

The Analysis of the Preceding Studies on the Restitution of Cultural Property in Korea

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Abstract—This study focused on the analysis of the trend of the studies on the restitution of cultural property in Korea. Despite the numerous studies on the restitution of cultural property in Korea, there has been no analytical study on the research trend regarding this issue. Because the restitution of cultural property is still an unsolved problem, it seemed necessary to understand the flow of the viewpoints of Koreans on the restitution of cultural property, for the sake of understanding the current effort to suggest solutions for restitution and discovering its shortcomings. The dissertations and academic articles in Korea were reviewed for this study. This research classified the topics of the studies on the restitution of cultural property into three categories and observed the change of foci and purposes of the studies in each category. The studies on each issue have gone through significant changes, but there are still the area left that need to be investigated on. Even though the studies on the restitution of cultural property have become much more diversified, it is still recommended that the researchers deviate from the established discussions and take new viewpoints in more global and practical manner.

Index Terms—Restitution of cultural property, international convention, 1965 Korea-Japan Agreement, Oekyujanggak documents.

I. INTRODUCTION

In Korea, after the end of the Second World War, the restitution of the cultural properties that were illegally taken by foreign power started to receive attention, being considered as an important part of postwar readjustment. Because Korea had gone through the invasion of the foreign power since the late Joseon dynasty, a tremendous number of Korean cultural properties were illegally exported to the foreign countries and the restitution of those cultural properties are is an ongoing problem. In this regard, the increase of attention and research on this issue seem to be necessary for the sake of taking proper actions for the restitution of cultural property.

There has not been any full-scale analysis on the history and the present state of the studies on the restitution of cultural property. For the purpose of grasping the trend of the Koreans' foci and viewpoints regarding the restitution of cultural property, and of pointing out the shortcomings of the studies on this topic and the related issues that requires further research, this study reviewed the dissertations and the academic articles written in Korea that dealt with the restitution of cultural property.

Through the research, it was discovered that there have been three main issues that constantly showed up as the main part of the studies of the restitution of cultural property: the institutional devices such as international conventions or domestic laws; the Korean cultural properties taken by Japan and the relationship between Korea and Japan; the restitution of the Oekyujanggak documents from France. In this paper, the changes and turning points of the focuses of the studies on each issue will be analyzed.

II. THE STUDIES IN KOREA ON THE RESTITUTION OF CULTURAL PROPERTIES FOCUSED ON THE INSTITUTIONAL ASPECTS

Since the end of the Korean War, there have constantly been the studies on the restitution of cultural properties focused on the international conventions and domestic laws. Starting from the research on the international conventions on the restitution of the cultural properties that were plundered during the colonization, the themes of the studies have shown various changes. It was observed that the second millennium was the turning point of the studies. The changes of the trend of the studies can be classified into three categories.

First, the objective of the studies before 2000 was mostly to find the solution for the restitution of Korean cultural properties that were taken by Japan during the colonial era by studying the related international conventions and domestic laws, whereas the studies mostly focused on the ways to broaden the application of the international conventions after 2000. In 1989, Chunghyun Baek suggested how the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter 1970 UNESCO Convention) could be applied to the restitution of the Korean cultural properties taken by Japan [1]. In 1995, Taewoon Kim focused his study on the 1970 UNESCO Convention and its application in understanding the 1965 Korean-Japanese Agreement [2]. In 1998, in his conclusion to the studies on the related international conventions, Kangsuk Lee mentioned the importance of the invigoration of the restitution of the Korean cultural properties from Japan [3]. In contrast, [4], published in 2005, focused on the improvement of the domestic law and the practical use of the Korean cultural properties stored in other countries. Reference [5], published in 2012, emphasized the cooperation with other East-Asia countries and the establishment of private organizations for the restitution. This shift of the foci of the studies demonstrates that the Koreans' view of the restitution of cultural property is no longer limited to Korea-Japan relationship, but has been much broadened and globalized.

Second, whereas the studies before 2000 were mostly about the comprehension of the international conventions, the studies after 2000 focused more on the improvement of domestic laws and the need to take actions in domestic level. Reference [1], published in 1989, compared and contrasted the past international conception of the protection of cultural property with the international conventions of that time and studied their application on Korea-Japan agreement. Reference [6] highlighted the role of international conventions to provide the agreeable solution for illegally exported cultural properties. T. Kim concluded that the role of UNESCO Convention is crucial for the regulation of illegal transmission of cultural properties and their restitution [2]. Reference [3], published in 1998, and shows the start of the change of the focus of study, as it focused on the contents of the resolution that was passed in 1970 UN General Assembly as the ground for asserting the responsibility of Korean government in taking actions for the restitution of cultural properties. Meanwhile, in 2007, Hunje Seo emphasized the amendment of the Cultural Property Protection Law in Korea, and pointed out the lack of self-enforcement in 1970 UNESCO Convention as the reason for the need of an extra implementation act of the domestic law [7]. In 2009, Hoyoung Song cited the loophole of 1995 UNIDROIT Convention, its non-retroactivity, as the reason for the necessity of the revision of the domestic law [8]. In 2011, Deokin Lee criticized that the protection system of cultural property in Korea is incomprehensive and incomplete [9]. This shift of the themes of studies can be interpreted that the effort in Korea for the restitution of cultural property became more active and objective.

Third, the restitution of the cultural property had mostly been considered a state-to-state matter until 2000, whereas it also came to be considered an individual-to-individual matter since 2000. The fact that comprehension of the international conventions had been the main issue of the restitution of cultural property before 2000 demonstrates that the state-to-state negotiation was the most emphasized. However, the focus on the restitution based on civil law in [10] which was published in 2004, and the call for the establishment of private organizations for active restitution in [11] which was published in 2012 show that the restitution of cultural property is no more in the boundary of state-to-state matter. This change in viewpoint may be in accordance with the increase of the successful restitution of cultural property led by an individual or a private institution.

III. THE STUDIES IN KOREA ON THE RESTITUTION OF CULTURAL PROPERTIES FOCUSED ON THE JAPAN-KOREA RELATIONSHIP

The disclosure of the documents in 2005 of the 1965 Korean-Japanese Agreement was the turning point of the studies in Korea on the restitution of the Korean cultural properties from Japan. The 1965 Korean-Japanese Agreement, an agreement that prescribed the relation between Korea and Japan, consisted of four agreements, one of which was the cultural property agreement. The cultural property agreement in 1965 ended up in the restitution of only 32% of

the cultural property that the Korean government asked for. The documents of the 1965 Korean-Japanese Agreement were opened to public in 2005 as a result of the litigation made by the Korean workers whose demand toward the Japanese government for the compensation for the compulsory manpower draft during the Japanese colonization was rejected for the reason that there is no legal ground for the compensation [11].

Before the documents were opened to the public, the studies were mainly about the restitution of the Korean cultural properties that were plundered during Japanese colonization as a part of the process of postwar readjustment as in [12], or were in the form of the report of a specific case of restitution as in [13]. In general, there was not so much full-scale study on the restitution of cultural property from Japan before 2005

After the disclosure of the documents, the studies were mostly based on the contents of the 1965 Korean-Japanese Agreement. Most of the studies dealt with the comprehension of the contents and the background of the agreement. For example, [14] focused on the attitude of U.S.A at that time and its effect on the agreement, and many of the studies pointed out the problems within the assertion or the attitude of the Japanese government regarding the 1965 cultural property agreement. Sungha Gook stated that the Japanese government evaded its duty of encouraging the restitution of the cultural properties that were privately owned by Japanese collectors [15]. By suggesting international legal grounds, Sungho Je pointed out the blind spot in the Japanese government's assertion that there should be no controversial issues regarding the additional restitution of cultural property from Japan after 1965 [11]. Mina Ryu attributed the cause of the partial restitution in 1965 to the conflicts between Ministry of Foreign Affairs and the board of education of Japan, pointing out the fact that the board of education did not have the intent of restituting the cultural properties to Korea [16]. Most of the studies concluded that the issue of the restitution of Korean cultural properties from Japan is an ongoing problem, and suggested the possible solutions and proper attitudes for the successful restitution in the future. Jihyun Kim contented that there were still the possibilities that more Korean cultural properties could be restituted from Japan [17]. Ryu asserted that the universal and international viewpoint, rather than the nationalistic viewpoint, is required when dealing with the restitution problem with Japan [16]. Jongsu Kim suggested four possible solutions for more successful restitution of cultural properties taken by Japan [18].

It is interesting that the opening of the documents of the 1965 Korean-Japanese Agreement initiated the full-scale researches on the restitution of Korean cultural properties from Japan. However, it was unfortunate that the scopes of the studies were mostly limited to the analysis of the 1965 Korean-Japanese Agreement.

IV. THE STUDIES IN KOREA ON THE RESTITUTION OF CULTURAL PROPERTY IN ACCORDANCE WITH THE PROCESS OF THE RESTITUTION OF OEKYUJANGGAK DOCUMENTS

Oekyujanggak documents are the important records of the

royal family of the Joseon dynasty, and Oekyujanggaks were the libraries that the extra copies of important documents were stored. Oekyujanggak documents were taken by the French soldiers during Korean-Japanese War in 1866, and more than 5000 other books were burned. The restitution process of Oekyujanggak documents is meaningful in that it was the first time that the Korean government negotiated a single diplomatic case for more than 20 years [19]. The process of the restitution of Oekyujanggak documents can be divided into three parts: after 1993 when the president Mitterrand promised the restitution of the documents; after 2000 when the French president Jacques Chirac suggested the exchange of the Oekyujanggak documents with other antique documents of the same value; after 2010 when the French government finally agreed on the restitution. The studies on the restitution of cultural property have been changed in accordance with the process.

In 1993, the French president Mitterrand promised the restitution of the entire documents but the negotiation failed because of the opposition of the librarians of the national library of France [20]. After 1993, most of the studies about the documents were about the necessity of the restitution and the overall analysis of the case. In 1994, Taewoon Kim explained the importance and the distinct value of the Oekyujanggak documents [20]. In 1999, Boa Rhee analyzed the case of Oekyujanggak documents with the international laws and suggested the possible solutions to reconstitute the documents [21].

In 2000 the French president Jacques Chirac agreed on the exchange of the Oekyujanggak documents with other antique documents of the same value, but strong opposition of the Korean scholars led to the withdrawal of the agreement. Most of the studies in this period were focused on the criticism on the negotiation attitudes and skills of the Korean negotiators and the government. In 2003 Sangchan Lee criticized the Korean negotiators and strongly opposed the exchange of the documents. He also suggested the basic stand that Koreans should take when it came to the issues of restitution of the Oekyujanggak documents. There were also studies on the foreign case of the restitution of the documents, which were suggested as important precedents to be followed. Munja No focused her study on the case of the restitution of the documents from Germany to Russia, and suggested that the case could be an example for the restitution of the Oekyujanggak documents [21].

After the restitution of the Oekyujanggak documents, most of the studies suggested how the case of the Oekyujanggak documents could work as an important precedent for the restitutions of other Korean cultural properties in the future. In 2011, Sangchun Jung suggested that the practical use of the restituted Oekyujanggak documents would be essential for future restitution of other Korean cultural properties [22]. In the same year, Hyunggeun Cho suggested four necessary steps that the Korean government should take for future restitution of Korean cultural properties, as a conclusion of analyzing the case of Oekyujanggak documents [24].

V. CONCLUSION

After reviewing the destitutions and academic articles in Korea about the restitution of cultural property, this study observed the three main themes that have been constantly debated on: the institutional aspects of the restitution of cultural property such as international conventions and domestic laws; the restitution of the Korean cultural properties that were illegally transferred to Japan; the process of the restitution of the Oekyujanggak documents. The studies in each field have shown significant changes in its focus and purposes.

The studies focused on institutional devices went through three main changes with 2000 as turning point: from the limited focus on the restitution of the Korean cultural properties from Japan to the focus on other broad and global issues; from considering the restitution of cultural property only as a state-to-state matter to considering the restitution of cultural property also as an individual-to-individual matter; from the focus on understanding the international convention to the focus on the improvement of the domestic laws. The themes of the researches on each issue had gone through significant changes.

The studies regarding the restitution of Korean cultural properties taken by Japan became more specified and full-scale after the documents of 1965 Korean-Japan Agreement was opened to public. Almost all of the related studies after 2005 were about the contents and the problems of 2065 Korean-Japan Agreement.

The studies related to the restitution of Oekyujanggak documents from Korea showed sensitive reactions to the process of the negotiation. In the beginning period of the restitution, the studies mainly explained the necessity and the history of the restitution. In the middle, the criticism on the Korean negotiators and the grounds for the opposition to the exchange of the Oekyujanggak documents with other ancient documents were the main issue. After the restitution was succeeded, the researchers examined how the case of the Oekyujanggak documents could work as a precedent for future restitution of cultural property in Korea.

Even though the issues of the studies on the restitution of cultural properties have been expanded, the studies tend to follow the preceding researches. I wish that the future studies on the restitution of cultural property take consideration of the intrinsic value of cultural property, more diverse and applicable measures for restitution, and the practical use of cultural property in more global and practical manner.

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