

Getting Off on the Wrong Foot: Rethinking the Title and Amount of Korea's Property Claims against Japan

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Introduction

On December 18, 1965, in the first meeting room of the capitol building in Seoul, South Korean Foreign Minister Lee Dong-won (李東元, 1926-2006) and Japanese Foreign Minister Shiina Etsusaburo (椎名悦三郎, 1898-1979) ratified the Treaty on Basic Relations and its subsidiary agreements between the Republic of Korea (ROK) and Japan. This exchange marked the official conclusion of fourteen years of negotiations for normalization that began in October 1951. The two countries thereby resumed relations that had been severed since 1945. However, during the ratification ceremony, protests continued in Seoul and Tokyo.

The fourteen years of negotiations and agreements themselves were controversial from the beginning. Treaty and agreements avoided answering the key historical question for both countries: how to recognize and address thirty-five years of Japanese colonial rule. Instead, it was the rhetoric of anti-communism and economic cooperation that al-

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lowed the two countries to settle their past. Because of this point, the Treaty and agreements were not accepted by many Koreans who considered definitively settling the history of colonial rule as the top priority of the negotiations. Many Japanese citizens, as well, did not accept the Treaty because they were more concerned about the emergence of a U.S.-Japan-South Korea military alliance.¹

Korea's property claims against Japan, which were on the agenda of the negotiations for normalization, was a key issue that symbolized the conflict of the past. This issue was controversial and led to questions such as: what the fund's title would be (property claims or economic cooperation); the adequacy and economic effect of the US \$500 million granted (\$800 million inclusive of private credits); the scope of the property claims stipulated in the Agreement (It's official title is that Agreement on the Settlement of Problem concerning Property and Claims and the Economic Cooperation between the Republic of Korea and Japan) as "completely and finally" settled, and the legal validity of such an agreement.

Reflecting on these questions, previous studies can be broadly divided into three groups that examined either the negotiation process, the economic effect of the fund after the effectuation of the 1965 Agreement, or legal implications of the 1965 Agreement.

Many studies have focused on the negotiation of property claims, which is also the topic of this paper.² Through the studies that focused

1 Regarding the movement against the negotiation for normalization between Korea and Japan, see: Lee Jae-O, *Hanirhoedamgwa pandaeundong* [*Negotiation for normalization between Korea and Japan and movement against it*] (Seoul: P'arabuksū, 2011); Kim Hyeonsoo, *Ilbonesöüi hanirhoedam pandaeundong* [*Movement against the Negotiation for normalization between Korea and Japan in Japan*] (Seoul: Sönin, 2016).

2 See: Takasaki soji, *Kensho nitkankaidan* [*Verification of Korea-Japan Negotiation*] (Tokyo: Iwanami shoten, 1996); Lee Wondeok, *Hanir kwagösa ch'öriüi wönjöm* [*Origin of Korea-Japan historical processing*] (Seoul: Seoultaehakkyoch'ulp'anbu, 1996); Ota Osamu, *Hanir kyosöp* [*Korea-Japan Negotiation*] (Seoul: Sönin, 2008); Yoshizawa Fumitoshi, *Nitkankaidan 1965* [*Korea-Japan Negotiation*]

on the issue of property claims of Ota (2003), Yoshizawa (2005), Jang (2015), and Yu (2016), and those which examined with the negotiations for normalization in general from Takasaki (1996), Lee (1996), and Park (2008), the process of the seven rounds of property claims' negotiations have been clarified in detail. These studies, which utilized diplomatic documents from Korea and Japan, demonstrated the process by which the rhetoric of anti-communism and economic growth replaced the rhetoric of settling the past once and for all. In this regard, a turning point in settling this issue was the political talks between Kim Jong-pil (金鍾泌, 1926-2018), then head of the Korean Central Intelligence Agency, and Japanese Foreign Minister Ohira Masayoshi (大平正芳, 1910-1980) in November 1962. In these discussions, the two sides agreed on the amount of the fund, without considering the title. They thus reached the 1962 Kim-Ohira agreement (memo) based on the so-called economic cooperation method.

One topic under-explored in the existing literature is the analysis of negotiations after the 1962 Agreement. Most of the previous studies analyzed the process of reaching the 1962 Agreement in detail, but only briefly described the process thereafter. This may be because researchers believed that the framework of the 1962 Agreement directly extended to the 1965 Agreement - in other words, that the negotiation concerning the property claims was effectively settled through the 1962 Agreement. However, negotiations continued for more than two years afterward, and important discussions took place during this period as well. It is this period that this paper intends to analyze.

After the 1962 Agreement, the two countries continued to negotiate two major issues: details of the property claims and the importing of

1965] (Tokyo: Koubunken, 2015); Park Jinhee, Hanirhoedam [*Korea-Japan Negotiation*] (Seoul: Sŏnin, 2008); Jang Bakjin, *Shingminjigwan'gve ch'ŏngsanŭn wae iruŏjil su ŏpsŏnmŭn'ga* [*Why couldn't the settlement of colonial relations be accomplished?*] (Seoul: Nonhyŏng, 2009); Yu Ŭisang, *Taeiroegyŏi myŏngbun'gwa shilli* [*Justification and practical interests of diplomacy with Japan*] (Seoul: Yŏksagonggan, 2016). See also numerous other studies.

capital goods by deferred payment. First, negotiations over property claims sought to settle the details necessary to execute the fund.³ The problems in this area were closely related to initiative in using the funds, i.e., how freely Korea could use the fund or to what extent Japan could intervene and influence the process. Therefore, in the course of the negotiations, the nature and title of the fund overlooked in the 1962 Agreement were inevitably subject to debate once again. Second, negotiations on the importing of capital goods by deferred payment, which is equivalent to private credit, began from the conditions of the 1962 Agreement that stated commercial loans could be granted even before the normalization.⁴ This matter, which seemed to be on the verge of being settled, also came up against an unexpected obstacle. The positions of the two countries were clearly different as to whether capital goods imported by deferred payment were considered a private credit under the 1962 Agreement and, furthermore, whether this private credit was included with the property claims.

In short, it can be said that neither the negotiations over the details of the property claims nor the importing of capital goods by deferred payment after the 1962 Agreement have received adequate attention.

3 Regarding this negotiation, refer: Lee I-Pöm, “Taeil ch’önggugwönjagümüi sebu hangmong hyöpsange kwanhan yön’gu” [A Study on Korea-Japan Negotiations Concerning Korea’s Detailed Property Claims Against Japan], *Ilbonyön’gu* [*Japan Studies*] 23 (February 2015): 231-252. However, this paper has only described some of the various issues of this negotiation. The significance of this negotiation has hardly been sufficiently expressed.

4 Refer to: Yoshizawa, op. cit; Kimiya Tadashi, “Kankokuno tainichi donyushikinno saidaikato saitekika” [Maximization and Optimization of Korea’s Introduced Funds from Japan], in *Rekishi toshiten no nitkan kotkouseijika* [*Normalization of diplomatic relations between Korea and Japan as history*], edited by Lee Chongwön, Kimiya Tadashi, Asano Toyomi. (Tokyo: Hoseidaigaku shuppankyoku, 2011). Yoshizawa emphasized that the economic relationship between the two countries has deepened and strengthened through the loan negotiations, and Kimiya emphasized the diplomatic achievement of the Korean government in increasing the amount of commercial loans from \$100 million to \$300 million. The intention of this paper is somewhat different from these.

These two negotiations show how lax and irresponsible the agreement between Korea and Japan was. From this perspective, this paper outlines the negotiation process after the 1962 Agreement and aims to understand the characteristics of further negotiations and the 1965 Agreement between Korea and Japan.⁵

Kim-Ohira agreement in November 1962

Korea's property claims against Japan means the right to claim compensation or reparation for Japan's colonial rule and mobilization for warfare. However, Korea could not use terms like 'compensation' or 'reparation' because Korea was not a participant in the Treaty of Peace with Japan. Therefore, its original meaning was reduced to civil and financial claims.⁶ However, as Japan conversely raised its property claims against Korea, negotiations concerning property claims in the 1950s continued to face many obstacles. The stance of the Rhee administration of Korea, which advocated anti-communism and anti-Japan rhetoric, also added difficulty. It was the rhetoric of so-called 'economic cooperation' emerging in the 1960s that was the key to moving forward.

This change in rhetoric was influenced by changes in US foreign economic policy and the US's strong pressure to restore Korea-Japan relations. The US government under President Kennedy externally placed great importance on the economic development of underdeveloped countries in Asia and thought that development was a more effective means of containment than military intervention. The US particularly expected Japan to play an active role in the development of Asia, in-

5 This paper has been revised and supplemented based on a section of the second chapter in the author's dissertation, "1960yöndaehaenguk'üi daeil ch'önggugwön mit 'kyöngjehyömyök' kyosöp yön'gu" [A study on Korea's property claims against Japan and 'economic cooperation' negotiations in the 1960s] (Ph.D. Diss., Seoul National University, 2019).

6 Ota, op. cit., 284-296.

cluding Korea. Although the US's official position on Korea- Japan relations was non-intervention, it gradually expanded its involvement through the State Department and embassies in both Seoul and Tokyo behind the scenes.⁷

Conditions changed to accommodate this pressure in both Korea and Japan. First, both governments changed at the same time: to the Ikeda (池田勇人, 1899-1965) cabinet of Japan in July 1960 and to the Military government of Korea in May 1961 after the collapse of the Rhee government. Both of the new governments adopted an economy first policy. The economic sectors of the two countries also responded to this policy change. Accordingly, an economic emphasis on Korea-Japan relations emerged.⁸

At the fifth negotiation concerning property claims (October 1960 – May 1961) and the sixth negotiation which resumed in October 1961, both countries discussed eight items of Korea's property claims which were first proposed by Korea at the initial negotiation in 1952.⁹ However, aside from discussing the eight items, there was no real progress. The Japanese government requested evidence such as a list of victims of forced labor. They further argued that the property claims of North Korea or property claims of Japan in colonial Korea should be considered. Moreover, both sides had different ideas about which ex-

7 With regard to America's involvement and role, refer to: Lee Chongwŏn, "Kannichikaidanto America" [Korea-Japan Negotiation and America], *Gokusaiseiji* [*International Politics*] 105 (January 1994): 163-181; Park T'ae Kyun, "Hanirhoedam shigi ch'ŏnggugwŏn munjeüi kiwŏn'gwa migugüi yŏk'al" [The origins of the Issue of Property Claims and the Role of the United States during the Korea-Japan Negotiations], *Han'guksayŏn'gu* [*Korean History Studies*] 131 (December 2005): 35-59.

8 Japan's experience in providing post-war reparations to other countries in Asia in the form of economic cooperation in the 1950s should also be mentioned. Refer to: Nagano Shinichiro, Kondo Masaomi(coed.), *Nipponno sengobaisho* [*Japan's Post-War Reparations*] (Tokyo: Keisoshobo, 2009).

9 With regard to negotiations concerning the property claims, refer to the following publications: Ota, op. cit; Yoshizawa, op. cit; Jang, op. cit.

change rate to apply to the fund. Japan adopted a tactic that suggested that if Korean government insisted on labeling the fund as property claims, the amount of the fund would be drastically reduced from what the Korean government wanted. This tactic acted as tacit pressure to surrender the title of the fund.

Under such circumstances, it was through the Kim-Ohira talks that both countries attempted to settle the amount and title of the fund through political compromise.¹⁰ After two rounds of talks from October to November 1962, both sides succeeded in agreeing on the amount of the fund and the conditions of provision or repayment. According to that agreement, the fund consisted of three parts: \$300 million in aid (stipulated in the first paragraph of the agreement), \$200 million in public loans in 10-year installments (as explained in the second paragraph), and private credit of over \$100 million (described in the third paragraph). There was an additional agreement that private credit, which referred to commercial loans, could be granted even before the normalization of diplomatic relations. Both sides could not agree on the title of the fund but decided to use the phrase “to solve the problem of property claims and promote economic cooperation.” Paragraph 3, delineating private credit, was included because of disagreements between two sides on the total amount of the fund. In other words, Korea wanted to keep the total amount at \$600 million while Japan advocated for \$500 million, leaving a difference of \$100 million.

As such, the Kim-Ohira talks managed to reach a compromise through the political logic of putting economic cooperation ahead of the history of the two countries.¹¹ However, there was something odd

10 With regard to Kim-Ohira talks, refer to following documents: Oemubu [Ministry of Foreign Affairs of Korea], *Hanirhoedam ch'onggugwŏn kwallyŏn munsŏ 59* [Documents Related to the Property Claims at the Negotiation for Normalization between Korea and Japan 59] (P'aju: Han'gukhaksulchŏngbo, 2004), 186-211, 258-283.

11 Ota summarized the historical significance of this agreement into three main categories: the partial implementation of the US regional integration plan; the end-

about this agreement. The title was incomplete, and it was difficult to understand the fact that the commercial loans were included in the property claims which were for officially settling the past. In other words, it is doubtful whether the 1962 Agreement can truly be called an agreement.

**Negotiation on the details of the property claims :
Asking for the title of Korea's property claims against
Japan once more**

Despite the 1962 Agreement, the two countries' conflict over property claims would continue. The two countries did not reach a compromise regarding the title of the fund, which was left blank up until the last moment when signing the 1965 Agreement. Korea regarded the fund as a property claims fund, while Japan defined it as an economic cooperation fund. The negotiation on the details of the property claims elucidates the different ideas of the two countries.

Property claims consisted of products and services, not cash. Furthermore, they were structured to be paid out over the course of ten years. Therefore, it was very important for Korea to introduce the materials it needed at that time. Efficient and autonomous use of the fund was not only economically beneficial but could also help to save the domestic reputation of the regime.

From February to March 1963, the Korean government held five rounds of conferences with related ministries and coordinated the government's negotiation policy on the details of the property claims. The most important principle of the policy was to avoid possible Japanese

ing of the discussion at the government level between Korea and Japan regarding the issue of compensation for victims of colonial rule and war and its historical recognition; and the choice of the economic cooperation method to address with the property claims issue. Ota, op. cit., 284-296.

interference and to allow Korea to use the fund autonomously.¹² The Japanese government's position was directly opposed to this; Japan envisioned a procedure that would be executed only after their consent.¹³

In 1963-64, negotiations for normalization between Korea and Japan were generally in a lull due to the rise of anti-negotiations movements after the presidential election in Korea. As a result, there was also no significant progress in negotiations regarding details of the property claims. After December 1964, when the two countries' governments decided to reach a settlement despite both countries' social opposition, intensive discussions were possible at the seventh negotiation between Korea and Japan.

There were four major issues in this negotiation. The first issue was about whether Korea or Japan would be responsible for preparing the implementation plan that would contain the list of products and services to be imported by the fund each year. Korea's position was that Korea would prepare it autonomously without Japan's involvement, or that the plan would at least initially be prepared by Korea and officially decided after consultation with Japan as a formality.

The second issue was the purchasing process and purchasing parties. This issue can largely be divided into whether the purchasing delegation would be set up in Japan and that delegation would be in charge of purchasing, or whether the Public Procurement Service (PPS) or a private contractor would purchase in Korea. In the case of Japan's reparation agreements in Southeast Asia, it was common for each country to set up a purchasing delegation in Tokyo and for that delegation to contract directly with a Japanese supplier. However, the Korean government opposed this method because of problems such as the possibility of being caught up in fraud if the delegation had full

12 Oemubu, Hanirhoedam ch'önggugwön kwallyön munsö 41, 260-262.

13 This was basically based on the procedure of the reparation agreements toward Southeast Asian countries in the 1950s, as well as on the idea that Japan would lead the growth of the Korean economy, which still remains underdeveloped.

right to purchase, the structural vulnerability to collusion by Japan's supplier, the inability to purchase from a private contractor, and the burden of the delegation's operational expenses. Korea's intention was that Korea would lead the purchasing process by purchasing in Korea while reducing the potential for fraud by diversifying the purchasing parties. Considering the expected backlash from Japan, Korea devised a purchasing process to set up a delegation but to not grant the delegation the right to formalize a contract. In addition, Korea tried to insist on purchasing consumer goods from the private sector and capital goods from the PPS. In both purchasing process, the contract would be formalized in Korea.

The third issue was the effective date of the purchase contract. In the case of Japan's former reparation agreements, there was a system of contract certification by the Japanese government which was similar to Japan's Export-License (E/L) system. According to this system, even if purchase contracts were arranged between each country and a Japanese supplier, it did not take effect until the Japanese government certified it. The Korean government wanted to avoid this system. Instead, Korea hoped that the purchase contract would take effect by itself if it met the agreement concerning property claims and the annual implementation plan. In this case, the Korean government would only need to notify the Japanese government. The Japanese government could raise objections within one week of signing the contract, but it was assumed that the Korean government could decide whether or not to accept the objection.

Finally, it was also important to determine which products to import, that is, whether to import capital goods or consumer goods (raw materials). This is an issue that the Korean government changed its position on several times. At the beginning of the negotiations, the Korean government emphasized that imported goods should be products that were conducive to economic development and at the same time avoided dependency on the Japanese economy. Therefore, Korea's policy was to avoid simple consumer goods and to import investment goods such as

machinery while not implementing specific projects entirely as property claims. However, after the negotiation began, the policy was changed to favor consumer goods such as fertilizers and building materials. This was due to the need for internal financing. If the entirety of the public loans was imported as a facility material, separate domestic facilities and a working funds were needed to smoothly put those projects into operation. Because of this, the Korean government tried to raise the counterpart fund by importing consumer goods and then disposing of them.¹⁴

The negotiations took place intensively for about two months from April to June 1965, and most of Korea's demands faced opposition from Japan.¹⁵ Japan's position was that the implementation plan would be decided through an agreement between the two countries, and purchase contracts must be approved by Japan before taking effect. As a result, the word "verification" was used instead of "approval," but, in effect, the Japanese position was enforced.

Japan also rejected the idea of setting up the purchasing delegation in Tokyo but contracting with the PPS in Seoul. Korea argued that the domestic impression of the delegation was unfavorable, and that the PPS was well equipped to carry out purchasing tasks. However, Japan objected, saying that it would be inconvenient for suppliers to have to deal with two agencies or to have to go to Seoul every time they had to sign a contract.

On this issue, what Japan valued most highly was the jurisdiction, namely, which legal procedure to would be followed, in the case of contract-related disputes. Japan insisted that even when the PPS formalized a contract in Seoul, the conditions for the establishment of the contract and the applicable law in case of a dispute should be governed by Japanese law. The compromise reached was that the proce-

14 Oemubu, *Hanirhoedam ch'önggugwön kwallyön munsö* 42, 190-208.

15 Oemubu, *Hanirhoedam ch'önggugwön kwallyön munsö* 58, 34-40, 57-58, 84-88, 90-102, 107-109, 128.

ture until the contract, such as the announcement of the bid, would be carried out in Seoul, but the final contract would be verified by the delegation in Tokyo. Dispute settlement methods would additionally be decided by the jurisdiction of the contracting area, that is, Japan. To sum up, Japan successfully maintained most of their positions and control over contract verification and implementation.

Compared to the above three issues, the Korean government was relatively successful in achieving its goals concerning product types. The Japanese government, which had supplied most of the materials as capital goods in the previous reparation agreements, was not satisfied with the supply of raw materials (consumer goods) at the beginning of the negotiations. The ostensible reason was that raw materials would disappear once they were used, making it difficult to persuade the National Assembly or sway public opinion, and Japan would be in a difficult position in relations with third-party countries. However, the real reason Japan resisted this position was that they were concerned their exports of consumer goods to Korea would decrease. As Korea emphasized the necessity of raising domestic capital through this fund to compensate for individual property claims, the supply of raw materials was recognized under the premise that “the provision of products does not significantly impede trade between the two countries” in the annex of the Agreement.

Except for the issue of product types, in the four major areas of contention discussed above, most of Korea’s conditions were not properly met. The Korean government touted the fact that the PPS carried out the purchase process in Seoul before the verification of the contract as an important achievement.¹⁶ However, the overall evaluation of the negotiations by the Korean media was not so generous. This is because, in addition to other major issues, there were many areas where

16 Taehanmin'guk Chŏngbu [Korean Government], *Hanirhoedam habŭisahang* [*Agreements at the Negotiation for normalization between Korea and Japan*] (Seoul: Taehanmin'guk Chŏngbu, 1965), 46-47.

Korea failed to meet the public's requirements, such as the inclusion of products made by "Koreans in Japan" in the category of "Japanese" products. Korean public opinion evaluated the Buy-Japanese policy as "economic cooperation to seek enslavement" rather than "Korea's right to property claims as compensations for colonial damage."¹⁷

At the heart of these issues was the initiative in the use of the fund: to what extent would the Japanese government be involved in the overall process? In other words, how much autonomy did the Korean government have in this process? These questions were closely related to the title or nature of the fund. As stated earlier, in the 1962 Agreement, both sides left the title of the fund blank. Therefore, it was perhaps foreseeable that the two countries would have another debate over the title of the fund the negotiations hereafter.

At the sixth session of the seventh negotiations concerning property claims, when the opinions of both sides collided on every issue, the Japanese government remarked: "We have the basic idea that our provision to Korea is not compulsory, like reparations would be, but rather economic cooperation," and "It is difficult for the Korean side to say that 'we should do whatever we want because this money is ours.'"¹⁸

From these remarks, it is clear that Japan viewed the nature of the fund as economic cooperation. Japan's idea was that, by providing aid and public loans in the form of an economic cooperation fund, the problem of property claims could be solved without directly connecting the fund itself to such claims. Korea, however, emphasized that the fund, no matter how nominal, was derived from the need for compensation of damage from Japan's colonial rule. The Korean government stated: "Shouldn't it be acknowledged that funds are not reparations but

17 "Myōngbun irūn ch'ōnggugwōn" [The Property Claims Which Have Lost Justification], *Tonga ilbo*, June 5, 1965; "Pait'pchaep'aen kangyohan kōt" [Japan Forced Buy Japan Policy], *Tonga ilbo*, June 7, 1965; "Tto ilbone kulbok'al kōshin'ga" [Will you surrender to Japan again?], *Tonga ilbo*, June 15, 1965.

18 Oemubu, *Hanirhoedam ch'ōnggugwōn kwallyōn munsō* 58, 159-174.

are based on property claims?” and “The beginning of this problem started with the right to property claims. It didn't start out of asking for help because the economic situation in Korea was difficult.”

This debate reminds us that the different views of the two countries over the framework of 'property claims and economic cooperation' were still at odds. In the end, Korea failed to enforce the title of the fund. The result of the negotiation meant that the nature of the fund was closer to economic cooperation than property claims.¹⁹ Korea, however, did not acknowledge this. Therefore, the fund was provided, but why this fund was actually provided and what the title of the fund was still remains a question.

In the 1962 Kim-Ohira Agreement, Korea emphasized the total amount of the fund. However, as is evident in this negotiation, Korea overlooked the fact that the title and the reality of implementing the fund were not separate but were closely linked. Even if the fund was not reparations, whether Korea received it out of obligation (property claims), or whether Japan merely provided it as a favor (economic cooperation), was bound to differ greatly in the autonomy and initiative allowed when using the fund. In short, the core of this negotiation was the title of the fund, not details, and it showed that the two countries were still in disagreement on this matter. This was a fatal flaw of the 1965 Agreement that still creates constant conflict between the two countries even now.

**Negotiation on import of capital goods by deferred payment :
What on earth are Korea's property claims against Japan?**

Along with the negotiations on the details of the property claims,

19 In this context, Yoshizawa pointed out that the property claims as claimed by the Korean government lost their original meaning and have been changed to barely show the legitimacy of the party accepting economic cooperation. Yoshizawa, *op. cit.*, 240.

the main issue during this period was the negotiation over the import of capital goods by deferred payment. As Yoshizawa pointed out, this issue was very closely related to the problem of property claims. In particular, it was an important medium that exposed the contradictory structure of the 1962 Agreement and, by extension, the 1965 Agreement. How did this problem come to be a sensitive topic in both countries?

At first, Korean society was very wary that economic cooperation with Japan could lead to economic subordination or preclude the property claims. Because of this, during the Jang administration, Prime Minister Jang Myeon (張勉, 1899-1966) promised, “If the people want it, the government will not introduce capital from Japan or invite a large-scale economic inspection team before the normalization of diplomatic relations.” After the coup, Chairman Park Chung-hee (朴正熙, 1917-1979) also emphasized at a press conference shortly after his first visit to the US and Japan that economic cooperation could only be implemented after the problem of property claims was resolved and diplomatic relations normalized.²⁰ Economic cooperation and property claims were separate problems, and the former would be promoted after the establishment of diplomatic ties. This was a principle of “normalization first, economic cooperation next.”

However, this principle was not upheld. The military government, which required significant funds to promote the economic development plan, sought the possibility of economic cooperation internally. In February 1962, Park Chung-hee attended the groundbreaking ceremony for the Ulsan Industrial Zone and stated that he would not block cooperation with Japan, even before normalization, so long as it would be friendly cooperation from the private sector. This was a policy of “allowing private credits in good faith.” The position of the Korean government was leaning toward conditionally permitting private economic cooperation, even if government-to-government economic coop-

20 Ota, op. cit., 197-198; “Mi wŏnjogyumo suil nae p'anmyŏng” [The Amount of US Aid Will be Determined Within a few days], *Tonga ilbo*, December 8, 1961.

eration was carried out after normalization.²¹ The 1962 Agreement opened the door for such discussions. At this time, the main target of economic cooperation was the importation of capital goods, such as facility materials, by deferred payment.

From around March 1963, the two countries began to discuss this issue through preliminary negotiations between the chief representatives, but for a while, there was no noticeable progress. The main factor delaying progress was that Japan, which raised this issue first, turned back passively when the discussion started. It was the Ministry of Foreign Affairs of Japan (MFAJ) that originally proposed this issue within the Japanese government. The MFAJ thought that it would be desirable to pursue economic cooperation with Korea at an early stage, given the situation in which several foreign countries, such as the United States were advancing into Korea. However, the MFAJ met opposition from relatively passive economic ministries. Therefore, the MFAJ tried to use this as a kind of bait to induce Korean concessions on other pending issues instead of delaying negotiations.²²

Korea took a relatively active stance. In Korea, 1963 was a period of political and economic turmoil. There were conflicts within the coup

21 This position is supported by the 「Government Policy on Private Economic Cooperation between Korea and Japan Before Normalization of Diplomatic Relations」 (Ministry of Foreign Affairs of Korea, February 20, 1962) adopted by the Cabinet immediately after this. Oemubu, kungmuhoeuïrok (che1hoe ~ che32hoe) [Minutes of State Council Meeting (1st-32nd)]. 1962. Accessed November 16, 2021.

<https://theme.archives.go.kr/next/cabinet/keywordSearchResultDescription.do>

22 For example, the Ministry of Finance took the position that although private consultations were free, implementation of it was impossible until a clear prospect of a settlement was reached on the Negotiations between Korea-Japan. He further argued that securing bonds should be guaranteed in relation to Korea's economic situation. The position of the Ministry of Economy, Trade and Industry (METI) was generally similar. Kungmindaehakkyo Ilbonhakyön'guso [Institute of Japanese Studies, Kukmin University], *Hanirhoedam Ilbonoegyomunsö* 59, 63 [*Japanese Documents at the Negotiation for Normalization between Korea and Japan* 59, 63], (Seoul: Tongbugayöksajaedan, 2010), 253-270, 205- 208.

forces and conflicts between Korea and the US. Economically, there were negative factors such as inflation and a decrease in foreign exchange reserves. In such a situation, the government must have thought that introducing foreign capital, that is, importing capital goods by deferred payment, would help placate the public. In addition, there were several unofficial business talks of attempting to import capital goods at the private industry sector. Therefore, Korea showed a cautious attitude toward importing Japan's capital goods at first but gradually developed an active stance.²³

While negotiation was in a lull, the Korean government resolved internal problems. First, they established a consistent policy on introducing capital goods to Japan. Strictly speaking, the policies of "normalization first, economic cooperation next" and "allowing private credits in good faith" contradicted each other. Accordingly, the Economic Planning Board of Korea prepared a new policy draft. The key to the new plan was to allow the introduction of both government and private foreign investment to Japan on the premise of government approval.²⁴ The Korean government additionally revised related laws and regulations.

As Korea took a series of measures to introduce capital goods to Japan, contracts between private companies of the two countries began to be signed including the PVC plant (\$3.6 million) and the cement plant (\$5 million) contracts signed in May and November 1963, respectively. All of the contracts were guaranteed by the government. In December 1963, the Korean government approved these contracts, including a poly-acrylic plant (\$3.8 million). All that remained was the issuance of an E/L from the Japanese government. In February 1964,

23 Shin Jaejoon, "1963-65nyŏn Pak Chŏnghŭi chŏngbuŭi kyop'ojaesan panipchedo unyong" [Park's Government's Policy on Bringing in Property of Oversea Koreans in 1963-65] *Han'gukmunhwa* [Korean culture] 69 (March 2015), 245-276.

24 Kyŏngjekihogwŏn [Economic Planning Board of Korea], *Kagŭisangjŏngan'gŏnch'ŏl* [Collection of Agenda Items to Be Submitted to the Cabinet (55th~76th)], 1963. Accessed November 16, 2021. <https://theme.archives.go.kr/next/cabinet/keyword/SearchResultDescription.do>

the Korean government provided a memorandum of understanding to the Japanese government requesting these three capital exports.²⁵

Table 1. Status of approval of importing capital goods by deferred payment by the Korean Government (February 1964)

| Korean importer | Japanese supplier | Project | Amount (million\$) | Condition | Approval date by Korean government |
|--------------------------|--------------------|--------------------|--------------------|--|------------------------------------|
| Taehan plastic | Shin Chitso hiryou | PVC plant | 3.6 | deposit X, annual rate 6%, repaid over 9 years with a 3-year grace period | 12.14.1963 |
| Gyeongwon Co. | Itochu | Cement plant | 5 | deposit X, annual rate 5%, repaid (kind) over 5 years with a 2-year grace period | 12.14.1963 |
| Tongyang synthetic fiber | Itochu | Poly-acrylic plant | 3.8 | annual rate 6%, repaid over 7 years with a 2-year grace period | 12.14.1963 |

Loan amount and conditions are constantly changing during the negotiation process.

During negotiations for these E/L issuances, the reality of the contradictory structure of the 1962 Agreement was revealed. There were two main issues. The first was whether these cases were included in Paragraph 3 (private credits) of the 1962 Agreement. The first issue ultimately led to the second which questioned the nature of Paragraph 3, that is, whether the commercial loans in Paragraph 3 were included in property claims or not. It was the first issue that became the focus sooner. Japan had long expressed its position that the capital goods

25 *Oemubu, Changgi kyölche pangshige üihan taeil chabonjae toip 1964* [Import of Capital Goods to Japan by Long-Term Settlement Method, 1964] (Seoul: Diplomatic Archives, Ministry of Foreign Affairs, 1964), 8-11, 204-206.

which were imported by deferred payment before the normalization of relations were included in the third paragraph of the 1962 Agreement.²⁶

This was an argument that the Korean government could not easily accept. First, Korea publicly advertised that it solved the problem of property claims with aid (Paragraph 1), public loans (Paragraph 2), and commercial loans (Paragraph 3), coming to a total of \$600 million. Therefore, if the above three cases were included in Paragraph 3, it meant that the property claims were introduced before normalization. This was contrary to the government's position, which had, domestically, consistently denied the introduction of property claims before the normalization of relations.

Second, Korea was concerned that if the capital goods of Paragraph 3 were introduced and used in advance, it would be impossible to include Paragraph 3 in a future agreement. In that case, the total amount would be reduced to \$500 million in aid and public loans, and the government could be criticized for lying about what it had previously described as \$600 million. There was a strong possibility that this could develop into a major political problem.

The two sides argued over these matters in an informal meeting of chief representatives after 1963. Bae Eui-hwan (裵義煥, 1904-2001), the chief representative of Korea, acknowledged that these cases were of the same nature as the commercial loans of Paragraph 3, but emphasized that they should be considered separate from property claims. Usiroku (後宮虎郎, 1914-1992) replied that Japan thought that the problem of property claims was settled with the \$500 million in aid and public loans, so Japan took the stance that these cases had nothing to do with property claims if they were introduced through ordinary private credits.²⁷

Here the second part of the problem becomes clear: that is, the relationship between Paragraph 3 of the 1962 Agreement and the property

26 Oemubu, *Hanirhoedam ch'önggugwön kwallyön munsö* 35, 75, 90-92.

27 Oemubu, *Hanirhoedam ch'önggugwön kwallyön munsö* 44, 307-309.

claims. Korea thought that Paragraph 3 also is included in property claims, whereas Japan thought that Paragraphs 1 and 2 were the only funds applicable to solving the problem of property claims. Japan thought that Paragraph 3 was basically nothing more than a 'private' capital transaction that consulted with 'private' industries regardless of property claims.

It was in July 1964 that conflict was fully ignited. The MFAJ finally issued an E/L for two cases of PVC and cement, but two conditions were attached. MFAJ insisted that these two cases should be counted in Paragraph 3 of the 1962 Agreement and that the terms of deferred payment should be adjusted to a general level.²⁸ Although it was clear that the Korean government would oppose it, the Japanese government used "counted in" as the clearest expression. Thus, the Korean government strongly protested. The most significant reason of objection was that the government would be criticized by the people for receiving the property claims before normalization, but Korea was also dissatisfied with the condition that the terms of deferred payment should be no different from those of ordinary private credits. For the Korean government, these cases had to be treated as ordinary commercial loans unrelated to property claims.²⁹

There were two main reasons why the MFAJ proposed these conditions. First, the MFAJ was suspicious of Korea's intention to treat these two cases separately to maintain the total amount of \$600 million. Second, the MFAJ wanted to make it clear that the commercial loans of Paragraph 3 were not 'special' loans, but 'ordinary' loans in the conditions of provision. In short, the conditions proposed by Japan were to clarify the conditions of the loans as the 'ordinary private credits on a commercial basis' of Paragraph 3 and to confirm that the two cases under negotiation belonged in this category.³⁰

28 Oemubu, *Changgi kyölche pangshige üihan taeil chabonjae toip 1964* (Seoul: Diplomatic Archives, Ministry of Foreign Affairs, 1964), 80-83, 116-119.

29 Ibid., 121-122.

These conditions revealed the incompleteness or contradiction of the structure of the 1962 Agreement which had only just been reached. The two countries had competing views not only regarding whether capital goods by deferred payment were included in the property claims, but also on whether the commercial loans of Paragraph 3 were special loans or ordinary loans. As Japan suspected, Korea wanted to make the terms of deferred payment more favorable and tried to stipulate the commercial loans in a later agreement. However, Japan's assertion that Paragraph 3 had absolutely nothing to do with the property claims was somewhat preposterous. The 1962 Agreement was only reached because it was possible to bring the total amount to \$600 million by adding commercial loans to the aid and public loans. It can at least be said that it had the effect for Korean government to decide to reach an agreement because the total amount became \$600 million by adding Paragraph 3.

Korean officials discussed the government's policy on this issue at the Blue House meeting in late August with President Park participating directly. Minister of Foreign Affairs Lee Dong-won expressed the opinion that the issue should be taken seriously given domestic public opinion and Prime Minister Jung Il-kwon (丁一權, 1917-1994) agreed. Deputy Prime Minister Jang Ki-young (張基榮, 1916-1977) and Chief Presidential Secretary Lee Huh-rak (李厚洛, 1924-2009), however, were of the opinion that capital goods should be imported. Park Chung-hee agreed with the latter position. At the end of the discussion, opinions were gathered in the direction of accepting Japan's request and adopting it, in the sense that these two cases and the commercial loans of Paragraph 3, were the "same in nature."³¹ The conclusion of this meeting shows that the Korean government was eager to introduce foreign capital. To say that the two cases of PVC and cement plant and the

30 Kungmindaehakkyo Ilbonhakyōn'guso, *Hanirhoeadam Ilbonoegyomunsō* 68, 1-55.

31 Oemubu, *Changgi kyōlche pangshige ūhan taeil chabonjae toip 1964* (Seoul: Diplomatic Archives, Ministry of Foreign Affairs, 1964), 154-158.

commercial loans of Paragraph 3 were the “same in nature” was to acknowledge that they were somehow related.

The two countries first sought a compromise. In early September, the Japanese side proposed a slightly euphemistic amendment to the phrase “two cases should be ‘counted in’ P3,” altering the statement, “two cases were ‘of the category’ of Paragraph 3” of the 1962 Agreement.³² This was just a modification of the phrase in a somewhat indirect way, but the meaning of the statement stayed the same.

The Korean government finally turned to US and contacted officials from the US embassies in Seoul and Tokyo to request US mediation. The US offered an arbitration proposal that was documented in accordance with Korea’s Plan C. It was a proposal to verbally confirm that there was no intention to create another category in addition to Paragraph 3.³³ This time, however, the Japanese government did not accept this proposal. This was because, from Japan’s point of view, it satisfied the requirement that the two cases were no different from the commercial loans of Paragraph 3 but did not satisfy the requirement that Paragraph 3 itself would be just ordinary loans, not special loans.

Table 2. The positions of Korea and Japan toward the conditions of importing capital goods by deferred payment.³⁴

| Japan’s original proposal (7.27) | Japan’s amendment (9.3) | Korea’s proposal (9.21) |
|---|---|--|
| These two cases of deferred payment export <u>shall be counted in</u> as constituting part of private export credits to be extended on a commercial basis, within the framework | “The deferred payment for the exports of the mentioned two plants <u>is of the category</u> of the ordinary private credits on a commercial | Plan A: Deletion of this condition. Plan B: “The deferred payment for the exports of the said two plants are ordinary private credits provided on a commer- |

32 Ibid., 170-175. This expression (‘of the category’) is the same as original text (diplomatic paper). It meant that these two cases fell into the category outlined in Paragraph 3 of the 1962 Agreement.

33 Ibid., 233-234.

34 Ibid., 201-202.

| | | |
|---|---|---|
| of Japanese economic cooperation on which a broad agreement was reached between the two governments towards the end of 1962 in connection with the settlement of the Korean Claims. | basis as envisaged in the tentative understanding reached between the two sides towards the end of 1962.” | cial basis without any connection with Korean Claim.” Plan C: “The deferred payment for the exports of the said two plants are ordinary private credits provided on a commercial basis.” |
|---|---|---|

Emphasis added by the author of this paper.

At the end of October, Korea eventually accepted Japan’s amendment to “of the category.” It had been almost three months since the two countries’ conflict began in July. At the end of the 1963, the METI (Ministry of Economy, Trade and Industry) issued E/L for the PVC and cement plants.

As a result of accepting the amendment, the Korean government had no choice but to say that Paragraph 3 of the 1962 Agreement was not directly related to the property claims. However, at the same time, this resulted in the Korean government backtracking on its previous position. The Korean government explained that agreeing to the commercial loans in the 1962 Agreement along with property claims was due to the special relations of the two countries.³⁵ It was an unsatisfactory excuse. From a different point of view, however, it might be said that by doing this, Paragraph 3 could be included in the form of an Exchange of notes when signing the Agreement in 1965.

After the signing of the 1965 Agreement, high-ranking government officials clearly acknowledged that private commercial loans were not property claims.³⁶ However, the media had already identified the problem, and they did not hide their discomfort. The media pointed out that “the real property claims [were] only \$300 million in aid,” and

35 Oemubu, *Changgi kyölche pangshige ühan taeil chabonjae toip 1963~65* [Import of capital goods to Japan by long-term settlement method, 1963~65], (Seoul: Diplomatic Archives, Ministry of Foreign Affairs, 1965), 65-67.

36 “Min’gansangöpch’agwanün ch’önggugwöni anida” [A Private Commercial Loan is Not a Property Claims], *Tonga ilbo*, June 23, 1965.

criticized the government's propaganda that even commercial loans were included in the property claims as "an embarrassing thing, a shameful thing about Japan, and a hypocrisy." The media criticized the government harshly, saying, "It was only a tragic comedy of diplomacy in this country that tried to perform the magic of a number of hundreds of millions of dollars in property claims." Such recognitions soon led to the question, "Why doesn't the government, which has officially publicized this riskiest money [commercial loans] as the property claims, apologize to the people for its wrongdoing?"³⁷

Essentially, the root of the problem was the inclusion of private commercial loans in property claims. From the Korean government's point of view, it was an inevitable measure to inflate the total amount, but at the same time, it was a trick for both countries. In other words, the two countries, which had been opposed not only in the title of the fund but also in the total amount, solved the problem politically by inserting ordinary commercial loans into the agreement. In so doing, the total amount could be calculated differently as \$600 million in Korea and \$500 million in Japan.

In addition, the 1962 Agreement made it possible to discuss economic cooperation by clarifying that Paragraph 3 could be implemented even before the normalization of relations. However, the nature of the commercial loans of Paragraph 3, which was ambiguous from the beginning, turned to the source of trouble in the process of discussing economic cooperation. It was extremely paradoxical. At the same time, it is clear how weak and irresponsible the so-called economic cooperation method was. The conflict was ultimately the responsibility of the two governments who created this imperfect structure.

37 "Hüryöjin ch'önggugwönüi sönggyök" [Blurred Meaning of Property Claims], *Tonga ilbo*, April 10, 1965; "Myöngbun irün ch'önggugwön" [Property Claims That Has Lost Its Justification], *Tonga ilbo*, June 5, 1965; "Ch'önggugwönhyöpchöngüi t'ükching" [Characteristics of the Agreement Concerning the Property Claims], *Tonga ilbo*, June 26, 1965.

Conclusions

In 1962, Kim Jong-pil and Ohira made an outline settling the problem of property claims by agreeing only on the amount of the fund while leaving the title blank. They, and the two governments that approved this agreement, might have thought that this would solve the problem, but the matter was not so simple. Leaving the title of the fund blank and including a commercial loan in the fund created problems immediately. The 1962 Agreement could never solve the problem of property claims, and the spark of confrontation lingered long after.

The method and structure that made different interpretations possible is a characteristic that permeates the entirety of 1965 Korea-Japan Treaty. Previous studies focused on the title of the fund for property claims or economic cooperation. However, as is clear from the above discussion, such a structure was not only flawed in the title. The basic structure of property claims for aid, public loans, and commercial loans was inherently contradictory. To critically review the handling of property claims between Korea and Japan, it is necessary to raise questions regarding not only why they did not agree on the title of the fund but also why commercial loans were included in the property claims.

Today, Korea and Japan have emerged as friendly countries in the Asia-Pacific region, sharing the important value of democracy and their respective market economies. However, as a series of incidents have shown in recent years, conflicts, large and small, have been periodically repeated, which has blocked the fundamental progress of bilateral relations. For the two countries to overcome the conflict of the past and become more trustworthy neighbors, the work of revealing and facing the past would be necessary.

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<Abstract>

**Getting Off on the Wrong Foot:
Rethinking the Title and Amount
of Korea's Property Claims against Japan**

Jaejoon Shin

Kim-Ohira Agreement, which agreed on the structure and amount of the property claims' fund is often regarded as a turning point in resolving the issue of property claims between the Republic of Korea and Japan. However, negotiations continued for more than two years after that. It goes without saying that important discussions took place during this period as well. It is the negotiations on the details of property claims and on the importation of capital goods by deferred payment that this paper focuses. These two issues have several things in common. One is that they are related to the 1962 Agreement. The other is that the core of the problems is the nature or title of the fund, namely, whether it is a property claims' fund or an economic cooperation fund. Ultimately, these two factors expose the incompleteness and irresponsibility of the 1962 Agreement and the agreement concerning the property claims. This is the historical significance of the Korea-Japan Agreement that this paper intends to confront.

Keywords: Negotiation for normalization between Korea and Japan, Korea-Japan Agreement, Agreement between Korea and Japan concerning the Settlement of Problems with regard to Property and Claims and Economic Cooperation, Korea's property claims against Japan, 1962 Kim-Ohira agreement.

〈국문초록〉

잘못 뺀 첫 단추 : 대일청구권자금의 명목과 금액 다시 보기

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한일회담에서 무상 3억\$, 유상 2억\$, 상업차관 1억\$ 이상이라는 청구권자금의 구조와 금액에 합의한 1962년 11월 김종필-오히라 합의는 흔히 청구권 문제 해결의 중요한 고비이자 전기로 평가된다. 청구권회담은 김-오히라 합의로 사실상 타결되었다는 인식이다. 그러나 교섭은 이후로도 2년 넘게 지속되었고, 이 기간에도 중요한 논의가 있었다. 본고가 주목한 청구권 세목과 자본재 연불도입 교섭이 그것이다. 이 두 가지 쟁점은 몇 가지 공통점을 갖고 있다. 하나는 김-오히라 합의와 관련된다는 것이다. 다른 하나는 자금의 성격, 즉 청구권자금인가 아니면 경제협력자금인가라는 질문이 이들을 둘러싼 양국 대립의 핵심이었다는 것이다. 궁극적으로 이들은 김-오히라 합의, 그리고 청구권협정의 허술함과 불완전함, 양국의 무책임함을 들추어낸다. 이것은 본고가 직시하고자 한 청구권회담과 협정의 역사적 의의이다.

주제어: 한일회담, 한일협정, 한일청구권협정, 대일청구권, 김종필-오히라 합의