full powers in the preamble with ratification arrangements stipulated at the end? Out of the four examples, two definitely are of this type (1. Convention, 1847, between France and the Queen of the Société Islands, 3. Convention, 1884 between France and Cambodia), the ‘Convention’ between France and Tunisia signed 8th June, 1883, was a supplement to a treaty signed between France and the Bey of Tunisia and so since it followed the latter, commission and ratification were not separately indicated. It is of course without question that the latter satisfied all the requisites. The last example, the ‘Anglo-Egyptian Soudan Convention’ (11), represented a mutual agreement to create a joint-participation body for the strife-torn Sudan, and so not being an agreement with the object of ‘joint-participation,’ it only went so far as to specify in its preamble that it was signed between signatories having received appropriate authorization.

In the case of these examples, the other parties with whom France concluded the treaties are the Queen of the Société Islands, the King of Cambodia Norodorm I, H.R.H the Bey of Tunisia and so forth, and it was also stipulated that an act of ratification by the Emperor or President of France be presented to these rulers. (3, 8) On the other hand, the ‘Second Japanese-Korean Agreement’ leaves all guarantee to the single phrase, ‘by the testimony to the right, the following, being duly authorized by their respective governments, sign and seal said agreement,’ there being no phrase to notify the intention of the Korean Emperor to be found anywhere. By Prof. Unno’s assertions, the Japanese had
assumed it to be of the type-II form from the start, but that was in any case merely the arbitrariness of the Japanese and certainly was not the result of consultation with the Koreans, and so a basic requisite of diplomatic agreements was clearly lacking. Prof. Unno stated of his own accord that ‘the reason they did not make a type I was probably because of the fear of resistance within Korea or the intervention of a third nation,’ but if so, would that not itself suggest the forfeiture of a basic requirement of diplomatic agreements?

Prof. Unno, apart from this, also quoted the ‘Protocol on the Conclusion, Ratification and Proclamation of Treaties’ of the first section of the Treaty Department of the Japanese Ministry of Foreign Affairs, where it says, ‘there is the customary practice of not putting a title on the original signed and sealed copy of international agreements,’ and cited such examples as the First and Second Anglo-Japanese Alliance (1902, 1905), the Commercial Treaty between Japan and India (1904), the First Russo-Japanese Agreement (1907), and the Agreement between Japan and Ching China over Gando Island. What must provide the standard in this debate is international convention and not the Japanese Ministry of Foreign Affairs’ official interpretation. I do hope he does not forget that what is being censured is the Japanese Ministry of Foreign Affairs’ arbitrary acts.

I pointed out that the fact that though the title was blank on the original, it was announced in the official gazette of each country as ‘Nikkan Kyoyaku’ (‘Japanese-Korean Agreement’-Japan) and ‘Hanil Hyopsang Joyak’ (‘Korean-Japanese Treaty’-Korea) respectively, and this was the result of measures taken afterward. I made reference to the fact that this way of dealing with agreements had already been resorted to in the ‘Protocol’ and the ‘First Japanese-Korean Agreement’ of the preceding period. Prof. Unno pointed out various supposed mistakes of mine in doing this. Among these, he pointed out that for the ‘Protocol,’ my interpretation had the dispatcher and the receiver the wrong way.
around, and this I accept. This was a misapprehension that arose while trying to follow the complicated scheme that the Japanese legation had plotted against the Korean ministers. As is already well known, this agreement started out from a bribery scheme, and was achieved against the background of militarism at the outbreak of the Russo-Japanese War, but only came about by forcing several key figures on the Korean side onto a Japanese warship and taking them for a ‘cruise,’ and as we saw previously, received the complaint from the Japanese Privy Council that it was in violation of the constitution that there was no consultation on it.

Prof. Unno also brought forth counter-arguments to the points that I had pointed out as problematic in the ‘First Japanese-Korean Agreement.’ I said that those concerned used the term ‘memorandum’ for this ‘agreement’ and since there looks to have been no clause concerning authorization carried by summary diplomatic agreements and so forth, considered responsibility for the memorandum as being only between the two government authorities and criticized as a fraudulent act the Japanese Ministry of Foreign Affairs’ translating it as ‘agreement’ in the English text for informing the British and American governments, so as to give it the semblance of a diplomatic agreement. Prof. Unno, with regard to this, viewed this ‘agreement’ as having this kind of deficiency because it was an implementing agreement adopted in accordance with clause six of the Protocol of 23rd February 1904 (‘the as yet unsettled detailed items of said agreement, will be settled by an appropriate agreement between representatives of the Great Japanese Empire and the foreign minister of the Great Han Empire.’) This is an excessive justification. It can be seen from the Agreement Supplementary to the Treaty of Amity between Korea and Japan concluded the 30th August, 1882, that even follow-on treaties have to undergo the proper formalities. This supplementary treaty even carried a statement to the effect that ratified texts of the agreement would be exchanged in Tokyo.
within two months, and that is how ratification took place.

3.2. The Actual Circumstances Surrounding the ‘Second Japanese-Korean Agreement’

Prof. Unno stated that as the ‘Second Japanese-Korean Agreement’ was not a type I treaty which required ratification, it is of no consequence whether it was ratified or not. He also said that because the Japanese government regarded it as having the emperor’s sanction, when afterward Emperor Kojong’s nullification movement arose, they ignored it. Further, he made the assertion that at the time they were pursuing the agreement, Emperor Kojong of his own accord judged that he could no longer reject the Japanese demands, and so even demanded that they ‘insert wording to the effect that if Korea became rich and powerful and sufficiently capable to sustain its independence, the proposed treaty would be retracted.’ There is a similar record in the ‘Particulars Surrounding the Signing of the New (Japanese-Korean) Agreement’ (日韓新協約調印始末) appended to Book 1, ‘Ambassador Extraordinary to Korea, Ito Hirobumi’s Special Envoy Mission Report’ (韓國特派大使伊藤博文特使復命書). If this is true, then Emperor Kojong’s statement right after signing that he had not approved this treaty, would have been a lie.

However, these records were at any rate written by the Japanese and so Emperor Kojong’s words could have been rendered to the advantage of the Japanese. Among the Japanese records can be found conflicting accounts of what was actually the same event. One example is the record of the critical moment, 8pm on the 17th November, when the Korean Emperor dispatched Minister of Imperial Household Yi Chaeguk (李載克) to Emissary Ito right before Ito and others, escorted by the Military Police, thronged to the palace. In ‘奉使記事摘要’ (Summary Mission Report) of the above mission report, we find the following record: ‘The Korean Emperor sent Minister of Imperial Household Yi Chaeguk to Envoy Ito saying that he had ordered the other ministers of the
Cabinet to hold a conference with the Japanese minister,’ whereas in the ‘Particulars Surrounding the Signing of the New (Japanese-Korean) Agreement’ it states, ‘Minister of Home Affairs, Yi Chaeguk, accompanied by an interpreter, visited the ambassador saying he had received an imperial order from His Majesty and demanded the decision on the proposed agreement be postponed a few days.’ Since the two accounts are completely conflicting, this is sufficient to substantiate that the objectivity of the records of the Japanese cannot be guaranteed.

There is a need to ascertain what Emperor Kojong actually said here. There is scope for it to be interpreted in a way that is advantageous to the Japanese. In order to do this, it is at the same time necessary to establish the actual circumstances under which the negotiations were actually carried out. Records useful in this regard include: (A) ‘內謁見始末’ (Particulars of the Audience with the Emperor) attached to the above mission report, (B) ‘Particulars Surrounding the Signing of the New (Japanese-Korean) Agreement’ and (C) the memorial to the Emperor, dated 16th of the 12th month, 9th year of Kwangmu (1905), submitted by five men including temporary acting deputy and Minister of Education Yi Wanyong. (Annals of the Emperor Kojong, volume 46) What follows is a summing-up of the circumstances from these records.

Special Envoy Ito received an imperial command on the 1st of November, left Japan on the 5th, arriving in Kyongsong, Korea on the 9th and had an audience with the Korean Emperor on the 10th where he delivered a personal letter from the Japanese Emperor. At three in the afternoon of the 10th, when the Emperor met Ito, he said that, even though he opened the letter (proposed treaty attached), it should be translated and then he could reply to the letter in person after reading it carefully. Ito petitioned for another audience soon but owing to the Emperor’s indisposition, he was not able to have another one until the 15th. What is to be noted in the conversation of the second audience is that Emperor Kojong said, ‘in the matter of delegating diplomatic rights it is not that I
am absolutely rejecting it, but I certainly have no objection to its contents, as long as it retains outward form.’ At this the ambassador asked what this ‘outward form’ was, whereupon the Emperor said, ‘the exchange of envoys and the like.’ The Emperor once again made his position clear to Ambassador Ito when he said, ‘In short, however, the proposed agreement’s substance, I will concede it. I only ask for your best efforts to ensure that the essence of that format is carried forth. If you give sufficient consideration to the matter and convey my earnest wishes to your Imperial House and Government, they might become flexible.’ ((A) above)

In sum, what Emperor Kojong was proposing was that with regard to the coercion Japan had exerted behind its vanguard of military power since the Russo-Japanese War, he could accept the proposed agreement with some modification, but that it be worded so that the existing system of the exchange of envoys, namely diplomats, with friendly countries could be maintained. This proposal is understood to have been with the aim of maintaining a diplomatic lifeline with other powers in the hope that the opportunity to break free from Japanese oppression might present itself. The fact referred to earlier, that before 8pm on the 17th, the Emperor dispatched imperial household minister Yi Chaeguk to Ambassador Ito requesting the signing of the agreement to be postponed several days, can also be explained as having been with the same intention. In other words, even if the Emperor was partially accepting the proposed agreement that the Japanese had thrust upon him with a little modification, he was exercising restraint in order to delay the situation where diplomatic rights would be completely lost through the suspension of exchange of diplomats. The claim that Emperor Kojong authorized ministers to negotiate with the Japanese is nothing more than the Japanese making only partial use of the conditional proposal to their own advantage.

According to Special Envoy Ito’s ‘Particulars of the Audience
with the Emperor’ the conversation with the Emperor on the 15\textsuperscript{th} was a complete two-way monologue, reaching no consensus at all. It is recorded that after a three-hour altercation, upon Ito saying that he would now withdraw, the Emperor said, ‘Since I deeply trust you, if you were to make sure my hopes were accepted by your esteemed Imperial House and Government, there could be no greater fortune,’ whereupon the ambassador suggested the Emperor ‘forgo Your Majesty’s hopes since they are completely useless.’ (A) On the next day (the 16\textsuperscript{th}), Ito had Envoy Extraordinary and Minister Plenipotentiary Hayashi Konsuke formally present the proposed agreement to the Korean Government (Ministry of Foreign Affairs) and start negotiations with the authorities in charge of foreign affairs, but also summoned the other Korean cabinet ministers to a hotel and started to forcibly demand cooperation. However, the Korean ministers consistently made it known that it was not proper, and on the same day, in the presence of the Emperor, pledged that even if they were to go to the Japanese Legation the next day, they would give the same answer.

On the morning of the 17\textsuperscript{th}, the Korean ministers gathered at the Japanese Legation in compliance with the Japanese diplomatic minister’s urgent demand. Here, Diplomatic Minister Hayashi demanded they make a decision, whereupon the ministers responded negatively, stating that procedurally, since they have not yet received a proposal from the Ministry of Foreign Affairs, they could not pass a resolution and according to the new regulations of the Privy Council, they had to consult the will of the people. At this the Japanese diplomatic minister retorted that since Korea was an absolute monarchy, what did they mean by consulting the will of the people, and that since they had already requested an audience with the Emperor through the Minister of the Imperial Household, they had better go with the ministers to the palace. The ministers refused this, but it was no use and they had to go against their will to a government office where they waited;
eventually the Japanese envoy came back with the officials and waited in the rest area. Shortly afterwards, the ministers had a chance to go to the Emperor and each one stated their opinion. At this point too, Emperor Kojong proffered the opinion that while it was difficult to turn down the Japanese demands outright, it might be worth carrying on negotiations with the proposed agreement in a modified form. However, this alternative plan was very much based on the premise of preserving the existing envoy system the Emperor had sought from Special Envoy Ito and was not to mean that they were to negotiate unconditionally. What is even more significant is that the Emperor and the ministers alike perceived the session as no more than ‘an ordinary meeting to discuss the matter’ (said by the Emperor), ‘a mere deliberative preparation’ (said by eight ministers), ‘mere exchange of information with no sign of anything that can be referred back to such as the stamping of seals’ (said by Kwon Chunghyon). Thus conceived of as a meeting to discuss counterproposals, there was no formality at all toward the Japanese, and the conclusion was to express opposition to the Japanese proposals ((C) above). It was immediately after this meeting that the Emperor proposed a few days’ delay to Ambassador Ito. When after this meeting the opinions of the Korean ministers came out in consistent opposition, Ambassador Ito asked the ministers for their opinions individually in the manner of an interrogation, and when five ministers offered conditional approval, he pretended to accept their conditions and then pushed the agreement through as approved. He thereupon sent the Japanese military police with his right-hand man (interpreter Maema Kyosaku) to the Korean Ministry of Foreign Affairs and had them bring the official seal of the Foreign Minister and put the seal to the document. The time is said to have been 2am on the 18th, past midnight of the 17th as scheduled by the Japanese.

What is notable in the above chain of events, as well as Emperor Kojong’s proposal for the negotiations, is the fact that the
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ministers also showed that they were well aware of the order of negotiation procedures when they said, ‘procedurally, since we have not yet received a proposal from the Ministry of Foreign Affairs, we cannot at present pass a resolution.’ This perfectly coincides with what the Emperor said with regard to the formalities in the interview with Ambassador Ito when he made it clear that ‘after the Foreign Minister has consulted with the Japanese Envoy, the outcome shall be referred to a meeting of government ministers and the outcome of the meeting of the ministers shall be reported to me.’ With this sort of procedural awareness, even though the Emperor told the ministers to proceed with the negotiations, it certainly did not mean that he was transferring the right of decision to the ministers or to the Foreign Minister. The ministers themselves could not have thought that the negotiations could be concluded by the expression of their own opinions. Seen from the position of the Korean Emperor and the ministers, the negotiations for this agreement, which was settled by the approval of five ministers, could not have been even halfway toward completion. For this reason the Emperor made clear immediately after the incident that he had not approved the agreement. Kwon Chunghyon, who attended the meeting as Minister of Agriculture, Commerce and Industry, best summed up the real state of affairs in an appeal on the 25th November, when he said, ‘The chairman (Prime Minister) and the minister in charge (Minister of Foreign Affairs) had already firmly refused and moreover, as it was not a formal meeting, the concluding of agreements was from the start not on the agenda; however, early the next morning the Minister of Foreign Affairs’ official seal was secretly brought in and finally resulted in the signature and the exchange of seals. When I think back, how on earth can a matter of such importance as this suddenly arrive at the exchange of seals without the sanction of the Emperor?’

In short the ‘Second Japanese-Korean Agreement’ was unilaterally settled without there being any consensus between the
two countries on negotiation procedures. There was no opportunity whatsoever for the ultimate sovereign authority, Emperor Kojong, to formally express his will in writing. An example of a protectorate-level agreement being dealt without due process has never been heard before or since in international treaty history. It is complete nonsense to talk of Japan's different treaty types in relation to an agreement forced through in this way. However one looks at it, the ‘Second Japanese-Korean Agreement’ cannot be said to be valid.

4. Emperor Sunjong’s Testimony on the Non-Existence of the ‘Korea Annexation Treaty’

Prof. Unno also criticized, item by item, the arguments I made as problematic in the ‘Korea Annexation Treaty.’ If we examine these in order, they are as follows.

Firstly, I pointed out that the signer for the Japanese, ‘Viscount Terauchi Masatake,’ Resident-General of the Residency-General, was by the ‘Second Japanese-Korean Agreement’ representative in the exercise of Korea’s diplomatic rights, and according to the 1907 ‘Japanese-Korean Agreement,’ held the post of superintendent of Korea’s internal administration, and so was in no position at all to represent Japan in the conclusion of this treaty. In response to this, Prof. Unno said that my view was mistaken since the direction for the superintendence of Korea’s internal administration, and so was in no position at all to represent Japan in the conclusion of this treaty. In response to this, Prof. Unno said that my view was mistaken since the direction for the superintendence of Korea’s diplomacy was from the Tokyo Ministry of Foreign Affairs, not from the Residency-General. Article two of the ‘Second Japanese-Korean Agreement’ states that ‘no treaty or contract having an international character whatsoever can be made unless through the offices of the Japanese Government.’ However, article three following on states ‘the Japanese Government shall place as
representative one Resident-General before His Majesty the Emperor of Korea, the Resident-General shall exclusively administer matters concerning diplomacy,’ from which it can be seen that the duties of the Resident-General are none other than to represent Korea in the exercise of its diplomatic rights. In the ‘Guidelines for the Business of the Resident General’ by cabinet decision 20th December, 38th year of Meiji [1905]), classified as a secret document of the Japanese government, it also stipulates in article four, ‘Minister of Foreign Affairs and the Resident-General must consult previous to taking measures with regard to important Korean diplomatic affairs.’ Thus there is no room to doubt that the duties of the Resident-General extended to the exercise of Korea’s diplomatic rights, and according to the ‘Japanese-Korean Agreement’ of July 1907, he was able to intervene as far as the level of internal administration. It is contrary to reason that such a person represented Japan in a treaty for the transfer of Korean national sovereignty. In such circumstances, the Japanese Emperor should as a matter of course have issued him full powers. For the Japanese to assert the validity of this treaty, they should at least make reference to the existence or otherwise of such full powers. However, up to the present, no record of the issuance of full powers to Terauchi Masatake has been confirmed.

Secondly, in response to my reference to the Imperial Edict or ordinance of the Emperors of both countries on the 29th August 1910 as taking the place of acts of ratification, Prof. Unno made the criticism that this was just my dogma since there were no references at all to substitution for ratification in the memoranda of either countries’ representatives. He asserted that the imperial ordinance of the Korean Emperor was calculated merely to convey the imperial message to the Korean people. Prof. Unno’s views stem from a peculiar understanding of the treaty procedures, as will be discussed later. He views the 22nd August full powers issued to Yi Wanyong as also serving to give consent in the part that reads, ‘it has been decided to present the government of
Korea and to hand it over to the one whom I (the Korean Emperor) deeply trust, His Majesty the Emperor of the Great Empire of Japan,’ and views this as effectively corresponding to an act of ratification. We will discuss later the viability of what we might term the ‘consent-in-advance’ theory.

Thirdly, he criticized my assertion that the Korean Emperor’s imperial ordinance was a ‘fabrication.’ The following is from a telegram dated 27th August, sent by Terauchi Masatake to Prime Minister Katsura and Foreign Minister Komura. ‘The Korean Emperor’s ordinance regarding the Japanese annexation of Korea has been agreed on as is indicated in the accompanying sheet and after being sanctioned today, will be announced on the 29th together with the annexation.’ (‘日本外交文書’ (Japanese Diplomatic Documents) 43-1 (p. 701)) At the end of the accompanying sheet it says, ‘the amendments to the text of the ordinance were reported according to telegram No. 51 sent by Resident-General Terauchi, but for the sake of convenience here is recorded the amended version.’ In my article ‘The “Treaty for Japanese Annexation of Korea” and its Fabricated Imperial Ordinance,’ I understood this to mean that the amendments had been added by the Japanese Prime Minister and Foreign Minister.

In response to this, Prof. Unno checked the times of the dispatch and receipt of the relevant telegrams via the corresponding originals in the Japanese Diplomatic Archive (No. 50, leaving Kyongsong 2:30 pm of the 27th, arriving Honjou (本城) 1:35 am of the 28th; No. 51, leaving Kyongsong 6:55 pm of the 27th, arriving in Tokyo the same day at 11:14 pm), and citing the fact that No. 51 (not included in the Japanese Diplomatic Archive collection) goes ‘as in the previous telegram, the text of the Korean Emperor’s ordinance has been amended as to the left,’ commented that the Japanese Ministry of Foreign Affairs or the Prime Minister could not have sent the amendments in reply. I accept Prof. Unno’s criticism that my interpretation of No. 50 is mistaken. But if Prof. Unno separately checked the dispatch and
receipt times in the Japanese Diplomatic Archive, does this mean that there are more uncatalogued materials connected to the annexation there? My error stems from the fact that the related materials made public are so imperfect. It arouses a lot of suspicion that out of the historical materials connected with Japanese diplomacy that are Korea-related, those to do with the annexation are the most unreliably compiled.

Through a different channel I also came into contact with a file of telegram texts (collected by Yi Chonghak) sent between the Residency-General and the Japanese Ministry of Foreign Affairs from the 8th August to the 14th October 1910. Most of these telegrams should be in the ‘Items to do with the Korean Annexation’ of the ‘Historical Materials on Japanese Diplomacy’ but have gone to places other than the Ministry of Foreign Affairs Diplomatic Archive. Among the telegrams worthy of note in connection with the above is one sent at 11 am, 17th August, to Resident-General Terauchi from Shibita, Secretary to the Foreign Minister, which reads, ‘Proposed texts for Imperial Rescript, public announcement, and for the Ministry of the Imperial Household, nine items in total, dispatched together yesterday evening. Scheduled to arrive with you coming 19th. Request telegram as soon as received.’ Of these, the announcement was none other than the Resident-General’s announcement made together with the Korean Emperor’s Imperial Rescript (at the time of proclamation known as ch’ikyu, ‘Imperial Ordinance’) and the Imperial Rescript that was said to have been sent with it could only have been the Korean Emperor’s Imperial Edict. If this is the case, then the Japanese Ministry of Foreign Affairs must have even prepared a draft of the Imperial Rescript (Imperial Ordinance) announcing the annexation in advance and sent it to the Resident-General on the 17th of August. The above telegram would be for the Resident-General to examine the draft, the draft being ‘determined’ and then notified back to the Japanese Ministry of Foreign Affairs.

If there is a separate No. 51 that Prof. Unno checked, this would
be the Ministry of Foreign Affairs amending a few characters more and sending it back. If this is the case, then the Japanese had decided on bringing about the annexation by force and in the course of making extensive preparations, went so far as to make a draft of the Imperial Edict in advance for the Korean Emperor to inform the Korean people of the annexation, sending it to the Resident-General and having them examine it for awhile in the actual place it would be promulgated. This fact would be clear proof that the treaty had been forced on the leaders of the target country.

Fourth, Prof. Unno stated that the Korean Emperor's edict should accurately be called an 'Imperial Ordinance' and my view of it as an Imperial Edict that corresponded to an act of ratification is wrong. The final draft which was promulgated was actually designated 'Imperial Ordinance' (ch'i'kyu). However, as can be seen in telegram No. 50, even the Japanese side originally titled it 'Edict' (choch'ik) but for some reason changed it to 'Ordinance' when it was finally promulgated. Clinging to the designation 'imperial ordinance' without any regard for the above events is an attempt to elevate the importance of the previously mentioned full powers to that of act of ratification.

The originals of the imperial edicts of the Emperors Kojong and Sunjong are bound in an edict file among the documents of the Kyujanggak archives (Kyujanggak documents 17708-1-2, 17709: collected in Imperial Edicts and Laws published by Seoul National University Library). All the edicts in this collection, with the exception of this last edict of the 29th August, 1910, the one under discussion, all start with the phrase 'His Majesty said.' The final edict does not only differ by its designation 'Imperial Ordinance' but the text also starts differently with the words 'The Emperor said thus.' This change could only have been the result of some sort of friction over the matter of the proclamation between the Emperor and those who forcibly demanded it. However, be it called 'ordinance' or anything else, as long as it is in the 'edict' file
it should naturally be viewed as an edict. Further, whereas all the other edicts in the edict file are concluded with the signature of the Emperor, this important ‘ordinance’ is not signed, a point which cannot but be problematic.

Prof. Unno requested that I not compare it with other edicts with the emperor’s name and seal but with other ordinances promulgated in the same period. However, in the Great Han Empire period there was but one official document designated ‘ordinance,’ so this request is not viable. ‘Ordinance’ is a term that was not used by the Great Han Empire.

Finally we will examine the appropriateness of Prof. Unno’s ‘consent-in-advance’ theory. The basis for this theory is the phrase in Yi Wanyong’s full powers, which was both signed and sealed by the Korean Emperor, to the effect that it had been settled to hand over the administration of Korea, and that it was stipulated in article 8 of the treaty that “since said treaty has the sanction of His Majesty the Emperor of Korea and His Majesty the Emperor of Japan, it shall go into effect from the day of proclamation.” He evaluated the Korean Emperor’s ‘ordinance’ promulgated the 29th August as having no special significance from the point of view that since consent had thus been given in advance. ‘There is no provision relating to ratification in the treaty and the exchange of ratification as a diplomatic act is rendered unnecessary.’ With this he criticized my view that since the ordinance was not signed by the Emperor this treaty had not received consent. This view raises the following problems.

Firstly, since it is hard to find another example of this form of ‘consent-in-advance’ in international treaty history, the validity of this method is seriously called into question. Prof. Unno himself indicated its exceptional nature, but how it can be concluded from this that ratification procedures were complied with is beyond my comprehension. Not only that, but the full powers under discussion was directly handed over to Yi Wanyong by Resident-General Terauchi on the 18th of August (The Report on the
Annexation of Korea by the Korean Government-General, 15th fascicule) (a fact Prof. Unno also acknowledges) and in common with the previously mentioned ‘ordinance,’ the Japanese prepared it beforehand. If we are to assert that the Korean Emperor gave consent in advance based on such documentation, then this would be a clear ground for a forced treaty under international law. Considering that Prof. Unno, while knowing all these facts, does not doubt its legality in the slightest, it would appear he is applying the principle that the format of an agreement does not have an internationally prescribed form, but is determined by the mutual agreement of both parties. He should not forget however, that the very act of advance consent itself is evidence of coercion.

Secondly, Prof. Unno interpreted the ratification of the treaty by the heads of the two countries to have been completed by the Japanese Emperor’s sanctioning of the annexation on the same day, the 22nd August, as the Korean Emperor giving advance consent by the full powers. Therefore, he said, the lack of the Korean Emperor’s signature on the ‘ordinance’ is not a problem. If so, then how would one explain the presence of the Japanese Emperor’s signature and seal on the Imperial Edict jointly proclaimed on the 29th August with the same intent? According to the memorandum between the representatives of the 22nd August, it was prescribed that the edicts of the leaders of both countries should ‘uniformly match on both sides and be proclaimed at the same time.’ Since there is no reference at all to any distinction being made between ‘edict’ and ‘ordinance’ in this stipulation, it meant that the edicts had to comply with the requisites for edicts of both countries. Whereas the Japanese Emperor’s edict satisfied the required conditions, the fact that the Korean Emperor’s ‘ordinance’ did not cannot but be problematic.

The Japanese Emperor’s sanctioning the annexation was his sanctioning of the decision of a meeting of the cabinet and was definitely not the sanctioning of the treaty signed and sealed by the representatives. The first expression of consenting to and
accepting the treaty being none other than with the edict of the 29th of August, there can be no doubt that this corresponded to an act of ratification. Consequently, the fact that the Emperor’s signature was missing from the ‘imperial ordinance’ clearly meant that the Emperor had not consented to it. The ‘consent-in-advance’ theory can be nothing but a fanciful explanation. Even if one adamantly sticks to the ‘consent-in-advance’ theory, it must be admitted that this has no procedural due process under international law on the ground of the threat and coercion of the head of the other country.

It appears that Prof. Unno’s ‘consent-in-advance’ theory reflects, in part, the intent of the Japanese political leaders of the time. There is every possibility that the high-level political leaders of the time actually anticipated that the Korean Emperor would not comply willingly and mapped out the procedures both for advance and for after-the-fact consent. Article 8 of the treaty substantiates such an intention. However, by international convention it is extremely doubtful that it would be accepted as due process through this alone and this is a quite obvious fact. The edicts of the heads of both countries were conceived to address this concern. Whatever the intention in issuing it, if we look at it from the point of view of international convention, this edict precisely corresponds to an act of ratification.

However, the fact that the Korean Emperor Sunjong himself made clear that the “Annexation Treaty” was forced has recently been verified. Immediately before he passed away on the 26th April 1926, Emperor Sunjong orally entrusted the following death-bed injunction to Minister of the Imperial Household, Cho Chonggu, who stayed by his side. This injunction was reported about two months later in the 8th July 1926 edition of the “Shinhan Minbo,” published by Korean residents in San Francisco, USA. (The help of Mr. Choi Somyon, the Director of the International Center for Korean Studies, in obtaining this material is acknowledged with gratitude.) The full text of the injunction is as follows.
I, who have barely maintained an existence, hereby issue an edict to revoke the approval of the annexation. The annexation was approved in the former days, by our strong neighbor* together with the treasonous.** Doing as they pleased and promulgating it as they pleased, it was no doing of mine, Only confining me and oppressing me with threats Making me unable to speak clearly, it was not my doing. How could there be such a way, past or present? It is now 17 years that I have lived so ignobly, unable to die I have become a transgressor against our country, against its populace of 20,000,000. As long as I have life in my body, I cannot forget this for a moment. Weary in confinement without the freedom to speak, it has been like this until today Now I am in a critical condition so if I should die without saying a word, even though I should die I cannot close my eyes, Now I place the matter in the hands of my liege so that he can proclaim this edict home and abroad, If you let my most beloved and revered people know clearly that the annexation was not my doing then the previous so-called annexation approval and the edicts of the two countries will be revoked of their own accord All of you must toil for the restoration of independence, My soul will aid you all out of the midst of darkness The edict conferred on Cho Chonggu (* meaning Japan) (** meaning Yi Wanyong and others)

Emperor Sunjong made clear the purpose of his leaving this
final injunction before he died as ‘to revoke the approval of the annexation.’ He revealed this in an earnest state of mind, saying, ‘The annexation was approved in the former days, by our strong neighbor together with the treasonous, doing as they pleased and they promulgated it as they pleased, it was no doing of mine.’ He also revealed at the same time that he had been kept confined by the Japanese deep inside the Secret Garden (Ch’angdeok Palace) and cut off from contact with the outside, which is why this fact came to light only then.

It is clear according to this testimony that coercion of the head of state did occur during the progress of the ‘Annexation Treaty.’ Depending on whether the Emperor’s phrase ‘the matter of the approval of the annexation’ refers only to the signing of the full powers, or whether it includes the signing and sealing of the ‘ordinance’ as well, the interpretation of the nature of the treaty may differ. In the case of the former, the interpretation will be limited to the matter of the threat and coercion of the head of state, and in the case of the latter, in addition to coercion, there will also be the lack of ratification and so the non-existence theory will be further substantiated. In the future, a more precise discussion from the viewpoint of international law will have to take place on this matter, but from the viewpoint of common sense, the latter interpretation stands. Further, from the state of mind revealed in Sunjong’s death-bed injunction, it is possible that although he complied against his will after holding out for more than three hours when forced to sign and seal the full powers, he could have refused to sign the promulgation edict. If he had signed and sealed this edict, he would not have been able to leave behind the words, ‘the annexation was approved in the former days, by our strong neighbor together with the treasonous, doing as they pleased, they promulgated it as they pleased, it was no doing of mine.’ The Imperial Seal (inscribed ‘勅命之寶’) stamped on this edict the name of which had been changed to ‘ordinance,’ was in the possession of the Resident-General and in no way
indicated the will of the Emperor.

The purport of an act of ratification originally is to inform the people in general that some agreement has come into being. It should be remembered that the Japanese government and the Chosŏn Government-General primarily relied on the ‘ordinance’ rather than the full powers as proof from the Korean side when announcing the annexation. To use this ‘ordinance,’ which contains absolutely no expression of the Emperor's consent, as proof of approval of the annexation, clearly amounts to a ‘fabrication.’

5. Conclusion

Prof. Unno dismissed my assertions as ‘adopting the method of first setting up a standardized model of the procedures and formats involved in the conclusion of treaties and examining whether the historical facts fit with it,’ ‘a system of judging cases deviating from the model as disqualified for not meeting the necessary conditions,’ and saying that ‘they are accompanied by one-sided thinking and there are aspects which seem to be dogmatic,’ and even mobilized such criticisms as containing ‘defective corroborative evidence,’ ‘misinterpretation of historical materials,’ and ‘mere speculation.’ However, through this article it has become clear that on the contrary, it is his criticisms, based as they are on the treaty classification system of the Treaty Department of the Japanese Ministry of Foreign Affairs that are fraught with problems. It is common sense that the touchstone for international agreements should be international convention. It is difficult to understand why Prof. Unno set up the classification of the Japanese government as the standard and arbitrarily judged everything against this.

From the standpoint of a Korean, I feel a strong aversion to the
self-righteous ideas for ‘Peace in Asia’ of the Japanese political leaders at the time these agreements were forced through, but now I feel myself unable to shake off an even greater impression of self-righteousness from the setting up of, not international law or convention, but the standards of the Treaty Department of the Japanese Foreign Ministry as a yardstick, and debating the legality of the agreements concerned based on that standard. It is not that I have gained nothing at all from what Prof. Unno has pointed out so meticulously, but I do feel that there are, on the contrary, many more instances where his unnecessary assertions, based as they are on mistaken standards, have unreasonably infringed upon the point of my argument. I still find it difficult to accept the expressions such as dogmatic, speculation etc. that he mobilized against my article. I still remain firm in my view that the five related agreements presented after the Russo-Japanese War were all forced on Korea by Japan, lacking in the necessary requirements according to international law, without a single instance where the Korean Emperor definitely expressed, of his own free will, his consent through any document, and so the annexation of Korea was not valid.

I more than welcome the great progress made by the ‘Dialogue between Japan and Korea’ also in the area of international law with Prof. Sasakawa Norikatsu’s *Heading for a Legal Dialogue between Japan and Korea*. I do however feel the strong need for the scope of the debate to go beyond the typical use-of-force viewpoint for the ‘Second Japanese-Korean Agreement’ only. As a historian, I earnestly hope that the results in the field of history will be put to use by joint research of international law scholars of both countries, as was proposed by Prof. Sasakawa Norikatsu.