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### Mediation and Negotiation in South Korea and Japan

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## MEDIATION AND NEGOTIATION IN SOUTH KOREA AND JAPAN

*Julie Kim*

Since Japan's colonization of Korea from 1910 to 1945, relations between the two countries have been rocky.<sup>1</sup> In 1965, the United States helped with the signing of a normalization treaty between Japan and South Korea; Japan believes that this resolved all reparation questions.<sup>2</sup> However, the treaty was signed secretly and pushed through the legislature under South Korean dictator Park Chung-Hee. Additionally, Japan possessed much greater power than South Korea at the time, leaving Koreans with few options and raising questions from Koreans' perspective of the treaty's legitimacy.<sup>3</sup> More importantly, the treaty did not properly address the issues of Japanese wartime military brothels and forced labor,<sup>4</sup> nor did it clearly state "if the settlements were grant aid from Japan or reparations for colonization."<sup>5</sup> As such, victims were not compensated, and capital secured from Japan through the treaty was used for economic development.<sup>6</sup>

In 2015, South Korean President Park Geun-hye, daughter of former dictator Park Chung-Hee, entered a "final and irreversible deal" with Japan, which sought to resolve the issue of "comfort women" who were forced to serve as Japanese military brothel workers.<sup>7</sup> Under the deal, Japan apologized to the victims and provided one billion yen (approximately \$8.3 million) toward a fund for victims.<sup>8</sup> The following South Korean President, Moon Jae-in, disbanded the fund, stating that the deal was done in haste and that the political agreement should have consulted former victims and their supporters.<sup>9</sup> In 2018, Seoul's Supreme Court ruled that two Japanese companies should compensate South Koreans for forced labor during colonization, igniting a trade war between the two nations.<sup>10</sup>

South Koreans believe that past treaties were not fair or final settlements; past negotiations were not transparent and did not consider the voices of the victims, lacking restorative justice.<sup>11</sup> As both Japan and South Korea's ally, the United States could assist in resolving the long-standing conflict by acting as a neutral third-party mediator. This assumes that both countries voluntarily request intervention, a rule of preventive diplomacy.<sup>12</sup> Under President Joe Biden, the United States could help with a new reconciliation agreement that consults comfort women survivors and forced laborers,<sup>13</sup> who are at the heart of the matter. Through considerate discussions, the Biden

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<sup>1</sup> *South Korea and Japan's Feud Explained*, BBC NEWS (Dec. 2, 2019), <https://www.bbc.com/news/world-asia-49330531> [<https://perma.cc/7Q9W-Q9JW>].

<sup>2</sup> Xuan Dung Phan, *How the US Can Mediate the Japan-South Korea Dispute*, DIPLOMAT (Dec. 16, 2020), <https://thediplomat.com/2020/12/how-the-us-can-mediate-the-japan-south-korea-dispute/> [<https://perma.cc/SC23-S94B>].

<sup>3</sup> Tom Phuong Le, *Negotiating in Good Faith: Overcoming Legitimacy Problems in the Japan-South Korea Reconciliation Process*, 78 J. ASIAN STUD. 621, 630–32 (2019).

<sup>4</sup> Phan, *supra* note 2.

<sup>5</sup> Le, *supra* note 3, at 629.

<sup>6</sup> Phan, *supra* note 2.

<sup>7</sup> *Japan and South Korea Agree WW2 'Comfort Women' Deal*, BBC NEWS (Dec. 28, 2015), <https://www.bbc.com/news/world-asia-35188135> [<https://perma.cc/Q28L-UHPZ>].

<sup>8</sup> *Id.*

<sup>9</sup> Phan, *supra* note 2.

<sup>10</sup> *Id.*

<sup>11</sup> See Joanna Diaz, *Negotiating the "Comfort Women" Issue in the 21st Century*, INST. SEC. & DEV. POL'Y (Dec. 19, 2018), <https://isdpeu.com/negotiating-the-comfort-women-issue-in-the-21st-century/> [<https://perma.cc/8TKF-QP9R>].

<sup>12</sup> Le, *supra* note 3, at 638.

<sup>13</sup> Phan, *supra* note 2.

administration could mediate a settlement between Japan and South Korea to encourage mutual understanding,<sup>14</sup> and provide insight and a neutral location.<sup>15</sup> Leaders should prioritize victims and restorative justice, rather than focus on strategic gains. The Biden administration, as a third-party, can further mediate and assist with treaty compliance by applying diplomatic pressure if one side does not uphold its end of the deal; this, along with language in the agreement that can be used against the retracting state,<sup>16</sup> would discourage backpedaling.<sup>17</sup> Transparency is crucial in negotiating a reconciliation agreement, and the agreement should contain language that clearly states Japan's war guilt and South Korea's acceptance of the sincere apology. As the third (Japan)<sup>18</sup> and tenth (South Korea)<sup>19</sup> largest economies, relations and trade wars in East Asia can have a global impact, such as slowing the production of semiconductors and display screens.<sup>20</sup> With a focus on the victims' perspectives, a future attempt at reconciliation between Japan and South Korea has the possibility to succeed.

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<sup>14</sup> *Id.*

<sup>15</sup> Le, *supra* note 3, at 635.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Japan Country Profile*, BBC NEWS (Sept. 16, 2020), <https://www.bbc.com/news/world-asia-pacific-14918801> [<https://perma.cc/36EF-JLYB>].

<sup>19</sup> *S. Korea Now Ranks World's 10th Biggest Economy*, HANKYOREH (Apr. 22, 2021, 3:55 AM), [https://www.hani.co.kr/arti/english\\_edition/e\\_business/992192.html](https://www.hani.co.kr/arti/english_edition/e_business/992192.html) [<https://perma.cc/5FBQ-UJGY>].

<sup>20</sup> Yen Nee Lee, *The Japan-South Korea Dispute Could Push Up the Price of Your Next Smartphone*, CNBC (July 22, 2019), <https://www.cnbc.com/2019/07/23/japan-south-korea-dispute-impact-on-semiconductor-supply-chain-prices.html> [<https://perma.cc/RA9F-9J37>].