“Settled Completely and Finally”: A Japanese Perspective on the Repatriationism of Cultural Property

Yoshiaki Sato

This article focuses on the Korean claim for repatriation of cultural property currently located in Japan. Through an analysis of the relevant rules of international law, it demonstrates the established norm that the predecessor state is not obliged to repatriate the cultural property acquired in and exported from the annexed territory. It further shows that, even if Japan had not annexed the Empire of Korea and just occupied it, the repatriationists’ claim would not hold water, as the question has been conclusively settled by a bilateral agreement between Japan and the Republic of Korea. Considering that the parties to a settlement should refrain from subsequently relitigating the matter, the author concludes that cultural property, which can be a powerful ambassador for promoting mutual understanding, should be dealt with in the framework of forward-looking cooperation, including mutual loans and possibly the creation of a multinational museum.

Keywords
Repatriation, Cultural Property, Intertemporal Law, UNESCO Convention, Joseon Wangsil Uigwe

“Let bygones be bygones.”
Mao Tse-tung

* Professor of Law at Seikei University, Japan. LL.B./LL.M./Ph.D. (Tokyo). ORCID: http://orcid.org/0000-0002-4738-3489. The author will appreciate the comments by Keisuke Mark Abe and Koji Ito. He may be contacted at: sato@law.seikei.ac.jp/Address: Faculty of Law, Seikei University, 3-3-1 Kichijoji-Kitamachi, Musashino, Tokyo 180-8633 Japan. DOI: http://dx.doi.org/10.14330/jeail.2017.10.1.10

1. Introduction

The relationship between Japan and the Republic of Korea ("ROK")\(^2\) continues to be in disarray. One of the main reasons is their different perspectives on the past history. In academia, thanks to the dispassionate evaluation of the merits and demerits of the Japanese administration of the annexed Korea, the distance between the views of the historians of the two countries appear to be closing.\(^3\) In contrast, the disparity between the popular sentiments seems to be widening. This is partly due to the school textbooks compiled by the Korean government which are criticized by historians, including those of Korea itself, for being full of unfounded and biased description.\(^4\) The populace of the ROK has been led to believe the distorted history as truth and has as a result internalized hatred against the Japanese. Korean politicians are often able to divert the people’s attention from the political difficulty caused by scandals and to gather popular support by exploiting such hatred and instigating nationalistic hysteria. It is worth examining whether such ‘government speech’ is consistent with Article 20, paragraph 2 of the International Covenant on Civil and Political Rights, adopted on December 16, 1966,\(^5\) which obligates State Parties to put a ban on any advocacy of national hatred that constitutes incitement to hostility.\(^6\)

The treatment of cultural property has been one of the major subjects of dispute in this part of the world. The Japanese have admired Korean artifacts since ancient times. E.g., the founders of the modern tea ceremony (chanoyu) in Japan in the middle of the sixteenth century appreciated Korean tea bowls very much. In fact, the use of Korean tea bowls symbolized the end of the old style of chanoyu known as “shoin no

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\(^2\) This article would discuss the claims for expatriated cultural property by the ROK. The author would like to deal with the claims by the Democratic People’s Republic of Korea on another occasion.

\(^3\) G. Akita & B. Palmer, The Japanese Colonial Legacy in Korea 1910-1945: A New Perspective 11 (2015). (The authors point out that, thanks to the studies by Korean and American scholars examining a variety of developments in the Korean society during the Japanese administration, the historiography of Japan’s rule of Korea is undergoing a gradual transformation).

\(^4\) Young Hoon Rhee, The Story of the Republic of Korea 大韓民国の物語 77-8, 82-5, 121-2 & 200 (Hiroki Nagashima trans., 2009) <available only in Japanese>. E.g., the description about the ‘comfort women’ in the textbook for high school students is said to be ‘pure fabrication.’ See Wansop Kim, Apology for the Pro-Japanese Koreans: The False Image of the National Heroes and the Reality of the Empire of Japan 親日派の弁明2: 英雄の虚像、日帝の実像 222 (2006) <available only in Japanese>. See also id. at 345, 354-5 & 385.

\(^5\) 999 U.N.T.S. 14668, at 172.

\(^6\) International Convention on the Elimination of All Forms of Racial Discrimination (660 U.N.T.S. 9464, at 212), art. 4. It condemns propaganda attempting to promote racial hatred and obligates the State Parties to declare an offence punishable by law all dissemination of ideas based on hatred.