



CARDOZO

Benjamin N. Cardozo School of Law

LARC @ Cardozo Law

CJCR Blog

Journal Blogs

10-22-2021

Mediation and Negotiation in South Korea and Japan

Julie Kim

Cardozo Journal of Conflict Resolution, Julie.Kim@law.cardozo.yu.edu

Follow this and additional works at: <https://larc.cardozo.yu.edu/cjcr-blog>



Part of the [Law Commons](#)

Recommended Citation

Kim, Julie, "Mediation and Negotiation in South Korea and Japan" (2021). *CJCR Blog*. 14.
<https://larc.cardozo.yu.edu/cjcr-blog/14>

This Blog Post is brought to you for free and open access by the Journal Blogs at LARC @ Cardozo Law. It has been accepted for inclusion in CJCR Blog by an authorized administrator of LARC @ Cardozo Law. For more information, please contact larc@yu.edu.

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.¹ 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.² 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.³ More importantly, the treaty did not properly address the issues of Japanese wartime military brothels and forced labor,⁴ nor did it clearly state "if the settlements were grant aid from Japan or reparations for colonization."⁵ As such, victims were not compensated, and capital secured from Japan through the treaty was used for economic development.⁶

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.⁷ Under the deal, Japan apologized to the victims and provided one billion yen (approximately \$8.3 million) toward a fund for victims.⁸ 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.⁹ 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.¹⁰

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.¹¹ 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.¹² Under President Joe Biden, the United States could help with a new reconciliation agreement that consults comfort women survivors and forced laborers,¹³ who are at the heart of the matter. Through considerate discussions, the Biden

¹ *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>].

² 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>].

³ 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).

⁴ Phan, *supra* note 2.

⁵ Le, *supra* note 3, at 629.

⁶ Phan, *supra* note 2.

⁷ *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>].

⁸ *Id.*

⁹ Phan, *supra* note 2.

¹⁰ *Id.*

¹¹ 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>].

¹² Le, *supra* note 3, at 638.

¹³ Phan, *supra* note 2.

administration could mediate a settlement between Japan and South Korea to encourage mutual understanding,¹⁴ and provide insight and a neutral location.¹⁵ 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,¹⁶ would discourage backpedaling.¹⁷ 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)¹⁸ and tenth (South Korea)¹⁹ largest economies, relations and trade wars in East Asia can have a global impact, such as slowing the production of semiconductors and display screens.²⁰ With a focus on the victims' perspectives, a future attempt at reconciliation between Japan and South Korea has the possibility to succeed.

¹⁴ *Id.*

¹⁵ Le, *supra* note 3, at 635.

¹⁶ *Id.*

¹⁷ *Id.*

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

¹⁹ *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://perma.cc/5FBQ-UJGY>].

²⁰ 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>].