

# The Dokdo/Takeshima Issue and the Validity of Some Treaties Coerced by Japan in the Early 20th Century

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독도/타케시마 논쟁과 20세기 초 일본에 의해서 강요된 조약들의 유효성

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## 국문요약

1910년 일본과 대한제국 간에 성립된 한일합방조약이 그 당시 조약법상 적법하게 성립되고 발효된 것인가의 여부는 독도 영유권에 관한 일본의 주장에 있어서 중요한 전제(前提)가 되고 있다.

또 1952년 패전국 일본과 연합국간에 성립된 샌프란시스코 강화조약은 승자인 연합국들에 의해서 일본의 의사와는 관계없이 강요된 조약이었다고 한다면, 이 조약의 법적인 유효성도 문제가 될 수 있다.

그러나 적어도 1952년 샌프란시스코 강화조약에 관한 한, 일본정부의 자유 의지와는 상관없이 강요된 내용으로 체결된 것이라고 할지라도, 조약법에 관한 비엔나 협약 제75조의 명백한 규정에 따라 무효 또는 취소로 인해 손상을 받은 것으로 간주될 수 없다는 점이 매우 명백하여 졌다. 이러한 관계는 UN헌장 제107조에 (적국조항)의해 다시 확인되었다.

일본의 한국 침략과정 중에 체결된 조약에 관한 한 그 체결에 있어 중대한 절차상의 결함과

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대표자에 대한 강제가 있었던 처음 3개 내지 5개의 조약은 법적으로 유효하게 확립되지 못했다. 뒤의 두 조약, 즉, 1907년의 한국과 일본간의 제3 한일협약과 1910년의 합방조약은 시초부터 국제 협약으로서 확립되지 못하였다. 그들 조약은 당초부터 무효이다. 이론적으로 일본에 의한 대한제국의 합방은 합법적으로 확립된 것이 아니며, 당연히 어떠한 법적 효과도 확립되지 않았다.

일본의 한반도에 대한 식민통치는 1952년 4월 28일부터 효력을 발생한 샌프란시스코 강화조약에 의하여 종식되었으며, 권리가 포기되었다. 1945년 9월 2일 일본제국의 무조건 항복에 따라 일본의 침략적 의지와 군대, 한반도에 대한 정치적 강압은 즉각적이고 완전하게 소멸된 것이다.

## I. Introduction

Korea and Japan have co-sponsored 2002 FIFA World Cup Game successfully. This luxurious world sports festival had never been convened in Asia, so far. So the mere fact that Asian nations, the Korea and the Japan are hosting this gala event, is unusual and meaningful. But the most touching moment is when the Japanese people wholeheartedly exulted at the Korea's victory over the Italy to earn the four finalists for the golden goal.

Have these two neighbouring nations come into real partnership with the chance of co-sponsoring this world event? For the prosperous future of these two nations, and for the security of the world, a real partnership based on mutual respect and confidence between these two nations is desperately wanted. In the course of completion of a real partnership between these two nations, the Dokdo/Takeshima Issue has been the most formidable stumbling block.<sup>1)</sup>

As a matter of a fact, the Dokdo Island Issue has been the most sensitive detonator to trigger up the fury of anti-Japanese emotion among Korean people. No other country but Korea has a patriotic popular song, so earnestly sung by the whole nation, yearning for the island, disputed with its neighbouring state. This song, so passionately sung by the Korean people is titled,

1) There are a few diplomatic stumbling blocks for enhancing the friendly relationship between the Korea and the Japan, such as the human right issue in relation with the coerced comfort women during the World War Two. and the fabricating history text book matter.

For the coerced comfort women issue, refer to *Radica Kumaraswami's Special Human Right Report*. E/CN.4/1996/53/Add.1 (Jan. 4, 1996) ; *Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-like Practices During Armed Conflict*. Final Report Submitted by Ms. Gay J. McDougall, Special Rapporteur. E/CN.4/Sub. 2/1998/13 (June 22, 1998) ; Rajendra Ramlogan, "The Human Rights Revolution in Japan: A Story of New Wine in Old Wine Skin", 8 *Emory Int'l L Rev.* 127, 146.

For the Fabricating the History Textbook Matter, refer to; Jung, Jaejung, *Ilbonue Nonlee* (The Japanese Theory), (Seoul: Mineumsa, 1998); Korea's Demand for Correction of Distortions in Japanese History Textbooks (May 8, 2001)

[http://www.mofat.go.kr/en/info/e\\_info\\_view1](http://www.mofat.go.kr/en/info/e_info_view1).; "Asians form human chain to protest Japanese history textbook," *Corporate Watch in Japanese* (Mon, 11 Jun 2001).

<http://www.jca.apc.org/web-news/corwatch-jp/157.html>

“Dokdo is our land”. Contrastingly enough, however, the stubbornness of the Japanese Government's attitude in asserting the legal title to this far-flung rock islands seems to become ever more aggressive<sup>2)</sup> while the contemporary Japanese people do not know much about this Dokdo Island Issue. The Korea and the Japan should overcome this sovereign dispute —the Dokdo/Takeshima Issue— fairly and wisely, to find a righteous way to complete a real partnership.

From the Korean point of view Dokdo Island is obvious and legitimate part of Korean territory. However, the Japanese Government believe that Takeshima is a legitimate part of Japanese territory, affirmed by historical evidences and based on the theory of international law. They insist that it has only been occupied by Korean authority, forcefully, and illegally.

Dokdo Islands locates in the centre of the Sea of East Sea/Japan, 47.4 nautical miles from Ullung Island. The Korean title of territorial sovereignty over the Ullung island is clear and indisputable. The existence of Dokdo Island which is visible from Ullung in clear weather, as an associated feature to the Ullung island has been apprehended by consecutive Korean dynasties. Dokdo Island, no matter that Liancourt Rocks/Takeshima, whatever it be called, has originally belonged to Korea. Even Japanese governments had recognized this as a fact, twice with official acts, such as:

- ① Tokukawa Shogunate government, in January 1696, had decreed that the Ullung island and its associated feature —Dokdo Island— belong to Korea, not to Japan, in the concluding act to the incident of An Yong Bock's Protest.<sup>3)</sup>
- ② The Meiji Japanese government's authentic interpretation had made it clear that the Ullung and Dokdo Island, — They described them as, “Takeshima and its associated feature (竹島, 外一島).”— belong to Korea, not to Japan, in the final authentic letter to the inquiry from Shimanae Prefecture. (March 29, 1877).<sup>4)</sup>

The origin of the Dokdo/Takeshima dispute between the two countries could be traced up to the incorporation of the island to Japanese territory, by the Japanese Government in 1905. Taking chance of the outbreak of the Russo-Japanese War, the Japanese Cabinet took the final decision of incorporation of Dokdo/Takeshima into Japanese territory, on January 28. 1905. Only

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2) <http://www.geocities.co.jp/WallStreet/2800/takeshima/>  
<http://www.mofa.go.jp/mofaj/area/takeshima>

3) Official Document, Attached Documents of the Genroku Era. No.1, 1696. Japan Council of State(Dajokan) ed., *Official Document(Kobunrok)*, 1877 in the Japanese National Archives

4) “Nihonkainai Takeshima hoka itto chiseki hansan kata ukakai”(An Inquiry about the Compilation of the Land Register on Takeshima and Another Island in the Sea of Japan) in Official Documents, Dajokan ed. Section on the Home Ministry, 1877 (Tokyo: National Archives).

obvious motivation of the Japanese governmental act was aggressive strategical demand which this emerging imperial monarchy had confronted with, at the moment.<sup>5)</sup>

The Russo-Japanese War had begun on February 6, 1904. Ignoring the Declaration of Neutrality notified to the belligerents by the Korean Government in January 21st, 1904, Japanese Army troops had advanced into Korean territory. Under the complete occupation of the whole territory by the invading Japanese armies, and in the military seizure of the Korean Emperor's palace by the Japanese troops, the "Korea-Japan Protocol" had been signed between the Korea and the Japan on February 23, 1904. In this coerced treaty, it was stipulated that the Japanese Imperial Army shall have the rights to use of any part of Korean territory, freely, as it were tactically or strategically demanded.<sup>6)</sup>

Some Japanese scholars insist that this act of incorporation by the Japanese Government in 1905 had constituted the prior "Occupation" of Dokdo Island, a *terra nullius*. and it had established the Japanese territorial title over this extension of land, which is impeccable according to modern international law.<sup>7)</sup> The official Japanese Government's stance insisting the sovereign title over this Dokdo/Takeshima is on exactly the same legal logic as this theory.<sup>8)</sup> Some other Japanese scholars like Daijudo Tei<sup>9)</sup> and Kawakami Kenjo<sup>10)</sup> explained in a slightly different manner as that Dokdo/Takeshima has been Japanese territory from ancient times, and this incorporation act was the meaningful procedure to confirm it. In either case, the Japanese government's act of incorporation of the Dokdo/Takeshima island to Japanese territory in 1905, has been the prime ground for the alleged Japanese title of sovereignty over this rock island.

The Japanese Government emphasized that Article 2 (a), the territorial clause of the 1952 Peace Treaty, does not contain any implication that the land which was a part of the Japanese territory before the 1910 Treaty of Annexation, be ceded to the newly independent Korea. So, naturally, the validity of the 1910 Treaty of Annexation, and other coerced treaties concluded between the Empire of Korea and the Empire of Japan in the course of the Japanese invasion of

5) Director Yamaza Enziro of the Japanese Foreign Ministry, Political Bureau, demanded urgently at the time;

...the incorporation is urgent particularly under present situation, and it is absolutely necessary and advisable to construct watchtower [on this rock island] and install wireless or submarine cable [to this rock island] and keep watch on the hostile warships.....

Shimane ken koho bunshoka (Public Information & Document Div. Shimane Prefecture) ed. *Takeshima Kankei Shiro* (Materials on Takeshima), 1953, vol. I

6) Article 4. The Korea-Japan Protocol. (February 23, 1904.)

7) Ueda Katsuo(植田捷雄), "The Korea-Japan Controversy Relating to the Sovereign Title of Takeshima", *The Hitotsubashi NonSo* [The Journal of Hitotsubashi University] vol.54. No.1. (1965), p.25.

8) Korea Ministry of Foreign Affairs, *Korea-Japan Diplomatic Correspondences* Vol. I (1952~76), Foreign Affairs Material No.77-134. p.17.

9) Daijudo Tei(太壽堂鼎), "The Takeshima Dispute", *The Journal of International Law and Foreign Affairs*, Vol.64, No.4 & 5.

10) Kawakami Kenjo, *A Historical and Geographical Study of Takeshima*, (Tokyo: Koshishoten, 1966), p.252.

the Korean peninsula, has become the crucial premise for the contention of the Japanese sovereign title of the Dokdo/Takeshima Island.

As a matter of a fact, the validity of the 1910 Treaty of Annexation, and other coerced treaties which had been concluded in the course of Japanese aggression to the Korean peninsula has already drawn academic debates among the historians and the international law practitioners.<sup>11)</sup>

To pave a righteous way for enhancing the honorable partnership between the Korea and the Japan with mutual respects and confidence, such academic debates should have come to a crystal clear conclusion.

In this paper, the validity of the 1910 Treaty of Annexation, and other coerced treaties concluded in the course of Japanese aggression, along with the scope of application of the 1952 San Francisco Peace Treaty shall be reviewed.

## II. The Japanese Surrender Terms in WW II and the Territorial Clause of the 1952 San Francisco Peace Treaty

### A. Validity of the 1952 San Francisco Peace Treaty

If a treaty were imposed by certain kind of force, the treaty is void in accordance with Article 52 of the 1969 Vienna Convention on the Law of the Treaty. This "Surrender Terms" and the territorial provisions in the 1952 San Francisco Peace Treaty were imposed to Japan by the victors, the Allied Powers, obviously without regard to Japan's free will. Shall this surrender terms and the territorial clause of the 1952 San Francisco Peace Treaty be void, upon this doctrine of nullifying a coerced treaty ?

Real consent of a state concluding a treaty is a condition of its validity. This is a prime doctrine of international law. A peace treaty however, is imposed to the defeated by the victor without regard of the free will of the defeated, always, in some respect. So, the contemporary international law seems to prescribe general condition for the validity of a peace treaty, namely,

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11) International Symposium. *Japanese Annexation of Korea: Reconsideration from Historical and International Law Perspectives*, January 25~28. 2001. Alamoanna Hotel, Honolulu, Hawaii.  
Francis Rey, "La Situation Internationale de la Coree", *Revue Generale de Droit International Public*, Tome VIII, 1906;  
*Yearbook of the International Law Commission*, 1963. Vol. II, Documents of the Fifteenth Session including the Report of the Commission to the General Assembly, U.N.  
Taejin Lee, "The Japanese Annexation of Korea was not validated legally; Extortion of the Korean Sovereignty by Japan and the Coerced Treaties ( I ) and ( II )", *Sekai*, July-August 1998, ( I ), pp.300~310. ( II ) pp.185~196;  
Sakamoto Shikeki, Let's not Indulge in the Senseless Debate of the Old Treaties' Validity; Responding to Professor Taejin Lee's Paper, *Sekai*, September 1998. pp.193~206.  
Yutaka Kawasaki, "Was the 1910 Annexation Treaty Between Korea and Japan Concluded Legally?" *E Law - Murdoch University Electronic Journal of Law*, Vol 3, No 2 (July 1996)

the conformity with the principles of international law embodied in the Charter of the United Nations.<sup>12)</sup> It could be simply summarized as: while a peace treaty would be void if procured by an aggressor state's coercion to a victim, a peace treaty concluded by a defeated aggressor state as a result of military victory by a would-be victim —particularly in the case of lawful collective action against the aggressor— is valid.<sup>13)</sup> But the rule that a coercion directed to a state itself, invalidates a treaty, which is prescribed in the Article 52 of the 1969 Vienna Convention on the Law of the Treaty, has only been developed recently.

The legal issues relating to the territorial clause of the 1952 San Francisco Peace Treaty should also be scrutinized in this sense, particularly in connection with the defining terms for Japanese Surrender and the territorial provisions in the 1952 San Francisco Peace Treaty, along with the Cairo Declaration of 1 December 1943, and the Potsdam Declaration of 26 July 1945.

As far as this particular action to the Japan —the territorial clause— in 1952 San Francisco Peace Treaty is concerned, however, it is quite obvious that the provisions could not be regarded as tainted with invalidity or void, no matter what the free will of the Government of Japan would have been, with the clarifying provision of the 1969 Vienna Convention on the Law of the Treaty, the Article 75.<sup>14)</sup> This notion is fortified again with the Article 107 of the Charter of the United Nations.<sup>15)</sup>

This doctrine of nullifying a coerced treaty does not have any relevance of application to the territorial clause of the 1952 San Francisco Peace Treaty not only because of the above-mentioned clarifying provisions of the Law of the Treaty Convention and the U.N. Charter, but also because of the unique situations of drafting the treaty. Thanks to the outbreak of Korean War in 1950, the relation of the U.S., the victor and drafter, versus the Japan, the defeated and the imposed had gradually changed into collaborating partners. With the outgrown communists threats from the north, Japan was no longer an enemy to the U.S. but a valuable potential partner to defend them. Particularly, in the course of drafting the treaty, the original roles of the parties had also been changed drastically.

As far as the territorial clause of this particular peace treaty was concerned, the will of Japan had been dealt with in some peculiar manner, as giving a crucial weight to it in the drafting

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12) Article 52 of the 1969 Vienna Convention on the Law of the Treaty

13) Sir Robert Jennings, Sir Arthur Watts ed. *Oppenheim's International Law*, 9th edition. (Longman, 1992), [here-in-after, 'Jennings'] pp.1290–91.; L. Henkin, *International Law: Politics and Values*, Dordrecht: Martinus Nijhoff Publishers, 1995., pp.28~29.

14) Article 75 of the 1969 Vienna Convention on the Law of the Treaty

The provisions of this present Convention are without prejudice to any obligation in relation to a treaty which may arise for an aggressor State in consequence of measures taken in conformity with the Charter of the United Nations with reference to that State's aggression

15) Article 107. Charter of United Nations

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory of the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

phase by the U.S.<sup>16/17)</sup> while the Korea had been completely excluded from the entire negotiating and drafting proceedings of the peace treaty.

The Korean Government had officially or unofficially expressed its desire to participate in the peace conference either in a negotiating or consultative capacity, on the basis that Korea had been a belligerent against Japan. As the evidence of the belligerent status, Korea cited the participation of Korean military unit fighting with Chinese armies in the war against Japan, and the military engagements waged in Manchuria by Korean guerrillas against Japanese army over the periods of years; and the combined military operations conducted by the special unit of the Korean Independent Army along with the U.S. and U.K.<sup>18)</sup>

Conceptually, the U.S. seemed to understand that the Korea should have been accepted as having some due parities with the Allies of its status for the negotiating in the peace conference and for the interpreting the Peace Treaty.<sup>19)</sup> President Rhee<sup>20)</sup> was reported to have stated in a

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16) Mr. Yosida Shigeru, the then Japanese Prime Minister recollected in his Memoir;

.....  
The Japanese Government submitted materials to the U.S. so abundant for them as to speak for the Japan in the course of negotiating the Peace Treaty. Particularly, we concentrated our utmost efforts in preparing the materials for the territorial clause of the draft treaty. We stressed and gave a full explanations that those outlying islands, such as Okinawa, Bonin, Kuril and Sakhalin islands have the indivisible relationships with Japan in respects of history, geography, race and economy. The collected materials submitted to the U.S. had piled up to 7 volumes only in relation with the territorial clause.

.....  
Yosida Shigeru, *Memoir of the Ten Years*, vol. 3. (Tokyo: Shinchosa, 1957)

17) Mr. Shimoda Takezo (下田武三), the then Under-Secretary, the Treaty Bureau of the Japanese Foreign Ministry, also recollected;

.....  
We first streamlined our own logic to assert for the appropriation of the inherited Japanese territory with historical basis. It was the logic that the inherited Japanese territory should be reverted to Japan. For this streamlining of the logic, Mr. Kawakami Kanjo, Junior Secretary, the Treaty Bureau of the Japanese Foreign Ministry, who had the expertise in the law of the treaty, prepared an elaborated report after a concentrated research on the historical records and various archives. The SCAP, being conscious of the other allied powers like USSR, had initially refused to receive such reports made by the enemy, Japan until 1946.

As the U.S.-USSR confrontation formulating the post cold-war situation had become intensified, however, the Washinton authority had come to realize the real value of those Japanese reports and begun to receive them willingly. ....

Shimoda Takezo, Centre for the Study of Administration, *The Post Japanese Diplomacy: A Memoir*, 1984.

18) Infra note 82.

19) Statement made by Ambassador John Foster Dulles, the then chief U.S. Delegate to the 1951 San Francisco Peace Conference, on September 5, 1951;

By this Treaty, the Allies will obtain for Korea, Japan's formal recognition of Korea's independence, and Japan's consent to the vesting in the Republic of Korea of the very considerable Japanese property in Korea. Korea will also be placed on a parity with the Allied Powers as regards post-war trading, maritime fishing, and other commercial

press conference on January 7, 1949 that General MacArthur had given assurances that the delegation of the Republic of Korea would be recognized and seated at any forthcoming conferences.<sup>21)</sup> But the U.S. had eventually made no definite commitment to support Korean participation.<sup>22)</sup>

So if any ambiguity doctrine — the rule of *contra proferentem* — were ever taken for considerations, it should be duly applied with in a manner of maintaining the view of taking the Japan, as the drafter, and the Korea, as the imposed.

#### B. Scope of Application of the Territorial Clause

In the interpretation of the Article 2, Para.(a) in the 1951 Peace Treaty, Korea and Japan have a grave difference of opinion, particularly in regard to the scope of application of the concerned provision.

Japan interprets the prescription, “Japan recognizes the independence of Korea” in the concerned territorial provision as that Japan has recognized the separation and independence from Japan of Korea as it existed before the annexation of the one to the other. Japan alleged earnestly that this particular provision does not contain the slightest implication that the land which was a part of the Japanese territory before the annexation be ceded to the newly independent Korea. Japan specifically stressed that “Takeshima” -Liancourt Rocks/Dokdo- had been placed under the jurisdiction of Shimane Prefecture prior to the annexation of Korea to Japan and continued to be so even after the annexation, not having been placed under the jurisdiction [of the Government General] of Korea.<sup>23)</sup>

Could all these qualified interpretations by the Japan, be possibly deemed as an ordinary meaning to be given to the phrase, “Japan recognizes the independence of Korea”?<sup>24)</sup> The recognition and the renunciation prescribed and demanded to Japan by the Article 2, Para.(a) in the 1952 Peace Treaty are supposed to strictly and scrupulously conform to those prescribed in the Cairo (1 December 1943), Potsdam (26 July 1945) Declarations and the Instrument of Surrender (2 September 1945)<sup>25)</sup>. As aptly pin-pointed in Ambassador Dulles' Summary<sup>26)</sup>, territorial

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arrangements. Thus the treaty, in many ways, treats Korea like an Allied Power

Conference for the Conclusion and Signature of the Treaty of Peace with Japan, San Francisco, California, September 4~8, 1951. *Record of Proceedings* (1951), Dept. of State Publication 4392, pp.84-85.; Marjorie M. Whiteman. *Digest of International Law*, vol. I. (Washington D.C.: U.S. Government Printing Office, 1963.) p.322.

20) The President of the Republic of Korea, Sung-Man Rhee.

21) FBIS. Daily Reports, Far Eastern Section, January 12, 1949. p.1117. UNCLASSIFIED

22) A-1455, Seoul, December 3, 1949. (classified as) SECRET. cited from Shin Yong-Ha, *Dokdo Youngyoukwon-Tamku*, vol. 3. Dokdo Research Series-7. Seoul, December, 23, 2000. pp.275~282.

23) Korea Ministry of Foreign Affairs, *Korea-Japan Diplomatic Correspondences* Vol. I (1952~76), Foreign Affairs Material No.77-134. (Seoul, 15 July 1977).

Japan's *Note Verbales* (No. 186/A2) Dated July 13. 1953. para. 7. p.19.

24) The Vienna Convention on the Law of Treaties. Article 31.

25) Ambassador Dulles' Summary, *Supra* Note 19.



provisions in the 1952 San Francisco Peace Treaty were only reiterating the Surrender Terms of 1945 which, so far as Japan is concerned, had been actually carried into effect since then. Korea had been inaugurated as a free and independent nation on August 15, 1948. Upon the entering into force of the 1952 Peace Treaty on April 28, 1952, "Japan should recognize the independence of Korea" just as its being at the time.

In the instrument, signed at Tokyo Bay on 2 September 1945, the Japanese Government proclaimed the Unconditional Surrender<sup>27)</sup> to the Allied Powers. In the sixth paragraph of this document, it pledged:

We hereby undertake for the Emperor, the Japanese Government and their successors to carry out the provisions of the Potsdam Declaration in good faith,.....

With this Japanese pledge, the Potsdam Declaration had been established as a valid treaty between the Japan and the Allies. Among the provisions of the Potsdam Declaration on 26 July 1945<sup>28)</sup>, there appeared the territorial clause as demanded for the terms of surrender in its 8th paragraph:

(8) The terms of the Cairo Declaration shall be carried out ....

In this way, the terms of the Cairo Declaration had already been established as a legal agreement which gives the legally binding obligation to be carried out by the Japan.<sup>29)</sup>

Then what are the terms of the Cairo Declaration ? To scrutinize the Japan's alleged qualified interpretations, we would better review some part of the Cairo Declaration which goes like this.:

The three Great Allies are fighting this war to restrain and punish the aggression of Japan.....It is their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the first World War in 1914, and that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China.

Japan will also be expelled from all other territories which she has taken by violence and greed.

The aforesaid three great powers, mindful of the enslavement of the people of Korea, are determined that in due course Korea shall become free and independent.....

Obviously, according to the terms of the Cairo Declaration, the Korea was to be free and

26) Marjorie M. Whiteman. *Digest of International Law*, vol. III. (Washington D.C.: U.S. Government Printing Office, 1964.) p.539.

27) Instrument of Surrender, signed at Tokyo Bay, Japan. [2 September 1945] *American foreign relations, a historiographical review* / edited by Gerald K. Haines and J. Samuel Walker. Westport, Conn. : Greenwood Press, 1981.

28) Proclamation defining Terms for Japanese Surrender, Potsdam, 26 July 1945 [Potsdam Declaration] *Diplomatic Manual*, Ministry of Foreign Affairs. Republic of Korea. 1960. p.778

29) Takano Ouichi, *The Territory of the Japan*, (Tokyo: Tokyo University Press, 1962), pp.4~11.

independent. All the territories of the Korea which had been taken by violence and greed of the Japan, should be restored to the Korea.

According to the historical records of Japanese aggression into Pacific and Asian area, Formosa, and the Pescadores were siezed by Japan in 1895 by the arrangement of Shimonoseki Peace Treaty concluding the Sino-Japanese War. On September 18, 1931, the Kwandong Army Division of the Japanese Imperial Government invaded into Manchuria. Japan had completed the seizure of the whole of this Manchuria area early in 1932. Japanese aggression into the Korean peninsula had commenced in 1875.

On August 21, 1875, 30 Japanese warships pulled into the Ganghwa Bay near Inchon Port, of the western coast of Korean peninsula. In the engagement between the Japanese amphibious assaulting force and the Korean coastal defence troops, the Korea had been completely defeated by the Japan with 35 casualties and 16 captured. After this military invading action, a series of political —or sometimes quasi-diplomatic— manipulations by the Imperial Japan to annex the Korea had proceeded. Five treaties had been concluded between the Korea and the Japan, in the course of Japanese aggression to the Korean peninsula (here-in -after, “the five treaties”)<sup>30</sup>. The

30) 1. The Korea-Japan Protocol. February 23, 1904.

A document militarily coerced by Japan in the beginning of Russo-Japanese War.

- ① The Korean Government shall take account of the Japanese recommendations to reform its administering policies.
- ② The Japanese Government shall guarantee the independence and the integration of territory of Chosun Dynasty.
- ③ The Japanese Imperial Army shall have the rights to use of any part of Korean territory, freely, as it were tactically or strategically demanded.

2. The First Korea-Japan Agreement. August 22, 1904.

A document militarily coerced by Japan in the wake of Russo-Japanese War.

- ① The Korean Government shall be under the control and guidance of Japanese Financial Governor.
- ② The Korean Government shall be under the control and guidance of Diplomatic Governor, designated from among foreigners, by the Imperial Government of Japan.
- ③ Any treaties or agreements the Korean Government intends to make with other powers, shall be prior-consulted with the Imperial Government of Japan

3. The Second Korea-Japan Agreement. (乙巳勒約) November 17, 1905.

The coerced agreement to make the Korea into a Japanese protectorate.

Article 1. The Government of Japan, through the Ministry of Foreign Affairs at Tokyo, will hereafter have control and direction of the external relations and affairs of Korea, and the diplomatic and consular representatives of Japan will have the charge of the subjects and interests of Korea in foreign countries.

Article 2. The Government of Japan shall undertake to see to the execution of the treaties actually existing between Korea and the other Powers, and the Government of Korea shall not engage to conclude hereafter any act or engagement having an international character, except through the medium of the Government of Japan.

Article 3. The Government of Japan shall be represented at the Court of His Majesty the Emporer of Korea by a Resident-General, who shall reside at Seoul, primarily for the purpose of taking charge of and directing matters relating to diplomatic affairs. He shall have the right of private and personal audience of His Majesty the Emporor of Korea. The Japanese Government shall also have the right to station Residents at the several open ports and such other places in Korea as they may deem necessary. Such Residents shall,

Treaty of Annexation [The Treaty regarding Annexation of Korea to the Empire of Japan] on August 22, 1910 was just one of the incidents proceeded thereof. In conclusion, this particular treaty seems not to be any meaningful threshold of Japanese aggression of Korea nor the only legally decisive document either.

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under the direction of the Resident-General, exercise the powers and functions hitherto appertaining to Japanese Consuls in Korea and shall perform such duties as may be necessary in order to carry into full effect the provisions of this agreement.

Article 4. The stipulations of all treaties and agreements existing between Japan and Korea not inconsistent with the provisions of this Agreement shall continue in force.

Article 5. The Government of Japan shall undertake to maintain the welfare and dignity of the Imperial House of Korea.

4. The Korea-Japan New Agreement. July 24, 1907.

The coerced agreement to make the Korea into a Japanese colony.

Article 1. The Korean Government shall be under the exclusive control of the Japanese Governor General

Article 2. Every important administrative and legislative disposition of the Korean Government shall have the prior authorization of the Japanese Governor General.

Article 3. The judicial function of the Korean Government shall be separated from the ordinary administrative and legislative function.

Article 4. The appointment of the high government official members shall need the consent of the Japanese Governor General.

Article 5. The Korean Government shall appoint the Japanese to the Korean Government's official serviceman as recommended and designated by the Japanese Governor General.

Article 6. The Korean Government shall not appoint any foreign citizen to the Korean Government's official serviceman without the Japanese Governor General's prior consent.

5. Treaty Regarding the Annexation of Korea to the Empire of Japan. August 22, 1910.

The coerced agreement to annex the Korea to the Empire of Japan.

Article 1. His Majesty the Emperor of Korea makes the complete and permanent cession to His Majesty the Emperor of Japan of all rights of sovereignty over the whole of Korea.

Article 2. His Majesty the Emperor of Japan accepts the cession mentioned in the preceding article and consents to the complete annexation of Korea to the Empire of Japan.

Article 3. His Majesty the Emperor of Japan will accord to their Majesties the Emperor and ex-Emperor and His Imperial Highness the Crown Prince of Korea and their consorts and heirs such titles, dignity, and honor as are appropriate to their respective ranks, and sufficient annual grants will be made for the maintenance of such titles, dignity and honor.

Article 4. His Majesty the Emperor of Japan will also accord appropriate honor and treatment to the members of the Imperial House of Korea and their heirs other than those mentioned in the preceding article, and the funds necessary for the maintenance of such honor and treatment will be granted.

Article 5. His Majesty the Emperor of Japan will confer peerage and monetary grants upon those Koreans who, on account of meritorious services, are regarded as deserving such special recognition.

Article 6. In consequence of the aforesaid annexation the Government of Japan assume the entire government and administration of Korea, and undertake to afford full protection for the persons and property of Koreans obeying the laws there in force to promote the welfare of all such Koreans.

Article 7. The Government of Japan will, so far as circumstances permits, employ in the public service of Japan in Korea those Koreans who accept the new regime loyally and in good faith and who are duly qualified for such service.

Article 8. This treaty, having been approved by His Majesty the Emperor of Japan and His Majesty the Emperor of Korea, shall take effect from the state of its promulgation.

In view of the law of the treaty, obviously such Japanese interpretation is neither a literal nor a teleological interpretation of the Article 2 Para. (a) of 1952 San Francisco Peace Treaty. Contrarily to this Japanese arbitrary qualification, scope of the Japanese aggression to be nullified and renounced by this territorial clause, was not safeguarded with anything like the 1910 Treaty of Annexation. It was prescribed as, "Japan will also be expelled from all other territories which she has taken by violence and greed" in the Cairo Declaration. So the Japanese aggression to the Korean peninsula since 1895 as a whole, should be renounced, no matter whether the 1910 Treaty of Annexation was legally valid or not, when it was concluded.

### III. The Validity of the Coerced Treaties concluded in the course of Japanese Aggression to the Korean peninsula

#### A. The Validity of 1910 Annexation Treaty and other Coerced Treaties as a Premise of the Japanese Sovereign Title to the Dokdo/Takeshima

As has already been made very clear in the previous chapter, the validity of the 1910 Treaty of Annexation has nothing to do with the scope of the Japanese jurisdiction to the Korean peninsula to be renounced and expelled upon the entering into force of the 1952 San Francisco Peace Treaty. But for the Japanese stance advocating its sovereign title to the Dokdo/Takeshima Island, the legal validity of the 1910 Treaty of Annexation is crucial point of its corollary. Japanese Government's official stance has been that the five treaties were concluded legally and they remained valid until the Japanese colonial rule was ended as a result of its defeat in the World War II.<sup>31)</sup>

It is contended as;

.....In the League of Nations system, States were permitted to recourse to war when the council failed to reach an unanimous recommendation on the resolution of conflict between them. The general prohibition of war provided by the Briand-Kellogg Pact is solely concerned with war *stricto sensu*, and cannot be interpreted as to prohibit an act of oppression using threat of war. Therefore, there is no evidence in international legal documents that, in 1910, an act of aggression, as the Japanese imposition of annexation on Korea was, did not possess the legal effect of making a treaty concluded under such situation illegal and void under contemporary international law principles.<sup>32)</sup>

Admittedly enough, the attitude of law relating to use of force or threat of force in procuring a treaty has been changed successively and cumulatively. An ancient and historic title procured by force or threat of force, in the name of subjugation, prior to the Covenant of the League of Nations, the General Treaty for the Renunciation of War and the Charter of the United Nations,

31) Japanese Prime Minister Murayama's Statement. 5 October 1995.

32) Yutaka Kawasaki, op.cit.

could be permissible to plead. But an expression of consent procured by the coercion of its representative through acts or threats directed against him, is generally agreed to be without legal effect, even prior to the establishment of the modern international law prohibiting the use of force or threat of force. There has been no change of attitude in regard to the prime rule of mutual consent to conclude a treaty in international law<sup>33</sup>).

It seems quite natural and essential for someone examining the validity of the five coerced treaties between Korea and Japan concluded in the course of Japanese annexation of Korea, to distinguish the coercion of the state itself<sup>34</sup>) and the coercion of a representative of a state<sup>35</sup>). So, as far as the later case is concerned, any validity of a coerced treaty could not be sustained with the excuses of the doctrine of inter-temporal law.

The logical ground of the above-mentioned Japanese contention seems to be obviously based upon the international law doctrine of inter-temporal law. However, we can not find any due verifications concerning the effects of the coercion exercised on the representative of the Korean Empire in the Japanese contentions.

#### B. A Historical and Bibliographical Review of "the five Treaties"

A historical and bibliographical review of "the five treaties" could be summarized as follows<sup>36</sup>):

The Treaties	Date of Conclusion	Phase of Aggression	Procedural defects as a legally valid treaty	Type of coercion	Mode of coercion
The Korea-Japan Protocol.	Feb. 23, 1904.	Japanese control of Korean diplomatic discretion Japanese free appropriation of strategical spots of Korean territory	No signature(seal) by the Emperors-Breach of the customary international law <sup>①</sup>	coercion of a state <sup>②</sup> coercion of the representative	military occupation <sup>③</sup> Threat to the representatives
The First Korea-Japan Agreement.	August 22, 1904	Designation of diplomatic and financial Governor to control Korean Government	-No title of the treaty <sup>④</sup> -No signature(seal) by the Emperors-Breach of the customary international law <sup>⑤</sup>	coercion of the representative <sup>⑥</sup>	military occupation <sup>⑦</sup> Threat to the representatives
The Second Korea-Japan Agreement.	Nov. 17, 1905.	The coerced agreement to make the Korea into a Japanese protectorate.	-No title of the treaty -No signature(seal) by the Emperor-Breach of the customary international law <sup>⑧</sup>	coercion of the representative <sup>⑨</sup>	military occupation <sup>⑩</sup> Threat to the representatives

33) Ibid. ; Ian Brownlie, *International Law and the Use of Force by States* (1963), pp.404~6.; Delupis, *International Law and the Independent States* (2nd ed. 1987) pp.141~223.

For the distinction, refer to Guggenheim, *Recueil des cours, Academie de Droit International de La Haye*, 74 (1949), i, pp.194~236.

34) Article 52 of 1969 Vienna Convention on the Law of Treaties.

35) Article 51 of 1969 Vienna Convention on the Law of Treaties.

36) Kim Yong-Ku and Ha Young-sun ed. *Historical Study of Korea Diplomacy: Basic Materials and Bibliographical Evaluations*. (Seoul: Nanam Publishing Co., 1996); Taejin Lee, "The Japanese Annexation of Korea was not validated legally; Extortion of the Korean Sovereignty by Japan and the Coerced Treaties (I) and (II)", *Sekai*, July-August 1998, [Here-in-after, Tae-Jin Lee, op. cit., *The Extortion of Sovereignty*.] (I), pp.300~310. (II) pp.185~196.;

The [Third] Korea-Japan Agreement.	July 24, 1907.	The coerced agreement to make the Korea into a Japanese colony.	Signature without full power <sup>①</sup>	coercion of a state <sup>②</sup>	military occupation <sup>③</sup>
Treaty Regarding the Annexation of Korea to the Empire of Japan.	August 22, 1910	The coerced agreement to annex the Korea to the Empire of Japan.	No signature(seal) by the full power on the ratifying document <sup>④</sup>	coercion of a state <sup>⑤</sup>	military occupation <sup>⑥</sup>

**Remarks:**

① This Protocol had been concluded on February 23rd 1904, with the signatures of the Korean representative, Major General Lee Jee Yong —Minister of State for Foreign Affairs *ad interim*— and the Japanese representative, Ambassador Hayashi Gonsuke —Envoy Extraordinary and Minister Plenipotentiary—, under the immediate Japanese military threats, and obviously in a hastily manner.

Professor Tae-Jin Lee of the Seoul National University, contended that the final texts of this Protocol had been drafted *ex post facto*, unilaterally by the Government of Japan, and transmitted by telegram on February 25th, two days later than the official signature of this agreement<sup>37)</sup>. But this contention was proved as to be an error of reading the telegram-head by the Japanese scholar, Professor Unno Hookuzu.<sup>38)</sup> From international law perspectives, this contentious point seems to have rather minor meaning.

More crucial point to be raised and scrutinized here is the fact that the Japanese Government chose the form of protocol for this bi-lateral agreement. Isn't this too simplified form of agreement in dealing with such important matter as yielding the sovereign function of making treaties to the Japan and

As for this and other consequent agreements, concluded in the course of the Japanese aggression of Korean peninsula,

Professor Tae-Jin Lee had raised this contentious point in his early paper.

②, ③ Russo-Japanese War had begun on February 6, 1904. Ignoring the Declaration of Neutrality notified by the Korean Government in January 21st, 1904, Japanese Army troops had advanced into Korean territory. Under the complete occupation of the whole territory by the invading Japanese armies, and in the military seizure of the Korean Emperor's palace by the

37) Telegram dated February 25th 1904: [Transmitting the Preamble and Texts of the Japan-Korea Protocol] cited from Tae-Jin Lee, *op.cit.*

*The Japanese Diplomatic Documents*(Nihon Kaiko Bunsho) Vol. 37, No.1. para. 5, p.381.

38) Unno Hookuzu, "A Historical Comprehension of the Japanese Annexation of Korea", *Sekai*, vol. 666. October 1999.

Japanese troops, this "Protocol" had been signed between the Korea and the Japan.

Japanese invasion into Korean territory at the outbreak of Russo-Japanese War, infringing of the Neutrality Declaration of Chosun Dynasty of Korea could not have been legally justified even in accordance with the old rule of international law in 1904.

Judging from those telegrams and documents in the relevant archives<sup>39)</sup>, this particular "Protocol" can not be accepted as a mutually consented agreement between two sovereign contracting parties. And also reminding of the compelling Japanese military force abused to each of the Korean representatives at that time in Seoul, this "Protocol" can not be accepted to be established as a legal treaty, *ab initio*.

④, ⑤ Japan had won a decisive victory in the naval confrontation at the Yalu River estuary against Russia, on August 10, 1904. Thanks to this naval victory, Japan had decided to make its control of the Korean Government predominant to any other neighbouring powers, by securing its aggressive intentions in a working level memorandum with Korea<sup>40)</sup>.

The documents of the First Korea-Japan Agreement, had not been exchanged between the two contracting parties. Only Japanese side had kept the documents in its archives, unilaterally. The representative status of the signatories entrusted with the full powers had not been clarified either.

Again, this agreement had been signed without any authenticated texts, on August 22, 1904, obviously under the immediate Japanese military threats, and in a hastily manner. The final texts of this agreement had been drafted *ex post facto*, unilaterally by the Government of Japan, and transmitted by telegram to the Ambassador Hayashi Gonske on September 4th, 1904, more than ten days after the official documents was signed<sup>41)</sup>.

⑥, ⑦ With the above-mentioned Japanese victory of August 1904, in the combat operation against the Russian Fleet, the aggressive intention of Japanese Empire towards Korean peninsula had come to be in a more overt fashion. The Japanese intention to deprive the Korean Government of the diplomatic and financial sovereign rights had drawn the strong repulsion with the astonishment among the members of the Korean Government in concluding this agreement. It was quite natural process that the stronger the Korean repulsion was, the more concrete and

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39) Ibid.

40) The title of this agreement, which had initially been deemed as an administrative memorandum by the Japan, had not been clarified in the document. This agreement had abruptly been introduced as an "Agreement" by Japan when it was informed to western powers like the Great Britain and the United States.  
Tae-Jin Lee, *op.cit.*

41) Telegram dated September 4th 1904; [Publicizing the First Korea-Japan Agreement.]  
*The Japanese Diplomatic Documents*(Nihon Kaiko Bunsho) Vol. 37, No.1. para. 6, p.418.

intensive coercion in the part of Japan had been exercised to the Korean representatives in the course of the conclusion of this agreement.

This manifest coercion addressed to the Korean representatives, had made this agreement an unlawful treaty from the outset.

As already been analyzed the annexation of the Dokdo island by the Imperial Japanese Government, on February 22, 1905, was a deliberately designed conspiracy by a handful of Japanese imperial government's high officials. This annexation was practically feasible only under the framework of the notorious the Korea-Japan Protocol of February 1904, and the First Korea-Japan Agreement which deprived the Chosun Dynasty of its sovereign management in important international affairs. This Agreement was procured by the threat of the Japanese army, on August 22, 1904, just six months before the annexation of the Dokdo Island.

③ During the war with Russia, Japan and Great Britain revised the Anglo-Japanese Treaty of Alliance on August 12, 1905, and Japan obtained British consent to colonize Korea under the guise of protection. In the secret Taft-Katsura agreement on July 29 1905, Japan and the United States recognized Japan's prerogatives in Korea. The United States, Great Britain and Russia had eventually given international acquiescence to Japanese aggression in Korea.

Immediately after the Portsmouth Treaty<sup>42)</sup> went into effect, Japan sent Mr. Ito Hirobumi to Korea and forced the Korean government to conclude the Second Korea-Japan Agreement.<sup>43)</sup>

After an intensive and deliberate study of the Second Korea-Japan Agreement of November 17, 1905, the historians and international law scholars have come to the conclusion that the coercion exercised to the Korean representatives by the militant Japanese Empire, made the agreement *null and void*.<sup>44)</sup>

According to the Constitution of the Chosun Dynasty<sup>45)</sup>, and the unique stipulations of the newly formulating state practises among the Empire of Japan and the Empire of Korea at the dawn of the 20th century, the treaty making capacity was supposed to be exercised by the Head of State, the Emperor, by himself.<sup>46)</sup>

42) The peace treaty concluding the Russo-Japanese War, done on September 5th.

43) *The Japanese Diplomatic Documents*(Nihon Kaiko Bunsho) Vol. 38, No.1. pp.450~51, 519~20, 526~27.

44) Francis Rey, "La Situation Internationale de la Corée", *Revue Générale de Droit International Public*, Tome XIII, 1906; p.55 ; Tomsich, "La Construction du Droit International", *Librairie de la Cour D'appel et de L'ordre des Avocats*, 1931, pp.57~58 ; J. De. Louter, *Le Droit International Public Positif*, Tom I, Imprimerie de L'Université, 1920, p.479.

45) Article 3 of the Fourteen Prime Codes of the State [Hongbum 14 Cho; 弘範14條]  
This Constitution of the Chosun Dynasty had been proclaimed on January 7th 1895. *Chosun Dynasty Official Gazette*. the state-year of 503rd dated December 12th. Han Oukwen, *The Korean History* (Seoul: Ulyou-Moonwha-Sa, 1985), pp.481~82.

46) At that time —the early beginning of the 20th century—, the treaty making power of States is,



But in the document of this agreement, there could not be found any Seal of the Emperor. Actually, Emperor Kojong had tried earnestly to declare that he had never given any consent to this treaty. He sent the special envoy, Ambassador Min Young-Chan, the resident ambassador to France, to Mr. Root, the U.S. Secretary of State.<sup>47)</sup> He asked Mr. Homer B. Hulbert, the editor of the *Korean Review* who were staying in Washington D.C. at that time, to convey his Declaration of Denial<sup>48)</sup> to the President of the United States.

Reviewing from the view of the rule of international law, as for this agreement between Korea and Japan to make the Korea into the Japanese protectorate, the procedural defect, no seal of the full power, shall be appraised as a decisive lack of the due requirement to be established as a valid legal treaty.<sup>49)</sup>

⑨, At the cabinet meeting in the afternoon, of November 17th, convened to discuss this treaty, the prevailing opinions among the Korean cabinet members presented in the meeting had naturally formed in the direction to oppose this treaty. Mr. Ito Hirobumi who was informed of the negative atmosphere in the meeting from Ambassador Hayashi Gonsuke, intervened the meeting right away, accompanying with the garrison commanding general and the military police leader to frighten them. He threatened the members one by one, and had eventually won them over to accept the treaty.

Among the seven members of the Korean Cabinet, only two, the Prime Minister, Han Gyou-Sul, and the Minister of Treasury, Min Young-Gi maintained the opposing opinions. These two members had been expelled from the meeting place and kept in custody by the Japanese military police. The other five Korean cabinet members were so frightened that they had resigned to express any opinion neither of affirmative nor negative. Mr. Ito regarded the silence

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as a rule, exercised by their Heads. Only when the heads of States do not act in person, they authorize the representatives to act for them. If the representatives conclude a treaty by exceeding their powers or acting contrary to their instructions, the treaty is not a real treaty, and is not binding upon the State they represent. A treaty of such a kind is called a *sponsio* or *sponciones*. At that time, when the custom of ratification for the validity of treaties was not yet in general, the difference between real treaties and *sponciones* was very important. *Sponciones* may become a real treaty and binding upon the State, only through the Head's approval. Lauterpacht, ed., *Oppenheim's International Law*, 8th Edition. Vol. I, (1958) pp.884-5. pp.887-89. : Yamamoto Shoji, *International Law* Tokyo, 1985, p.505.

47) *Washington Post*, December 12th, 1905.; *Evening Star*, December 12th, 1905; *The Japanese Diplomatic Documents*(Nihon Kaiko Bunsho) Vol. 38, No.1. pp.669-71.

48) The Emperor's Declaration of Denial:

I, the Emperor of the Korean Empire, declare that this Korea-Japan Agreement has no legal effect because this was concluded unlawfully by force. I did not sign the document and I will not sign it never.

Ibid. pp.671-2; *Evening Star* dated December 13th, 1905.

49) Jennings, op. cit., section 597. p.1221. Vienna Convention Article 2. 1, (c), McNair, *Law of Treaties*, (1961), pp.126-8. : Satow, *A Guide to Diplomatic Practice*, 5th Ed. edited by Gore-Booth, (1979), pp.61-4.; Blix and Emerson, *The Treaty maker's Handbook* (1973), pp.34-44.

as the agreement. Even for the final ratifying signature, Mr. Ito had a Japanese soldier to seize the seal of the Minister of Foreign Affairs by breaking through the Minister's office without the owner's prior approval, and had Mr. Park Jae-Soon, the Minister of Foreign Affairs forcibly to sign on the document.<sup>50)</sup>

⑩ By that time Seoul had already been occupied by a Japanese cavalry unit, an artillery battalion and a military police unit.<sup>51)</sup> On November 17, 1905, Mr. Ito Hirobumi pressed the Korean government to sign the draft treaty designed to isolate the Korean government by severing its foreign relations completely. Diplomacy was then taken from Korean control and placed under the control of the Japanese Foreign Office. The treaty also established the Office of the Resident-General in Korea to enforce colonial rule.<sup>52)</sup>

Reviewing from the view of the law of the treaty, there had been the coercion of a state and the coercion of the representatives, simultaneously. In 1905, the coercion of a state did not necessarily make a treaty unlawful. But the coercion of the representatives, especially such uncivilized, brutal manner of use of force exercised upon the representatives of a contracting party, shall hinder this treaty to be legally valid.<sup>53)</sup>

⑪ Emperor Kojong had been deprived of his throne by the Japan, eventually, because he sent the secret envoy to the Hague Peace Conference in 1907, to declare the invalidity of the Second Korea-Japan Agreement.<sup>54)</sup> On July 22, 1907, the Japanese Empire had made the Korean Prince by force, to receive the throne to be a new Emperor. Taking advantage of such threatening atmosphere, and to provide a legal basis for Japan's appropriation of Korea, the Japan requested the Korea to accept the Third Korea-Japan Agreement on July 24th 1907.<sup>55)</sup>

The Third Korea-Japan Agreement was signed by Mr. Ito Hirobumi, with the title of the

50) McKenzie, *The Tragedy of Korea*, Hodder and Stoughton, 1906.; *The Japanese Diplomatic Documents*(Nihon Kaiko Bunsho) Vol. 38, No.1. pp.488~91, 531.; The Korea History Editing Committee, *The History of Korean Struggle for the Sovereign Rehabilitation*, 1965. pp.52~60. ; Hwang Hyon, *Maechun Yarok* (梅泉野錄), The Korea History Series I, (Seoul: 1955). vol.4.

51) *The Japanese Diplomatic Documents*(Nihon Kaiko Bunsho) Vol. 37, Supplement.

52) Tae-Jin, Lee, *The Annexation of the Empire of Korea by the Japan*, (Seoul: Kachi Publication, 1995), [Here-in-after, Tae-Jin Lee, *The Annexation*.]

53) Jennings, op.cit., Section 641. pp.1290~91.

54) The secret emissaries of the Emperor Kojong arrived at the Hague on July 14th, 1907. One of them, Ambassador Yi Chun (李准) killed himself in the Hague in an anger at not being able to attend to the Peace Conference and the failure in appealing the Emperor's Declaration of Denial of the Second Korea-Japan Agreement to the participating powers.

55) The Korea History Publishing Committee, *SeungChongWon Diary* [承政院日記], Vol. 15. (Seoul: Tamgudang, 1969). *Kojong-Sunjong Silrock*, [高宗純宗實錄] (Seoul: Tamgudang, 1970). Kim Chong-Myong, *Japan-Korea Diplomatic Materials -Making Protectorate of Korea and the Annexation* [Japanese version] 8 volumes, Tokyo, Japan, 1965. Centre for the Oriental Study of The Dangoon University, *The Tragic History of Korea: The Park Eun-Shik's Memoirs*, [Korean version] vol.III, Chapter 32. Seoul, Korea, 1975.

Resident-General in Korea and Mr. Lee Wan-Yong, with the title of the Prime Minister of Korean Government. The office of the Resident-General in Korea had created by the Second Korea-Japan Agreement. As far as this treaty, the Second Korea-Japan Agreement had not been established legally, the title of the Resident-General in Korea could not have been effectively established. So, Mr. Ito Hirobumi should have been entrusted with the full power in a separate credentials from the Japanese Emperor to have the Japanese representative status of the signatory for this treaty.

According to the spirit of the Constitution of the Chosun Dynasty, and the state practice maintained by the persistent attitude of the Emperor Kojong at that time, the treaty making capacity was supposed to be exercised by the Head of State, the Emperor, by himself. So, Mr. Lee Wan-Yong, by the title of the Prime Minister, could not have been accepted as having the treaty making capacity, *ex officio*, either. Mr. Lee Wan-Yong, should have been entrusted with the full power from the Emperor Sunjong to have the representative status of the signatory for this treaty.<sup>56)</sup>

In all archives, no documents entrusting the full powers for this particular treaty to both of the signatories have not been found yet.<sup>57)</sup> With such decisive defect of the procedural formality, this particular agreement could not be accepted as to be established as a valid treaty.<sup>58)</sup>

⑫, ⑬ No records have been found that the Japan had tried to force the Korean representative, Mr. Lee Wan-Yong, the Prime Minister, to make him accept this agreement. In other words, coercion of the representative had not been committed for the conclusion of this treaty. Needless to say, the Japan had not needed to address any force to the puppet Prime Minister of Korea.

None-the-less, practically this agreement could not have possibly been deemed as an ordinary international treaty between two sovereign states, in view of the procedural formality normally expected between the two contracting parties in international law. This "Agreement" had been done unilaterally by the Japan, in the manner of an administrative procurement within a municipal authority.<sup>59)</sup>

This Third Korea-Japan Agreement had been done on July 24th 1907 just two days after the forcible change of the Korean throne by Japanese invaders. Disbanding the Korean Army, and reinforcing the Japanese garrison force with a new strengthened infantry brigade had been proceeded simultaneously with this conclusion of the treaty by the Japanese Empire. The coercion of a state exercised by the Japan to conclude this particular agreement was an overwhelming

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56) Supra note 46.

57) Tae-Jin Lee, *The Annexation*.

58) Jennings, section 597. pp.1220~21.

59) Ibid. section 599. pp.1224~25.

military invasion itself.<sup>60)</sup>

In conclusion, with all those vivid procedural defect, and immediate coercion of a state exercised by the Japan, even according to the rule of inter-temporal law as of in 1907, this particular agreement could not been accepted as an international treaty to be evaluated worthwhile of any legal effect.

⑭ With the chance of the fermentation of the Third Korea-Japan Agreement on July 24th 1907, a large number of Japanese officials penetrated the executive and judicial branches of the Korean government, accelerating the Japanese scheme of complete Korean overrule. The Korean armed forces were disarmed and disbanded. The judicial system was reorganized to serve Japanese aggression. Moreover, in a secret memorandum attached to the Third Korean-Japan agreement, it was stipulated that courts, newly constructed prisons, and the police would be turned over to Japanese management. This enabled the Japanese to assume actual judicial and police authority. Annexation the Korea to the Empire of Japan had almost been completed substantially. Only some procedural formality of annexation had been supposed to be completed in no time.

On October 26th 1909, to confirm the Russian acquiescence to the Japanese annexation of the Korea, Mr. Ito Hirobumi had arrived at Harbin in Manchuria for the meeting with Mr. Vladimir N. Kokovtsov, the Russian representative when he was shot and dead by the Korean young man, the patriot An Chung-gCun. On July 7, 1910, the Japanese Cabinet had adopted the official draft of the Treaty Regarding the Annexation of Korea to the Empire of Japan.

The main document of the Annexation Treaty had been signed on August 22, 1910, by Mr. Terauchi Masadake, the Resident General in Korea and Mr. Lee Wan-Yong, the Prime Minister of the Korean Government. The Japan seemed to have especially endeavored to fulfill the procedural formality of an international treaty, in a scrutinized manner, this time. The puppet Prime Minister of Korea, Mr. Lee Wan-Yong had manifestly been entrusted with a full power from Korean Emperor, Sunjong to have the Korean representative status of the signatory for the Annexation Treaty.

Except those vivid evidences of the coercion of a state, there had been no use of force or exercise of threats towards the Korean representatives, no procedural deficiencies except one, as far as the conclusion of the Annexation Treaty is concerned. The only procedural defect was that there was no signature by the full power —the Seal of the Korean Emperor, Sunjong— on the ratifying document.<sup>61)</sup>

60) Ibid. section 641. pp.1290~92.

61) Tae-Jin Lee, op. cit., *The Extortion of Sovereignty*.

⑮, ⑯ Concluding this Annexation Treaty on August 22, 1910, the puppet Government of Korea and the last Korean Emperor, Sunjong, did not seem to make too much trouble against the Japanese efforts to fulfill the procedural formality of an international treaty. But the last puppet Emperor Sunjong confessed, on April 26, 1926, at his hour of death, he had virtually been held in captivity, under the sharp surveillance of the Japanese Government and forced to sign the treaty.<sup>62)</sup> Only the Japanese Government preceded a few severe suppressive measures, such as, the suspension of newspaper publication and the arrest of thousands of Korean leaders. The capital city of Seoul<sup>63)</sup> in particular, was guarded tightly by Japanese combat troops.

There seemed to have been no procedural deficiencies except one, as far as the conclusion of the Annexation Treaty is concerned. The only alleged procedural defect was that there was no signature by the full power —the Seal of the Korean Emperor, Sunjong— on the ratifying document.<sup>64)</sup> But professor Unno Hookuzu defended to this allegation that this Treaty had already been authorized by the both Emperors as prescribed in the treaty provision,<sup>65)</sup> and no ratification signatures were ever needed.<sup>66)</sup> Whether such defending theory could be sustained as a legal reasoning acceptable to the law of treaties shall be reviewed.

Even as for the coercion exercised to the state itself, the doctrine of inter-temporal law must be applied within a given framework of reasoning and due rational limitations

The so called "Inter-temporal law" could be defined as; the general rules of international law in force at the time of certain treaty's conclusion. The international law has a principle that a juridical fact must be appreciated in the light of the law contemporary with it and a treaty's terms are normally to be interpreted on the basis of their meaning at the time of the treaty was concluded<sup>67)</sup> and in the light of circumstances then prevailing.<sup>68)</sup>

This doctrine of inter-temporal law is an axiomatic principle in international law. But it goes without saying that this established principle should be accepted within a given framework of

62) *Shinhan Minbo*, July 8, 1926.[A community news paper published by Korean residents in the area of San Francisco] Cited from Tae-Jin Lee, ed. *The Japanese Annexation of Korea was not validly established*. (Seoul: TaeHakSa, 2001), pp.206~209.

63) In 1910, the name of the city of Seoul, was, "Hansung (漢城)"

64) Tae-Jin Lee, op. cit., *The Extortion of Sovereignty*.

65) Article 8 of the Treaty of Annexation.

This Treaty, having been approved by His Majesty the Emperor of Japan and His Majesty the Emperor of Korea, shall take effect from the date of its promulgation.

In faith whereof the respective Plenipotentiaries have signed this Treaty and have affixed thereto their seals.

66) Unno Hookuzu, op. cit.

67) If a state accedes later to a treaty, its terms will be applied to that state in the light of the circumstances prevailing at the date of its accession and not of those at the time when the treaty was concluded. *Aerial Incident Case*, ICJ Rep. (1959),

68) *Rights of United States Nationals in Morocco*, ICJ Rep. (1952), pp.176,189.: *South West Africa Cases*, Ibid. 1966, pp.6, 23.:pp.127, 142-5.: Jennings, op.cit., pp.1281~82.

reasoning and due rational limitations. Even though a treaty when concluded did not conflict with any rule of *jus cogens*, it will become void if there subsequently emerges a new rule of *jus cogens* with which it is in conflict<sup>69</sup>). The concepts embodied in a treaty may be not static but evolutionary, in which case their interpretation cannot remain unaffected by the subsequent development of law. For an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation, the considerations may go some way towards negating the application of the inter-temporal law.<sup>70</sup>

But still, even in the case that the annexation now appear vitiated in the light of the peremptory norm prohibiting the acquisition by force or threat of force, the law often has to take some account of consequences of situations brought about unlawfully. Such conclusion is demanded by the principle of stability, and deemed to be the sort of situation which could be explained by the doctrine of inter-temporal law.<sup>71</sup>

Sir Robert Jennings gave us some precautions for the application of this doctrine<sup>72</sup>;

..... The principle of inter-temporal law is not one which has attracted the notion of a *jus cogens*. In this sort of situation it is important to distinguish between an historic origin and root of title, and the possible later claims to title, title which may flow from recognition, acquisition, and general historical consolidation, and which may lend legitimacy to a continuous and peaceful display of territorial sovereignty.....

Needless to say, the results of Japanese aggression and its occupation of Korean peninsula had been sustained until the end of the World War Two, not by the validated legal effect of any treaty, but by an immediate military and political force of Japanese Empire.

The first three agreements among the five treaties, with grave procedural defects and the coercion of the representatives for their conclusion, had not been established as legally valid treaties. As for the Third Korea-Japan Agreement (1907) and the Annexation Treaty (1910), we still found some procedural defects. But an important aspect for these two agreements is that these had not been concluded as international agreements between two sovereign contracting parties. As already been analyzed, the 1907 Agreement had not been made by competent signatories. The Japan had forcibly changed the Korean throne to make this agreement. The puppet Prime Minister of Korea employed by the Japanese Government and the Korean Prince who had been forced to receive the throne by the Japan could not have possibly been recognized as the competent authority representing the Government of Korea.

As a matter of a fact, upon the conclusion of the Second Korea-Japan Agreement, the Korean

69) Jennings op.cit., Section 642. pp.1292-93.

70) Ibid.

71) Fitzmaurice, *The Third Report to the ILC on the Law of Treaties*, UN Doc. A/CN4/115 of 18 March 1958, at para. 62.

72) Sir Robert Jennings op.cit., Section 268. p.704.

Government had been completely isolated internationally by depriving of its diplomatic sovereignty. No outside power could have possibly recognized this puppet Empire at the special occasion of the abnormal change of the crown, neither conceptually, nor practically.

Even with all those superficial formalities, like separate credentials and exaggerated documentation of the annexation, the 1910 Annexation Agreement could not have any valid legal effect, for it had not been consented by competent sovereign state.<sup>73)</sup> All the Japanese colonial controls in Korean territory fortified by this agreement was not based on any international legal title but sustained by the immediate Japanese military force.

In conclusion, the Third Korea-Japan Agreement (1907) and the Annexation Treaty (1910), had not been established as international treaty from the outset. They are null and void, *ab initio*. In the discussion of validity of a treaty under the coercion of a state, even prior to the changes of lawfulness of the use of force or threats of force, a forcible appropriation of territory during the continuance of an aggressive war, did not confer any valid title to the force addressor unless the results of the war were declared with a legitimate subjugation and settled legally in a peace treaty.<sup>74)</sup>

Theoretically, the annexation of the Empire of Korea by the Japan had never been legally established. Even the use of force by the Japan upon the Korea in the course of the Japanese aggression could be accepted as to be lawful, in view of the inter-temporal law of 1910, no valid legal title had been conferred to the results of the Japanese appropriation. The forcible appropriation of the Korean territory by the Japan ever since the breakout of Russo-Japanese War, until the end of the World War Two, had been sustained only as the results of the acts of the Japanese aggressive force. Naturally, there had not been any legal effects established and maintained to be relinquished, or renounced by the 1951 San Francisco Peace Treaty of September 8, 1951 which entered into force on April 28, 1952, as far as the Japanese territorial jurisdiction on the Korean peninsula is concerned. With the unconditional surrender of the Japanese Empire on September 2nd of 1945, the aggressive intention of the Japan and its military and political force upon the Korean peninsula had been perished immediately and completely.

Since the declaration of unconditional surrender, all the Japanese colonial controls in the

73) Jennings op. cit., section 599. pp.1224~25.

74) Lindley, M. F., *The acquisition and government of backward territory in international law; being a treatise on the law and practice relating to colonial expansion*. New York, Negro Universities Press[1969], pp.161~64.; Following cases of annexation were cited as to be premature and unlawful in Jennings, op.cit., Section 265. p.700. note 1 & 2.  
① The annexation of the Orange Free State in May 1900, and ② Annexation of the South African Republic in September 1900, by Great Britain during the Boer War; ③ The annexation of Tripoli and Cyrenaica by Italy during the Turco-Italian War in November 1911; ④ The annexation of Ethiopia by Italy in 1936.

Korean territory had already been commenced to be abolished in the due course of the provisions of Potsdam and the Surrender Terms formally ratified by the Japan. As Ambassador Dulles succinctly summarized, the renunciations contained in Article 2 of Chapter II, had actually been carried into effect 6 years before the entry into force of the Peace Treaty and it should have strictly and scrupulously conformed to that Surrender Terms.<sup>75)</sup>

### C. The Cumulative Effects of the Coerced Five Treaties

During the Japanese occupation no historical title upon any specific portion of the Korean peninsula had been consolidated. As far as the territorial jurisdiction within the Korean peninsula is concerned, there is not any old historical title to be accepted or revalidated, taking into account of the consequences of the Japanese occupation in consideration of the doctrine of inter-temporal law.

As for the legal effects of the afore-mentioned five treaties, even during the Japanese occupation, there had been consistent expressions of the denial against the validity of the aggressive treaties in the part of Korean people. Emperor Kojong had been deprived off his throne by the Japan eventually, because he sent the secret envoy to the Hague Peace Conference to declare the invalidity of the Second Korea-Japan Agreement of November 17 1905.

There had been no acquiescence towards the Japanese occupation in the part of the Korea, whatsoever. On the contrary, Korean people had waged persistent resisting war against the Japanese Empire. Those had been formidable military operations. Resisting the conclusion of the Second Korea-Japan Agreement of November 17, 1905, Uibyeong(義兵) -organized citizen volunteers' armies had been appeared all over the Korean territory. The most prominent troop in 1905, was the Young-Poong Uibyeong, the guerilla organization of 3,400 personnel operated in the Young-Poong Province, southern part of the Korean peninsula. Resisting the conclusion of the Annexation Treaty of 1910, there had been 128 military engagements between the Korean Uibyeong<sup>76)</sup> forces and Japanese military forces<sup>77)</sup> in the single year of 1910. After the Independence Movement<sup>78)</sup> on March 1st 1919, the citizen guerilla forces had been reorganized

75) Supra note 26.

76) voluntary resisting guerilla

77) In those engagements in 1910, the participants in the resistant action were 1,832. Korean casualties, 130, and Japanese casualties, 7.

78) A non-violent resisting movement against Japanese occupation throughout the Korean peninsula which was initiated by the mass gathered for the funeral of the late Emperor Kojong on March 1st 1919. At noon on that day, the Representative of the Korean Nation -33 prominent leaders- declared the Independence of Korea. Korean people had gathered unarmed in mass, they marched declaring the independence of Korea. This movement continued about three months. Total participants; 2,023,089 persons. 7,509 were killed by Japanese military police forces. 15,961 were wounded. 46,948 were captured and put into the prison.



as full-fledged armies.<sup>79)</sup> They were commanded by the Provisional Government of Korea in Shanghai, China<sup>80)</sup>. General Kim Jwa-Jin's army regiment<sup>81)</sup> and General Lee Cheong-Cheon's army division were the most active combat forces which had waged several historical military operations against the Japanese army.

As a representative of the Korean people, and as their only independence organization abroad, the Provisional Government, despite financial difficulties and attempts of suppression, did its best to fulfill the international obligations of the Korean government. It declared war on totalitarian Japan and provided close cooperation with the Allied Powers during World War II.<sup>82)</sup> For more

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Kim Jun-Yoep, Park Young-Soup and et al, *The History of Korea Independence Movement* (Seoul: HankookIlbo-Sa, 1987) pp.130-32.

- 79) Various citizen's voluntary armies operating in Manchuria were unified and placed under the command of the Provisional Government. They were usually called as the Toklipgoon(獨立軍) -"Independence Army", The Military Organization for the Independence of Korea-. In Manchuria area, the total forces of this resistant army had come to two division size, with military academy, the military aviator training center and nurse academy. A group of leaders met in Beijing in April 1921 to work out a plan for united military action, realizing that the most urgent task was to unite the independence armies active in Manchuria. The conference later developed into the all-inclusive Council of National Representatives that held its first meeting in Shanghai in January 1923. Armed resistance under the leadership of the Provisional Government was given a firm basis, and the Korean troops in Manchuria continuously fought against the Japanese army, sometimes with spectacular success.
- 80) At the height of the Independence Movement, a provisional government of Korea was established in Shanghai on April 11, 1919. Similar actions had appeared by other groups in Vladivostok on March 21, and in Seoul on April 21, simultaneously. The Provisional Government of Korea in Shanghai, made efforts to integrate its activities with those of other groups. It passed a resolution calling for integration with the Seoul government. The first cabinet meeting was convened on November 4, marking the start of the functioning of the Provisional Government.
- 81) They had the famous engagement with the Japanese cavalries in the valley of Chong-San-Lee, the southern part of Manchuria on October 16, 1920. In this engagement General Kim won a brilliant victory over the Japanese division. Japanese casualties were 118 cavalries, 3,300 division soldiers (including the Division Commander). Korean army recorded only 60 casualties, 90 wounded. Kim Yun-Whan, Park Yong-Ouk and et al., *The Military Engagements of the Independent Army* (Seoul: Minmoongo, 1995) Volume 4 of the Series of The History of Korean Independent Movement against Japan projected by the Society for the Rehabilitation of Nation History.
- 82) ① Military cooperation with the Chinese Army  
Due to the fact that the main operating area of the Korean Independence Army had been the Manchuria area and Northern Part of China, most of its combat activities had been carried out in the form of combined operation with the Chinese Army.
- ② Military cooperation with the British Army  
In 1942, when the Japanese Imperial Army invaded into Indo-Burmese front line, the authority of the British Army suggested a combined operation with the Korean Independence Army. General Lee, Chong-Chun and the British Representative, Colin Mackenzie agreed the military cooperation in a document of 12 points, June 1942. From September 1942 to April 1944, the Korean Special Unit had joined the combat operations of the British Army -the 17th Division- in the area of Imphal, Chittagong and later to the amphibious operation attacking the Capitol Rangoon.
- ③ Military cooperation with the U.S. Army  
The Provisional Government of Korea and the Korean Independence Army had actively tried to join the Allies Forces' military actions against the Japan ever since the Japanese surprise attack to the Pearl Harbor on December 8, 1941. But the meaningful contact with the U.S. Forces

than 26 years, until its return home on November 23, 1945, after the Japanese surrender, the Provisional Government strove to represent the Korean people.

The Provisional Government of Korea's painstaking activities were far more systematic and persistent than those by the General Charles de Gaulle's (provisional) government in exile in London, in its efforts to rehabilitate the sovereignty of France.

#### D. The Treaty of Basic Relations between Japan and Korea

The validity of "the five treaties" has been explicitly denied in the Article 2 of the Treaty of Basic Relations between Japan and the Republic of Korea of 22 June 1965<sup>83</sup>).

##### Article 2

It is confirmed that all treaties or agreements concluded between the Empire of Japan and the Empire of Korea on or before August 22, 1910 are already null and void.

But in interpreting the prescription of the same provision, the Korea and the Japan have revealed a serious difference of comprehension about "the five treaties". The Japanese text of the concerned provision employs the expression permitting the interpretation as that the Annexation Treaty could be in effect up until the conclusion of the Basic Relations Treaty. This Japanese text is inconsistent even to the Japanese official stance that the Annexation Treaty was legally concluded and remained in effect until the end of Japanese colonial rule as the results of its defeat in the World War Two, which is on 15 August 1945.

In case of any conflicts of interpretation between Korean and Japanese texts, the interpretation of the English text shall prevail over the two.<sup>84</sup> Mr. Yutaka Kawasaki concluded that the literal interpretation of the English text could up hold at least the Japanese official stance.<sup>85</sup> But his conclusion must be reviewed more carefully.

As we have already reviewed, all the five treaties had not been established as a legal treaty from the outset. They were unlawful and null and void *ab initio*. The Korean text of the above Article 2 "implies" such notion. So the teleological interpretation of the Article 2 should go like;

It is confirmed that all treaties or agreements concluded between the Empire of Japan and the Empire of Korea on or before August 22, 1910 are already null and void from the outset.

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commenced with Mr. Chrence B. Weens of the U.S. Air Force Command resident in China, The combine actions with the U.S. Forces had proceeded mainly in the form of the special intelligent operations with Office of Strategic Service (OSS) during 1943~1944.  
Kim Yun-Whan, et al., *The Military Engagements of the Independent Army* (1995), pp.218~ 225.

83) Official English text is reproduced in 4 *ILM* 924, 925.

84) Article 7 proviso of the Treaty of Basic Relations between Japan and the Republic of Korea

85) Yutaka Kawasaki, *op. cit.*

This article was included in the Treaty of Basic Relations between Japan and the Republic of Korea, by the strong insistence of the Korean delegation.<sup>86)</sup> As far as the Korean context is concerned, for the expression of “are already null and void”, any translation like “are no longer valid” is not relevant and is almost absurd.

Making things worse, in case of the later translation, you must define the time of invalidation. Logically you could choose anytime from August 21, 1875 to June 22, 1965. Even in the case you could define the time of invalidation as manifest as at the end of the Japanese rule upon the Korean peninsula, still, a very difficult controversy would come up about the choice among the August 15, 1945 —the End of the World War II—, August 15, 1948 —the Inauguration of the Republic of Korea—, and September 9, 1948 —the Independence of the North Korea—.

Japanese official stance seems to maintain that the Annexation Treaty became void on August 15, 1948 in relation to the South Korea, and on September 9, 1948, in relation to the North Korea.

As aptly confessed by Mr. Yutaka, in the Basic Relations Treaty, citing the United Nations General Assembly resolution 195(III), Japan recognised that the government of the Republic of Korea is “the only lawful Government in Korea”. Therefore, Japan's stance that the Annexation Treaty remained valid until 15 August 1948 in the South and until 9 September 1948 in the North is questionable.<sup>87)</sup>

#### IV. Conclusion

The 1910 Annexation Treaty and each of the other 4 coerced treaties concluded during the Japanese aggression of the Korean peninsula, had never been established as a valid treaty. They were unlawful, null and void, *ab initio*. So, in the sense of the international law, no matter an inter-temporal one or the contemporary rules, the Japan had been “the belligerent occupier”<sup>88)</sup> throughout its colonial rules in the Korean peninsula and nothing more.

Under the premise that the coerced five treaties were concluded legally and they remained valid until the Japanese colonial rule was ended as a result of its defeat in the World War II, the Japan insists that “Takeshima” —Liancourt Rocks/Dokdo— is a part of the Japanese territory not to be ceded to the newly independent Korea by the territorial clause of the 1952 San Francisco

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86) Ibid.

87) Ibid.

88) *Oppenheim's International Law* 7th Edition 1952. edited by H. Lauterpacht, vol. II, p.437.; 1956 US Department of the Army, *Field Manual on the Law of War*, Whiteman vol. 1., p.947.; Jennings, vol. I, Section 265, Subjugation distinguished from belligerent occupation. ; Ibid. Section 250. pp.686~688.

Peace Treaty, because the concerned islands had been incorporated before the annexation of Korea into the Japan.

Without saying the fact that the Japanese Government's act of incorporating the "Takeshima" in 1905, was nothing but a greed extortion of the neighbouring country's island for the immediate military need in the course of aggression, the Dokdo/Liancourt Rocks had been a legitimate part of Korean territory since the inauguration of the newly independent Republic of Korea in August 15, 1948, 4 years before the entry into force of the San Francisco Peace Treaty in April 28, 1952 in accordance with the legal effects of the Surrender Terms and the Cairo, Potsdam Declaration. Quite naturally, the absurd construction of such Japanese contentions could not be accepted, nor to be sustained.

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