Since their signing more than a century ago, the annexation treaties between Korea and Japan in 1910 and the question of their legality have remained a controversial issue in the relationship between the two countries. They were a main obstacle to the normalization of the countries’ diplomatic relations in the 1950s and have been a recurrent theme of dissension, along with territorial and historical disputes. Discord over the annexation question may be deeper than so-called historical controversies such as the comfort women issue, in which the turmoil is mostly caused by Japanese conservative politicians who regularly and publicly deny the coercive nature of the practice. The majority of South Korean and Japanese historians do not dispute the basic historical facts regarding the issue and largely agree on their interpretations. In the case of the annexation treaties, by contrast, the divide remains sharp, not only among political leaders but also among scholars of both countries.

Koreans and Japanese find it difficult to reduce their differences on this particular topic of annexation treaties because of the fundamental distance between their overall historical understanding of the colonial period. In a sense, the debate has more to do with legitimacy and less with legality. Both sides agree that the annexation treaties would be illegal by today’s standards. The question then is whether the same would be true based on the legal standards at the time of annexation. Or so it seems.

The negotiations that led to the signing of the Treaty on Basic Relations between Japan and the Republic of Korea in 1965, the treaty that normalized the diplomatic relations between the two countries, could not settle the issue. During the first round of talks that began in 1952, South Korea reaffirmed the idea that both the protectorate and the annexation treaty had been forced upon Korea and were thus invalid. Japan, in turn, asserted that its acquisition of Korea had been carried out in conformity to international law and customs. The two countries were eventually able to sign the treaty and establish diplomatic ties, but only because they decided to leave the legality issue unresolved.

1 Takasaki Sōji, *Kenshō Nik-Kan kaidan* (Examination of the talks between Japan and South-Korea) (Tokyo: Iwanami Shoten, 1996), 34.
The ambiguous wording of Article 2 attested to this fact: “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.” According to Kim Tong-jo (1918–2004), the head of the Korean delegation to the Korea-Japan Talks, the insertion of the word “already” allowed each side to interpret the provision according to its need. South Korea could legitimately claim that the annexation treaties were “already null and void” at the time of their signing, whereas Japan could argue that those treaties were indeed “already null and void” in 1965, but that they were valid until 1948 when the Republic of Korea was established. In other words, the 1965 treaty nullified all the annexation treaties but it didn’t specify since when, leaving that question unanswered to this day.

After a few decades of relative quiet in the two countries’ relations, the 1990s saw a resurgence of the past. Negotiations between Japan and North Korea for the establishment of diplomatic ties, the democratization of South Korea, and the death of Japan’s Emperor Hirohito in 1989 triggered renewed interest in and appraisal of the colonial period. Against this backdrop, historians joined the debate on the legality issue, mainly thanks to the discovery of documents that shed new light on the annexation process. In particular, the original version of the protectorate treaty of 1905 found by Yi T’ae-jin in the Kyujanggak library did not bear the Korean emperor’s seal, a fact that seemed to substantiate the “invalidity thesis” of Japanese colonization.

These findings prompted a dialogue and heated debate among Korean and Japanese scholars, including a series of articles published in the Japanese magazine Sekai in 1998.

This chapter examines the arguments that have been put forward since the beginning of the debate on the legality of the annexation and explores the complex link between legality and legitimacy. It assesses the relevance of this legality issue to the reconciliation process between South Korea and Japan by pointing out the risks pertaining to the continuation of such a debate.

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3 See below note 18.

4 Several articles from Sekai were translated into Korean and English. See articles in Yi T’ae-jin, ed., Hanguk pyŏnghap ŭn sŏngnip haji anatta (The annexation of Korea failed to come into being) (Seoul: Taehaksa, 2001), and a special issue of Seoul Journal of Korean Studies 18 (2005).