Article 2 of the Korea-Japan Basic Treaty and Japan’s Repatriation of Korean Cultural Properties: Reviewing Travaux Préparatoires

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The Treaty on Basic Relations between the Republic of Korea and Japan was signed as a result of Korea-Japan talks from October 1951 to June 1965. Article 2 of the Korea-Japan Basic Treaty stipulates the so-called “Article Related to the Former Treaties and Agreements.” A compromise was adopted with the term, “already null and void.” As regards this expression, Japan asserts that the period of Japanese occupation was once valid, while Korea maintains that it has been “fundamentally null and void.” So, the meaning does not change even if ‘already’ is inserted in the beginning. Korean cultural properties taken away to Japan during the period of Japanese occupation should all be returned to Korea, but Japan evaded the expression, ‘return’ until Korea referred to the term, ‘turn over’ as an intermediate expression between ‘return’ and ‘donation.’ The author believes that the more both sides mutually communicate with each other for universal value, the earlier they arrive at the final resolution for these issues under international law and justice.

Keywords
Korea-Japan Basic Treaty, the Former Treaties and Agreements, Already Null and Void, Cultural Properties, Return, Turn Over

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1. Introduction

The Treaty on Basic Relations between the Republic of Korea (“ROK”) and Japan (hereinafter Korea-Japan Basic Treaty) was signed as a result of Korea-Japan talks from October 1951 to June 1965. Its objective was to settle down the issues from the period of Japanese occupation and further normalize diplomatic relations between the two countries. The Korea-Japan Basic Treaty includes the following chapters: ① right of claim; ② fishery; ③ status of Koreans residing in Japan; and ④ return of Korean cultural properties from Japan.

This research will tackle the issue of return of Korean cultural properties under Article 2 (Article Related to the Former Treaties and Agreements) of the Korea-Japan Basic Treaty. Looking back the entirety of the Korea-Japan talks, there were different views of the period of Japanese occupation between Korea and Japan, which were reflected in the treaty and various agreements. Those differences continue today, obstructing sincere reconciliation between Korea and Japan. Under this premise, this paper will observe how these different views influenced the negotiation for the return of Korean cultural properties. In particular, the author will scrutinize the original documents of both the Korean and Japanese side which were described in the course of drafting the Korea-Japan Basic Treaty in a positive way. In order to examine the Korean and Japanese reasoning for the return of Korean cultural properties, the travaux préparatoires of the process of negotiation and adoption of Article 2 of the Korea-Japan Basic Treaty will be carefully reviewed. This paper is composed of four parts including a short Introduction and Conclusion. Part two will discuss Article 2 of the Korea-Japan Basic Treaty and the reasoning for the Return of Cultural Property. Part three will investigate the dispute settlement regarding Article 2 and the Agreement on Cultural Properties.

2. Article 2 of the Korea-Japan Basic Treaty and the Return of Cultural Property: A Dispute

When concluding the Korea-Japan Basic Treaty, Korea aimed to confirm that all former treaties and agreements concluded between the Empire of Korea and the Empire of Japan including the Korea-Japan Annexation Treaty had been fundamentally null and void from the very beginning, upon normalization of