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The Current Course for a Russia-Japan Peace Treaty is Doomed to Fail

Andrea Snyder

The governments of Russia and Japan are unlikely to sign a peace treaty if settling the Kuril Islands territorial dispute remains a precondition. Russia and Japan should not use the resolution of the Kuril Islands territorial dispute as a precursor to signing a peace treaty. The economic and cultural benefits of officially ending the World War II conflict between the two countries and establishing formal diplomatic relations outweigh the benefits from resolving the territorial dispute. The United States may pressure Japan into not signing a peace treaty if the territorial dispute is not resolved to protect US interests in the region.

Background

The main stumbling block for Russia and Japan in signing a peace treaty is the territorial dispute over the sovereignty of the four southernmost Kuril Islands (Iturup/Etorofu, Kunashir/Kunashiri, Shikotan, Habomai). The chain of islands stretches from the Russian Kamchatka Peninsula in the north to the Japanese island of Hokkaido to the south. The 1855 Treaty of Shimoda, the first treaty that established formal relations between Russia and Japan and established their borders, stipulates that the four currently disputed islands are sovereign territories of Japan. The Kuril Islands were colonized by Japan’s Meiji government in 1869 and forced the native Ainu people of the Kurils to assimilate at the end of the 19th century. Japan would later cede its part of Sakhalin Island to Russia in exchange for the group of Kuril Island under Russian control in the 1875 Treaty of Saint Petersburg. The Kuril Islands were under Japanese administration until 1945.

The Soviet Union and Empire of Japan were engaged in several minor border clashes following the Japanese invasion of Manchuria in 1931 which later escalated to an undeclared border conflict from 1932 to 1939. The border conflicts and Battle of Khalkhin Gol contributed to the signing of the Soviet-Japanese Neutrality Pact on April 13, 1941. The pact was similar to the German-Soviet Non-aggression Pact signed in August 1939. However, the Soviet Union agreed to enter war with Japan on the condition that the “Kurile Islands shall be handed over to the Soviet Union” at the Yalta Conference in February 1945. The Allied powers agreed that this and several other conditions “shall be unquestionably fulfilled” after Japanese defeat in return for the Soviet’s involvement in the Eastern front. The Soviet Union then unilaterally denounced their neutrality

1 The author of the paper will refer to the contested islands by the Russian name of the Kuril Islands throughout the paper because the islands are currently under Russian administration. The Japanese name, the Northern Territories, will still be used in direct quotation. The author does not intend to argue for or against either state’s sovereignty claims.

pact with Japan by declaring it would not renew the treaty in April 1945. The Soviet Union then officially declared war on the Japanese Empire on August 8, 1945, two days after the United States dropped the world’s first atomic bomb on Hiroshima.³ The Soviet’s declaration of war occurred one hour before sending more than one million Soviet troops to Japanese-occupied Manchuria in northeast China. The two states then engaged in a three-week-long conflict resulting in Japanese military defeats and the end of Japanese control over several territories including the Kuril Islands (or Chishima). Despite this campaign only lasting about three weeks, the Soviet Union and Japan would not formally end their state of war until years later.

The Allied Powers and Japan formally re-established peaceful relations by signing the Treaty of San Francisco in September 1951. The treaty ended the legal state of war against Japan, provided war reparations for Japan’s hostile actions leading up to and during World War II, and returned full sovereignty to Japan by ending the US-led Allied occupation.⁴ The Soviet Union participated in the San Francisco Conference but objected to the draft treaty and ultimately refused to sign. The Soviet Union opposed the treaty in part to it not recognizing the Soviet’s sovereignty over the Kuril Islands amongst other issues. In regards to the sovereignty of the disputed territories the treaty states, “Japan renounces all right, title and claim to the Kurile Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of September 5, 1905”.⁵ However, then Prime Minister of Japan Shigeru Yoshida opposed the inclusion of this article in the treaty. PM Yoshida stated, “With respect to the Kuriles and South Sakhalin, I cannot yield to the claim of the Soviet Delegate that Japan had grabbed them by aggression. At the time of the opening of Japan, her ownership of two islands of Etorofu and Kunashiri of the South Kuriles was not questioned at all by the Czarist government… Both the Kuriles and South Sakhalin were taken unilaterally by the Soviet Union as of September 20, 1945, shortly after Japan's surrender.”⁶ The then First Deputy Minister of Foreign Affairs of the USSR Andrei Gromyko was also dissatisfied with the language of the treaty concerning the territorial dispute of the Kuril Islands claiming that it lacked clarity over the sovereignty of the territories. Gromyko stated, “Similarly, by attempting to violate grossly the sovereign rights of the Soviet Union regarding Southern Sakhalin and the islands adjacent to it, as well as the Kurile Islands already under the sovereignty of the Soviet Union, the draft also confines itself to a mere mention of the renunciation by Japan of rights, title and claims to these territories

and makes no mention of the historic appurtenance of these territories and the indisputable obligation on the part of Japan to recognize the sovereignty of the Soviet Union over these parts of the territory of the USSR.”

The contention over the sovereignty of these territories from both the Soviet Union and Japan allowed this dispute to continue into the present day and remains a major stumbling block in a Russian-Japanese peace treaty.

The Soviet Union and Japan would not officially declare an end to their state of war until the signing of the Soviet–Japanese Joint Declaration of 1956. The declaration restored diplomatic relations with the two parties agreeing to continue peace treaty negotiations. The declaration did resolve the sovereignty issue of the Habomai Islands and the island of Shikotan in Article 9 stating that, “[the Soviet Union] agrees to transfer to Japan the Habomai Islands and the island of Shikotan, the actual transfer of these islands to Japan to take place after the conclusion of a Peace Treaty between the Union of Soviet Socialist Republics and Japan.”

However, the Soviet Union and Japan interpreted the status of the Kuril Islands differently. The Soviets asserted that the declaration, by excluding the Kuril Islands, decisively resolved the Soviet Union’s sovereignty over the Kurils. The Japanese instead presumed that the transfer of these two territories in the declaration would be used as an initial step to the return of the Kurils. The four islands continue to be under Russian administration through this territorial dispute.

Russia and Japan have actively pursued the signing of a peace treaty and normalization of relations since the early 1990s but recent efforts increased in September 2018 when Russian President Putin expressed his desire to sign a peace treaty “without preconditions” by the end of the year at the G20 Summit in Vladivostok. A peace treaty was not signed and experts believe Putin was “trolling” PM Abe as Putin told Abe on the sidelines of the forum that it would be “naïve” to think the issue could quickly be resolved two days earlier. However, Putin’s public announcement did kick off an increased dialogue over the territories and a potential peace treaty. Putin and Abe again met in November 2018 during the 13th ASEAN summit in Singapore and announced the two leaders would accelerate peace treaty negotiations based on the 1956 Joint Declaration. Bilateral talks continued throughout 2019 but stalled in 2020 due to the Covid-19 pandemic. Japan’s Diplomatic Bluebook, an annual report detailing the government’s current stance on foreign policy issues, removed the assertion that the Kuril Islands “belong to Japan” in the 2019 report, signaling a potential softening of resolving the territorial dispute as a
precondition. However, the Japanese government reaffirmed its sovereignty claim in the 2020 iteration. The 2021 Bluebook again restated Japan’s territory claim and willingness to resolve the issue and sign a peace treaty stating, “the Northern Territories are the islands, over which Japan has sovereignty. The Japanese government maintains close dialogue… and will continue active talks with Russia on the basis of our basic position - solving the problem of the ownership over four northern islands and the signing of a peace treaty in the future.”

Current Stances

Russian President Vladimir Putin is highly unlikely to concede all or any of the Kuril Islands to Japan. President Putin pushed to amend the Russian constitution to make the alienation of any Russian territory illegal in March 2020. The amendment was voted on and approved on July 4, 2020. President Putin has established a bylaw that in effect put Japan on an unequal footing for potential future negotiations. President Putin reiterated that the new amendment will be used moving forward in future Russia-Japan relations in a meeting with Russian media outlets on February 14 stating, “we want to develop ties with Japan and we will do this. But we won’t do anything that runs counter to the key law of the Russian Federation.” Russia would have to backtrack and declare that it does not have sovereignty over the Kurils in order for Japan to regain administrative control over the territories. Japanese Chief Cabinet Secretary Katsunobu Kato stated that Japan’s stance on the territorial dispute has not changed in response to Putin’s statement.

Japan is unlikely to give up its sovereignty claims over the Kurils in part to not lose footing in other territorial disputes with China and South Korea. However, the recently elected Prime Minister of Japan Yoshihide Suga may be amenable to proceeding with a peace treaty without resolving the territorial dispute to better his chances of reelection later this fall. The Japanese government has continuously claimed sovereignty over the Kuril Islands and sought the return of the four islands. PM Suga stated that his premiership will focus on continuing the goals of the long-standing Abe administration including pursuing a peace treaty with Russia. Suga stated that

16 https://tass.com/world/1283411
18 https://tass.com/society/1174563; https://tass.com/politics/1174507
19 https://tass.com/politics/1256295
achieving closure on the Kuril Islands, developing relations with Russia, and the signing of a peace

treaty are some of his goals during his first speech to the Japanese Parliament in October 2020. PM Suga and Russian President Vladimir Putin agreed to continue territorial negotiations of the

Kuril Islands based on the Joint Declaration of 1956. PM Suga stated on February 4th that he will, “exert every effort in order to get closer to the solution of the issue of the Northern Territories by at least half a step.” Suga reiterated his plans on resuming peace treaty talks based on the agreements made during the Singapore meeting in 2018.

The Kuril Islands offer economic and strategic value for both Russia and Japan. The area is resource abundant with substantial fishing grounds and economic substantial titanium sand, sulfide, and sulfur deposits. The economic development of the Kuril Islands is key area in which progress is being made in Russia-Japan bilateral relations rather than creating conflict. Abe and Putin agreed to create a joint $1 billion fund to invest in infrastructure and energy projects in 2016. However, the value of this economic cooperation is unbalanced. Japan would gain a greater economic benefit with the Kuril Islands because of Japan’s scarcity in natural resources. Japan is likely overestimating Russia’s perceived value in economic cooperation on the Kurils. Russia instead places greater value in geostrategic importance of the Kurils and being able to base troops on the doorstep of major US-ally Japan. The Russian military currently has the 18th Machine Gun Artillery Division stationed on Iturup Islands and regularly conducts military exercises in the area. Russian forces reinforced the Kuril Islands defenses with anti-aircraft missile systems, combat helicopters, and a submarine in 2015. One of Russia’s strategic objectives is to regain and expand its military footprint and establishment and maintenance of its military presence on the Kurils is imperative to this objective. Russia enjoys the military presence it is able to create on the Kurils while also concerned about the possibility of the United States basing troops on the islands if they were to be under Japanese control. Putin expressed this concern during the 2017 International

23 (2020, October 26). New Japanese PM plans to finalize talks on Kuril Islands. TASS. https://tass(.com/world/1216253
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Economic Forum stating, “there is a possibility of U.S. troop deployment on these territories.” Russia’s perceived threat of the potential of the US deploying troops on the Kurils greatly outweighs the territories economic value; because of this joint economic development and improvement of bilateral relations through these means will have little impact to settling the Kuril Islands dispute. Russia will not cede geostrategic military basing to the US and therefore will not cede the Kuril Islands to Japan.

Looking to the Future

PM Suga may try to use advancement on a peace treaty with Russia during the Olympics to curry favor in the upcoming 2021 election. The Diet of Japan (Parliament) is required to hold a general election before October 22, 2021. PM Suga’s term as president of the ruling Liberal Democratic Party (LDP) is also set to expire on September 30, 2021. PM Suga and President Putin may use the postponed 2020 Olympics in Tokyo, Japan as a meeting spot to further discuss the issue in person. The Olympic games are often used as grounds for advancing foreign policy agendas with most recently the 2018 Olympics in Pyeongchang, South Korea serving as the catalyst for dialogue with North Korea. Experts believe that a successful Tokyo Olympics will give Suga and the LDP a boost going into the fall election. Suga and Putin are unlikely to come to a formal resolution about the territories or peace treaty at the Olympic games. However, if the leaders are able to come to an agreement about officially resuming dialogues or set up a high-level meeting to discuss the peace treaty it will likely be considered a success for PM Suga. Russia and Japan have an increased likelihood of advancing peace treaty talks during the Olympics as North Korea has stated that it will not participate in the Tokyo games. With North Korea not being a focus of these Olympics, other states in the region will likely attempt to advance other goals. The Tokyo Olympics presents a perfect opportunity for Japan and Russia to restart dialogue as well as potentially change course in peace treaty negotiations.

Russia and Japan should not use the resolution of the Kuril Islands territorial dispute as a precondition for the signing of a peace treaty. Neither state is likely to give up its sovereignty claim over the territories in the near future. Both states have also normalized relations with other states with whom there are territorial disputes. Japan is still engaged in multiple WWII-era territorial

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disputes, most notably the Senkaku/Diaoyu Islands with China and Takeshima/Dokdo with South Korea. Japan still normalized relations with both countries despite these ongoing territorial disputes. Both Russia and Japan appear to have a genuine desire to sign a peace treaty. However, they are reinforcing its main stumbling block by hardening the stance of settling the Kuril Islands dispute as a precondition. Neither state is likely to renounce its sovereignty claim over the islands in this current environment. Russia and Japan would gain a greater benefit of normalizing relations without the resolution of the territorial dispute than continuing negotiations with this precondition that will ultimately prevent a resolution. The signing of a peace treaty and normalization of relations would enable increased bilateral economic cooperation which is much needed due to the negative economic impacts from the Covid-19 pandemic. Russia and Japan normalizing relations could also improve cooperation in regards to North Korean denuclearization negotiations. Unity between the major actors in North Korean denuclearization negotiations is nearly impossible to achieve, particularly with Russia and China’s continuing to violate sanctions against North Korea.\textsuperscript{36} However, if six-party talks were to resume, as Russia advocates for, normalized Russia-Japan relations could help the multilateral approach succeed.\textsuperscript{37} The resolution of territorial disputes is not a necessary precursor for signing a peace treaty as demonstrated in Japan’s ongoing debate with China and South Korea. However, by signing a peace treaty and officially normalizing relations the Russia-Japan relationship can start to grow, making an agreement over the territory more likely.

Russia and Japan signing a peace treaty without resolving the Kuril Islands dispute still comes with its own challenges, primarily with the potential reaction from the United States. The US has a vested interest in keeping a strong alliance with Japan and curtailing possible Russian influence in the region. The US would likely pressure Japan into not signing a peace treaty with Russia until the Kuril Islands territory dispute is resolved, likely in favor of Japan. The United States would presumably want to approach the normalization of Russia-Japan relations with caution to ensure that Japan is not pulled away from the US sphere of influence. The US would likely require, informally or formally, that certain conditions be met in the signing of a Russia-Japan peace treaty including the continuation of US strategic basing in Japan. However, it is unlikely that Japan would rapidly shift alliances from long-time ally US to Russia just from signing a peace treaty. Instead, the US should encourage Japan to normalize relations with Russia as the US seeks to restore and strengthen alliances under President Joe Biden’s foreign policy plan.\textsuperscript{38}

If Russia and Japan maintain that resolving the Kuril Islands territory dispute is a requirement to signing a peace treaty, they are doomed to fail. The Asia-Pacific is plagued by

\textsuperscript{36} https://apnews.com/article/cb6be1337d2a48ecbde14dac590be083
\textsuperscript{37} https://asia.nikkei.com/Politics/International-relations/Russia-urges-renewal-of-six-party-talks-to-denuclearize-North-Korea
\textsuperscript{38} Macias, A. (2021, February 4) \textit{Biden vows to restore U.S. alliances and lead with diplomacy in his first foreign policy address}. CNBC https://www.cnbc.com/2021/02/04/biden-vows-to-restore-alliances-in-first-foreign-policy-address.html
unresolved grievances from the WWII era and the lack of normalized relations between Russia and Japan continues to perpetuate this. The signing of a peace treaty is a mutual goal for Russia and Japan but both countries continue to enforce roadblocks to achieving it. The sovereignty question of the Kuril Islands should be answered, but it should not inhibit Russia and Japan from normalizing relations. By signing a peace treaty both countries will start to improve relations and increase trust, allowing for the Kuril Islands dispute to be resolved. The actions and consequences of World War II continue to inhibit the region’s progress to improving diplomatic relations, but Russia and Japan finally declaring peace could restart a path to healing.
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DMCA: An Outdated View of the Updated Internet

Jack Brophy

DMCA has shown its cracks in recent years. Mass claims on content hosting platforms such as YouTube and Twitch have shown its one-sided nature, leading many to believe it is in serious need of reform. This article will give a brief insight into the history of DMCA and examine it in a more modern light, with the aim of showing how it can be improved upon.

DMCA: An outdated view of the updated internet

Even at the time in which it was introduced, the Digital Millennium Copyright Act (DMCA) was a controversial act. It was seen as unconstitutional, blocking free speech, hindering education, and more.1 In recent years, its reputation has not improved. This essay will examine the DMCA, looking at where it succeeds and where it fails in relation to fair use and service providers, and make some suggestions as to how it could be improved.

Historical Background

As the name suggests, the DMCA was brought in at the turn of the millennium, coming into effect in October of 1998.2 The DMCA heavily amended the Copyright Act 1976, with the aim being to bring US copyright law forward into the modern age, and implement the two World Intellectual Property Organization (WIPO) treaties.3 Cases such as the infamous Betamax case had shown that the American copyright system had fallen behind technology somewhat, and was in major need of a broad reform.4 However, the DMCA went a bit too far in its ambitions, and many scholars raised a variety of criticisms against it. Sutko summarises the criticisms well;

“it was ineffective, unconstitutional and unwise, that it violated consumer rights; and suppressed free speech. No matter how one slices it, the DMCA institutionalizes the music, film and TV industry’s latest “piracy crusade” and exemplifies how U.S. technology policy influences world policy.”5

This an excellent summary and a prime introduction to the core issues with the DMCA. To apply these criticisms and start analysing the DMCA itself, I will examine the DMCA’s controversial safe harbour policy, fair usage under the DMCA, as well as look at the Lenz case and how it interacts with the DMCA in its current state.

Fair Use: Almost a distant memory

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5 Sutko (n 1), 154.
There is no denying that technology has advanced rapidly in the last twenty years. From the creation and widespread adoption of social media to the rapidly advancing online shopping market, technology is advancing at a rate too fast for law to keep up, and fair use is no exception. Section 512 of the DMCA requires that all online service providers must provide a way for copyright holders to notify the service provider of an infringement, and thus remove the infringing material from the website or other service. YouTube, a platform which proclaims to have a monumental two billion monthly users, is just one example of a service provider.\(^6\) Given the extreme number of users and videos uploaded to the platform, it would be impossible to manually review all of the DMCA infringement claims that come in. To combat the widespread copyright infringement, YouTube implemented their own “Content ID” system. This works by analysing the audio of a video and attempting to detect copyrighted audio, for example a song belonging to a music artist.\(^7\) While at first this seems an ingenious solution, it’s flaws quickly become apparent. The automated nature of this system means fair use cannot be considered; how can what is essentially a robot tell the difference between in context fair use, and blatant copyright infringement? The unfortunate answer is that it cannot.

This is problematic for a number of reasons. As Chung notes, due to the inability of YouTube to manually review all claims and counter notices, the only real remedy available to someone who has received an infringement notice for their fair use work is to assert a fair use defence in court.\(^8\) This alone raises a variety of problems. In a lot of cases, the party filing the copyright infringement claim is a large corporation, for example a music rights group, who have a lot of money and legal aid at their disposal. YouTube is also a global platform, meaning that copyright owners and alleged infringers could reside in entirely different jurisdictions. Chung accurately points out that “the resulting dynamic favors right holders, who have relatively little to lose by filing a DMCA takedown request.”\(^9\) It is worth pointing out that YouTube is not the only platform with such issues; Twitch, a live streaming platform, was targeted for mass DMCA claims in late 2020, resulting in their abrupt implementation of a system similar to Content ID.\(^10\)

Large platforms such as these all suffer from the same problems, namely an inability to manually review the sheer number of claims, and the inability for content creators to effectively dispute false claims. The Lenz case is a potential solution.

**The Lenz Case: An impractical, yet possible, solution**

The Lenz case revolved around a video uploaded to YouTube in February of 2007. The 29-second-long video was recorded and uploaded by Lenz, and contained her two young children dancing to a song by Prince.\(^11\) The video was initially taken down following a DMCA claim from Universal, who claimed that Lenz did not have sufficient license to distribute the song. The court document points out specifically that fair use was not considered by any of Universal’s “video evaluation guidelines”, which determine whether or not Universal would issue a claim. Following some back and forth between Lenz, Universal and YouTube, the video was reinstated. Lenz then made a claim for misrepresentation under Section 512(f) of the

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\(^8\) Timothy S Chung, ‘Fair Use Quotation Licenses: A Private Sector Solution to DMCA Takedown Abuse on YouTube’ (2020) 44 Columbia Journal of Law & the Arts 69.

\(^9\) ibid, 70.


\(^11\) *Lenz v Universal Music Corp* (2015) 801 F 3d 1126 (Court of Appeals, 9th Circuit).
DMCA. The main case, and the one discussed here, followed an initial District Court case which denied summary judgement.

The key DMCA clauses that apply here are Section 512(f) and Section 512(g). Section 512(g) provides that where a DMCA claim was made incorrectly, the alleged infringing material must be reinstated online. Section 512(f) of the DMCA states that where a person “knowingly materially misrepresents” material or activity that is infringing or was removed or disabled by mistake or misidentification, that person shall be liable for damages. In the case of Lenz, the claim was somewhat successful, with the court ruling that “copyright owners need not make the right call on fair use, but they must at least take fair use into account before they use the power of the DMCA takedown provision.”

While this might seem like a “smoking gun” of sorts, a fool proof way to reinstate fair use on YouTube, Twitch, and other large platforms alike, there are a number of issues to be resolved first. As mentioned previously, and indeed as was the case in Lenz, these DMCA claims often come from a large corporation and target an individual user. Immediately there is a severe power imbalance, as the individual user will not always have the means to bring their claim to court as Lenz did. In fact, in the Lenz case, Randazza points out that the only reason Lenz could bring her case to court was because “an advocacy organization took up the cause.”

So while Section 512(f) contains, in theory at least, a strong defence against false DMCA claims, the current system still heavily favours large corporations and music rights groups.

That is not to say that the lessons learned from Lenz should be ignored, however. A system which puts in place an independent body to report such false claims to could be very useful in reclaiming fair use online. One potential system could operate similarly to how the General Date Protection Regulation reporting system works. Under this system, where a person believes their data protection rights have been breached, they can make a report to their national Data Protection Authority, which will investigate on the reporters’ behalf. A similar system whereby a national body operates to investigate on behalf of the people who make reports of incorrect DMCA claims against them could help in preventing corporations from making these incorrect claims. A national body whose sole purpose is oversight of fair use would have much more legal power than the average user uploading a video to YouTube. Randazza also suggests introducing statutory damages in Section 512(f), or even cancelling the copyright of repeat offenders. While this is a more extreme approach, it would definitely grab the attention of music rights groups and other corporations, and would ensure a much more methodical and accurate approach from those same groups and corporations.

Overall, while the verdict handed down in Lenz is aspirational in its current form, a legislative form of the decision made in the case with stronger powers being made available to average internet users to dispute false claims could make the findings of the Lenz case far more applicable in day-to-day usage, and see a semblance of fair use continue to live on online.

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13 ibid, 772.
15 Randazza (n 12, 773-775.)
Safe Harbour: a deeply flawed, brilliant idea

Section 512(a) is known as a “safe harbour principle”. Under this section, online service providers will not be held liable for the material that they transmit or store, provided they meet certain criteria. Like many other sections of the DMCA, this is a good idea in principle, but the application is significantly less robust.

Perhaps the best example of this is the case of BMG Rights Management v Cox Communications. Cox is an internet service provider (ISP), a company that provides internet access to its customers. As part of Section 512(a), Cox can not be held liable for the data which it transmits, provides it meets certain criteria. One of these criterium is that Cox must have:

“adopted and reasonably implemented, and informs subscribers and account holders of the service provider’s system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider’s system or network who are repeat infringers”

In typical DMCA fashion, this seems like a relatively well put together clause, that provides necessary safe harbour for ISPs and other conduits to operate without fear of mass DMCA claims. However, in similar DMCA fashion, the implementation is lacking severely. There is no provision as to what constitutes “reasonably implemented”. Similarly, the term “repeat infringers” is lacking in clarity.

Cox argued that the definition of “repeat infringers” could, and should, mean adjudicated repeat infringers. The court disagreed, pointing to where the term “adjudicated infringer” is used elsewhere in the DMCA, meaning that it could not be the term that applies in Section 512(i)(a). The court also found that separately, Cox’s thirteen strike policy that resets every six months cannot be considered a “reasonable implementation” of a policy under Section 512(i)(a), and also found that Cox had not even reasonably enforced said policy. Furthermore, internal emails suggested that Cox were actively avoiding terminating subscriptions related to DMCA claims. As a result of this, the court found that Cox would not receive protection from the safe harbour principle. Despite the fact that the case was remanded for a new trial, these findings are still important.

The Cox case provided some much-needed clarity surrounding the safe harbour principle, but many questions still remain. We know now that a thirteen-strike policy is insufficient to receive protection under Section 512(i)(a); but how many strikes is sufficient? Furthermore, where does the line lie between reasonable implementation of an existing policy, and a failure to do so? Now that we see mass DMCA claims targeted against users of services such as YouTube or Twitch, the indefinite wording of the safe harbour principle becomes very concerning. Are YouTube and Twitch’s “Content ID” systems considered a reasonable policy that is implemented correctly? Or could it be argued that systems that are so rife with abuse and false claims unreasonable in their real-world applications? Either way, it is apparent that in the modern age of the internet, Section 512(i)(a) is in need of either serious reform, or a serious number of amendments to better clarify the criteria that must be met in order to benefit from safe harbour.

16 BMG Rights Management v Cox Communications (2017) 881 F 3d 293 (Court of Appeals, 4th Circuit).
17 Digital Millennium Copyright Act 1998, Section 512(i)(A).
18 BMG Rights Management v. Cox Communications (n 16), Section A.
Conclusion

Overall, the DMCA is showing its age. The internet in 2021 is so incredibly different to what it was in 1998 that it is unfair to assume that the DMCA stayed accurate throughout all these years. That said, it would be remiss to simply leave the DMCA as it is; serious reform, or indeed even replacement, could greatly benefit fair use as a whole online, and better protect service providers such as ISPs, YouTube and other hosting platforms, and more. I would argue that it is time to seriously evaluate the DMCA, and come up with better systems to better protect copyright online moving forward.
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Videogames as a Source of Soft Power for China

Natnael Tsegaw

China’s burgeoning videogame industry could perhaps be a powerful source of soft power. As restrictions on video games continually ease in China, their consumers are playing in larger numbers, and most importantly their creators are starting to find success in both domestic and international markets. This success that China is finding in outside markets may serve as a means to improve its reputation in the future.

Soft power as “the ability to affect others to obtain the outcomes one wants through attraction rather than coercion or payment”¹ has found a passionate ally in pop culture. From the impact of Hollywood in the United States, K-pop in Korea, and fashion in Italy, these cultural products not only can create a sense of togetherness globally, but also play a valuable role in shaping, if even just a little, the reputation of a country. In the case of Hollywood, while a nuanced case in many respects, there is little doubt that the films produced have permeated every corner of the globe. Even Kim Jong Il was a fan of Disney’s 2003 comedy *Freaky Friday*.² K-pop has captured the hearts of not only those in Asia, but youth in the West as well. BTS, K-pop’s most successful group is estimated to have brought $3.8 billion into the South Korean Economy by the Hyundai Research Institute³. And finally in the case of Italy, for many, clothing designed there is seen as a status symbol irrespective of where you are.

But where does China fit in? Currently, Tiktok, for better or for worse, has garnered the attention of half a billion active users⁴ and a handful of suspicious governments. A true force of popular culture undoubtedly. Though it often causes another of the Chinese’s blossoming creative ventures to be overlooked. Video Games. Currently, this crown is shared by the Americans and Japanese in regard to the creation of these games. The United States employs the largest amount of developers in the world⁵ and the Japanese are responsible for creating the most profitable video game intellectual properties⁶. However, one look at global sales data quickly shows that the appetite for video games in China has rapidly grown with the United States being the largest market at $36.87 billion and China at $36.54 billion (2019)⁷. With this appetite growing stronger as time passes, so have studios operating within China. Though for many years, Chinese studios have

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largely found success solely within the country; sometimes due to differences in taste, strict regulations, and sometimes as a result of plagiarism.

The medium of video games has a long and complicated history in China. Beginning in the 80s as China began loosening its economic restrictions, companies like Nintendo entered the market. They found relatively little success, but their intellectual property gained stardom nonetheless through clone systems from companies like Subor\(^8\). The popularity served as the spark for China’s gaming appetite, though, it quickly was met with a flurry of worry from parents and legislators “Consistent with traditional morals of resisting excessive attention to entertainment (such as the proverb of \textit{Wanwusangzhi}, implying indulgence in playthings will sap one’s spirits)”\(^9\). Years later, sweeping reforms on the industry were put in place reading, “the manufacturing and selling of any digital gaming devices, plus their parts and accessories, to domestic areas is to be stopped immediately. No companies or individuals can partake in the manufacturing and selling of digital gaming devices and their parts and accessories headed to domestic areas…”\(^10\). There was of course wiggle room for larger heads of industry representing Sony and Nintendo, but it was largely for naught as strict regulations drove the cost up making the already large pirating scene an even more attractive alternative for consumers. This, along with the fact that the ban did not include games produced for PCs, played a large role in separating China’s hardware and software sensibilities from those around the world who faced fewer barriers to entry in gaming. Genres like massive multiplayer online role-playing games (MMORPG), first-person shooters (FPS), and multiplayer online battle arenas (MOBA) which tend to be staples of PC gaming therefore tend to be more popular than the countless other genres that have found success outside of China like action-adventure games.

Fast-forward to 2020, with laws changing from a more prohibitive stance to focusing on both explicit regulation and a strong push for self-regulation\(^11\), the Chinese video game industry has experienced large growth. Though what deserves special attention here is not the internal growth but the external, where seeds of soft power in the form of reputation brought out by the arts may find themselves growing in the years to come.

One of the inspirations for this article is the game \textit{Genshin Impact}. It is free-to-play, meaning piracy is of low concern, and multi-platform but PC-centric. This firmly addresses the needs of the Chinese gaming audience. The title also borrows gameplay and aesthetic elements quite heavily from the Nintendo title, \textit{The Legend of Zelda: Breath of the Wild}, not unlike the many clone titles and systems which have existed for decades in the country. The title epitomizes the history of the medium in the country and now that the industry has matured enough, it was able to

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release a title which was the largest international release of any Chinese game, became the highest-grossing game in the world in October 2020, and grossed approximately $250 million in its first month just on mobile. The game’s popularity across the world, and particularly in the United States, Japan, and South Korea could very well mark the start of the Chinese making a name for themselves in the largest entertainment medium by revenue in the world ($145.7 billion in 2019).

The second title that inspired this article is *Black Myth: Wukong* (黑神話：悟空). This title, while based on the Chinese classic *Journey to the West* seemingly does not serve as a particularly great example of a title that was born from the restrictions placed on the gaming industry in China. It is an action-adventure game from an independent Chinese studio that was born from former Tencent developers that worked on free-to-play PC and mobile titles. Its significance is born from the fact that it deviates from the norms and conventions of typical Chinese releases and garnered huge praise for its first public showing from domestic and international players and media outlets. Within a day, footage of the game received over 2 million views on YouTube and over 10 million views on the Chinese site Bilibili. And while technical analysis of what was shown has been praised heavily, if the game itself strikes a chord with international audiences in 2023, it could very well serve as another major stepping stone for the Chinese video game industry and could very well be their *Gone with the Wind* moment.

Where the optimism fades however is when one looks at how these international releases carry the weight of Chinese politics with them. Censorship may prove to be the crux that prevents the proliferation of soft power through this medium. In the countries where these games are finding the most success, the United States, Japan, and South Korea, attitudes toward China are already largely unfavorable, so if censorship becomes a large enough issue, it could become a huge problem. Already, there are cases that could foreshadow larger obstacles being in the way down the line. Regarding *Genshin Impact*, reports of censorship are already making headlines, with any

mention of Hong Kong and Taiwan being banned from text chats in the game. Furthermore, the issue of censorship in non-Chinese games is of great concern to many players as many fear that the economic benefits could cause publishers to bend over for the Chinese government. For example, in the American game *Hearthstone*, published by Activision-Blizzard, a player who spoke in support of Hong Kong protests during an official broadcast was banned from tournament play for a year and unable to receive compensation for any tournament winnings. The decision received major backlash from players to legislators in the United States as it was seen to be a step toward indirect censorship. As publishing games in China is already a labor for international companies, the fear is that to appease authorities, topics sensitive to the Chinese may be censored. In the case of publisher Activision-Blizzard, they have an extensive catalog of games that are steeped in political themes so it could spell controversy for audiences who are already distrustful of Chinese authorities who catch even the slightest scent of censorship whether direct or indirect. In direct contrast to this though is *Black Myth: Wukong* as the game seemingly draws no comparison with any hot contemporary political issue. Though only time will tell.

Now, in regard to why this is important to keep an eye on, there is the issue of China’s aforementioned reputation. While a nuanced topic, it seems as though the wealthier a nation is the more likely it is to have an unfavorable view of China. On the other hand, the United States, while suffering quite a large blow to its reputation globally after the Iraq War, carries “largely favorable reviews” with elements of soft power like technology, customs, ideals, and movies scoring relatively high especially with younger populations. The Chinese are well aware of this and through hosting the most diplomatic posts in the world, funding Confucius institutes in college and universities around the world, investing in several economic and social programs throughout Africa, and more, they are quite obviously trying to better their reputation. Videogames are merely a small piece of soft power but they can become consequential. The world consumes media at astounding rates and videogames are the largest entertainment medium in the world. Highlighting this is the Japanese government’s “Cool Japan” initiative which aims to “disseminate Japan’s attractiveness and allure to the world and to incorporate and harness global growth for domestic economic growth.” While judging the effectiveness of their initiative is beyond the scope of this article, the fact that they are pursuing this suggests that it is a worthwhile mission for the Japanese government. Soft power after all can have measurable effects beyond influence.

opinion, or reputation. A boy band can be responsible for bringing in $3.8 billion into an economy. And well-maintained UNESCO world heritage sites can bring in countless tourists from around the world.

Of course, videogames are not the singular key to the many benefits soft power can bring. But it is a piece of the puzzle. No country has just one item or trait of such cultural significance that it can attract the attention of a world full of people with differing sensibilities. Casting a wide net is key. And if China can enable its creators, it may very well be able to stand side by side or even eclipse the giants in this space that are the United States and Japan. While it is understandable that many will be skeptical of the potential benefits to soft-power that videogames can bring, look no further than the closing ceremony of the 2016 Olympics in Brazil. In a meticulously choreographed scene, Tokyo 2020 was announced with a view of the Christ the Redeemer statue overlooking the stadium followed by the then Prime Minister Shinzo Abe coming out of a large green pipe dressed head to toe like Super Mario.
References


The Iran Nuclear Deal: Should the U.S. Rejoin?

Sophia Muina

In 2015, The United Nations permanent 5 members of the Security Council and Germany signed a nuclear agreement with the state of Iran. In exchange for Iran de-escalating their nuclear program and allowing for unprecedented monitoring by the International Atomic Energy Agency, the other party members agreed to remove key sanctions related to their nuclear activity which put an economic burden on Iran. Widely considered a highlight of former U.S. President Barack Obama’s foreign policy, the agreement effectively decreased Iran’s ability to create a nuclear weapon from 2-3 months to 12 months. After going into effect in 2016, President Obama’s successor, former President Donald Trump, pulled the US out of the treaty in 2018. Referring to the deal as “decaying and rotten”, Trump felt he would be capable of formulating a better deal. As a response to the reimposition of sanctions, Iran began violating the provisions in the agreement. Given the volatile situation at hand, newly elected President Joe Biden must work with other members of JCPOA to reenter the agreement, bring Iran back into compliance, and get the agreement back on track.

Treaty Content

The Joint Comprehensive Plan of Action (JCPA) had a plan to slow down Iran’s breakout time. Iran was required to reduce their uranium stockpile by 98% and shipped out 25k pounds of it¹. The level of enrichment would have to remain at 3.67%, well below what is needed for nuclear weapons. The Obama White House reported it would now take them 12 or more months to build a nuclear weapon if they broke the agreement². Theoretically, this would give the other treaty members enough time to take action as opposed to their previous 2-3 month breakout time. Iran also dismantled and removed ⅔ of their centrifuges and filled their heavy water reactors with concrete after they removed the calandria from it. A calandria is a reactor core that is used to create weapons-grade plutonium, which is used to create nuclear weapons³. Iran agreed to vast access and monitoring by the International Atomic Energy Agency. (IAEA) The IAEA claimed they would not compromise their usual methods of inspection nor allow self-inspection. Iran also agreed to allow the IAEA to inspect any site they deemed suspicious⁴. In return, nuclear-related sanctions that were crippling the country were lifted from Iran. If any signatory suspected

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violations, they could call up a vote in the security council and a snapback provision would be instituted that reinstated sanctions.

The UN terminated all sanctions directly related to Iran’s nuclear program. In addition, ballistic embargoes remained in place for eight years and the arms embargo for five. The U.S. also removed economic sanctions relating to their oil and banking, giving the state access to the international system. Other sanctions targeting human rights, terrorism, and missile activity all remained in addition to the right to impose additional sanctions not related to nuclear issues. However, the U.S. maintained certain nuclear sanctions with the agreement but agreed to terminate them within eight years contingent on Iran’s nuclear program remaining peaceful. Included in the agreement was the commitment to work on national and US state policies to ensure the implementation of the treaty. The EU removed nuclear-related sanctions that targeted Iran’s financial institutions as well. The EU also committed to not reinstate any terminated sanctions and to refrain from any policies that would harm normalization between the two.

The treaty had some provisions that raised concerns for some US politicians. The treaty had what is called a “sunset provision”, meaning certain restrictions and regulations would cease after a specified period. Limitations on uranium enrichment would end after 10 years and their stockpile limit would expire in 15. The IAEA still has continuous monitoring abilities between 20-25 years after implementation. Iran can also implement the additional protocol which gives the IAEA wider access to their facilities for monitoring. Iran agreed to the additional protocol.

Implementation and compliance

Prior to the official date of implementation, the IAEA confirmed that Iran complied with a series of actions, including the removal of 98% of its uranium stockpile and allowing the implementation of IAEA safeguards to ensure the monitoring of their nuclear program. Once the various demands were met, the treaty came into force on January 16, 2016. On implementation day, the sanctions pertaining to the nuclear program were lifted and thus began a new relationship with Iran, the P5+1, and nuclear energy.

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The IAEA began issuing quarterly reports since implementation day and a report from 2017 confirmed Iran was abiding by all of the provisions of the JCPOA. Iran was cooperating with the IAEA in giving access to monitor facilities, providing requested documentation, and reporting its nuclear-related activities. Further reports continued to confirm Iran’s compliance with the JCPOA, including the one issued in May 2018, the same month the US withdrew from the treaty.

The US pulls out of Treaty

In May of 2018, the US withdrew from the JCPOA. Former President Trump cited the failure of the agreement to address Iran’s ballistic missile program, their engagement of proxy warfare in the region, and the sunset provisions that would potentially enable Iran to pursue nuclear weapons in the future. The administration reinstated banking and oil provisions against the state.

US and Allies

Leaders around the world voiced their regret to the US pulling out of the JCPOA and reiterated that the general consensus to work with Iran in maintaining the deal is alive. Israel, Saudi Arabia, Bahrain, and the United Arab Emirates all supported the administration’s reinstatement of harsh sanctions on Iran. International Organizations like the EU and the UN voiced their own concerns about the conditions that would arise because of the actions taken by the U.S. administration. The U.S. provided six-month waivers to eight governments that exempted them from the oil sanctions imposed on Iran. However, the waivers were not renewed in an effort to drive Iran’s oil exports to zero. Although the other parties were trying to keep the deal alive, with the three European members going so far as to create an economic channel to bypass newly imposed sanctions, the U.S. was effective in forcing companies to choose sides. Officials traveled around and told companies that if they continued to do business with Iran, they’d lose access to the US market and financial sector.

JCPOA Violations

When the key benefits Iran enjoyed from the agreement were halted, the government saw political pressure to break their own promises. The IAEA reports in 2019 showed the uranium stockpile exceeded limits set forth in the JCPOA, however, it was declared by Iran\(^{21}\). Consecutive reports showed the government was also exceeding its heavy water limits\(^ {22} \) and the IAEA detected particles like uranium at an undisclosed site\(^ {23} \). After the targeted killing of Qasam Soleimani, a prominent military and political Iranian official, by the US, Iran announced they would no longer restrict uranium enrichment\(^ {24} \). As of February 23, Iran halted certain IAEA nuclear inspections and their uranium stockpile was up to 20%, exceeding the 3.67% limit set under the JCPOA\(^ {25} \).

Success of reinstating sanctions

The Trump administration felt through harsh sanctions they could cripple Iran’s influence and the state would continue to adhere to the limitations of the JCPOA\(^ {26} \). However, the history of sanctions on Iran shows this isn’t the case. Prior to the implementation of the JCPOA, Iran experienced economic troubles that fell on everyday citizens. Hyperinflation, unemployment ranging from 11-25%, and a drop of oil revenue by 60% did nothing to stop Iran from pursuing their nuclear ambitions\(^ {27} \). The government chose to cut subsidies to the public, leaving 80% of their laborers living below the poverty line\(^ {28} \). Iran got around their inability to access official systems through the use of foreign exchange bureaus and more than anything, the sanctions and weakened Iranian currency pushed Iran to look into self-reliance. The economic troubles faced by the general population were not enough to destabilize the government and resistance was shut down quickly. Despite sanctions, several states like India, Russia, and China continued to work with Iran and even the EU until 2012 was importing their oil\(^ {29} \). Despite the drop in oil revenue, having the


\(^ {22} \) Verification and Monitoring of the Islamic Republic of Iran in light of United Nations Security Council resolution 2231(2015) [PDF]. IAEA.


\(^ {26} \) Fitzpatrick, M. (2020, May 12). Two years after JCPOA withdrawal, Americans are less safe, the Middle East less peaceful. Retrieved from https://www.iiss.org/blogs/survival-blog/2020/05/jcpoa-withdrawal-pompeo-statement


second-largest oil reserves would benefit Iran in the long run as sanctions have led to the reserves not changing much. As pointed out by Najam Rafique and Babar Shah in their article for strategic studies, there had been no success found in the various methods used in reigning in Iran and their nuclear ambitions.

The reinstatement of sanctions accomplished its goal of hurting the Iranian economy but failed to stop Iran from waging proxy wars and gaining influence, and even encouraged them to deviate from the JCPOA. One year later, inflation drastically increased, oil exports shrank from 2.5 million to 400k barrels a day, and the regime was even more turned off from entering discussions with the U.S. administration. In the end, the sanctions appear to be hurting Iranian citizens more than the government. Although humanitarian aid was exempt from sanctions, the international sphere of banks and firms tended to avoid Iran altogether in fearing repercussions from the U.S. in the future and this led to limited access to medical equipment. While Iranian public opinion says the economic downturn in Iran is also due to internal mismanagement, it is clear the sanctions have crippled the economy as intended but failed to slow down the behavior the U.S. was intent on curtailing. If anything, it made the situation more fragile and volatile.

**Legal analysis**

The legality of withdrawing from the JCPOA is complex. In the United States, the president is given large discretion and control over foreign affairs. The constitution lays out the groundwork for approving treaties, which would require two-thirds Senate consent to make it legally binding and withstand future administrations. More often than not as of recently, however, many presidents have taken to creating executive agreements which allows for them to make arrangements with other international parties and bypass congress altogether. Presidents, therefore, have the right to pull out of previous executive agreements if they so wish. That being said, the JCPOA wasn’t ratified as a traditional treaty, but it was not entirely an executive agreement either. Congress passed the Iran Nuclear Agreement Review Act and it was

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signed into law. The law essentially gave Congress review over the agreement including prohibiting the removal or modification of sanctions if Congress decided to reject whatever agreement was sent to them. If Congress approved or decided to not take action, then the agreement would go into effect. Given Congress did not take any action during the time period allotted, the JCPOA went into effect on January 16, 2016, and sanctions related to the nuclear activity were lifted. Because of this review mechanism, the JCPOA is considered a nonbinding political commitment. In sum, from a U.S. domestic point of view, Trump was within his rights to terminate the U.S.'s involvement with the JCPOA.

International law is a whole other matter. The definition of a treaty is broader than in the US which only considers agreements a treaty if it has been approved by two-thirds of the Senate. That being said, the US did enter into an agreement and no withdrawal provision was listed in the agreement itself. The Vienna Convention on the law of treaties does not generally allow for termination of a treaty without some provision listed unless it falls under certain exceptions. The nature of the agreement, with timelines and serious economic and security commitments, fortifies that there was no withdrawal provision implied within the agreement. The 4 exceptions for terminating a treaty without a withdrawal provision are: material breach, impossibility doctrine, a fundamental change of circumstance, or the emergence of a strong peremptory norm (Jus Cogens) that conflicts with the treaty itself. The International Court of Justice made it clear in the Nagymaros case involving the construction of a barrage system just how difficult it is to use any of those 4 exceptions. The dissolution of a state and the creation of a new one was not even enough to discharge the parties of their responsibilities; therefore a simple regime change from president to president would not muster the high standard of a fundamental change of circumstance. Although the Trump administration felt Iran was not following the JCPOA, there was no evidence to back that allegation and the independent inspectors of the IAEA issued quarterly reports that affirmed their compliance. That being said, the Vienna Conventions does require ratification, done through domestic channels, for a treaty to be enforceable. The issues listed above on domestic law raise issues here as well.

Whether or not what Trump did was considered legal from a domestic or international point of view, the international community was not pleased, and the administration received sharp criticism for it.

41 Gabčíkovo-Nagymaros Project (International Court of Justice September 25, 1997) (Dist. file).
Although there was no way to hold them accountable and force them back into the agreement, the reputation of the US in the eyes of the international community was further tarnished. This was a common trend of the Trump Administration which also left the Paris Climate Agreement, the human rights council of the UN, UNESCO, and began the process of leaving the World Health Organization amidst the Coronavirus pandemic.

What Next?

The victory of Joe Biden over President Trump back in November 2020 was welcomed by Iranian officials who hoped to bring an end to the sanctions and have the U.S. re-engage with the JCPOA. Ayatollah Khamenei announced they would not go back to complying with the JCPOA until the U.S. lifts sanctions. President Biden stated in an interview with CBS he will not lift sanctions in an effort to re-engage with Iran. Rather, the president said the US will return to the JCPOA if Iran complies with the limitations in the agreement.

The issue at hand is who will blink first: Will Iran return to complying with JCPOA or will the US lift sanctions first? Currently, the US is in a better position for setting out terms. Iran has suffered a huge economic blow from the sanctions and relief will be much welcomed. However, the tensions between the two governments over the last four years will not soon be forgotten just because another US president is in power. Iran is justifiably upset over the U.S. pulling out of the agreement and reinstating sanctions without just cause, and President Biden is understandably wary over Iran’s nuclear capabilities, weaponry, and belligerent tactics in the region. The road to begin repairing the damage done and bringing Iran back into compliance with the JCPOA will not be an easy one. The country has called for economic reparations suffered at the hands of the sanctions as well. The international reputation and credibility of the U.S. took a hit the last four years, and because of that, the current administration should consider engaging with other members of the JCPOA and the international community as a whole. While Iran’s actions in the region and their ballistic missile program are areas of reasonable concern, what the Trump administration failed to appreciate was the targeted effect on Iran’s nuclear program and nuclear program only. Not all sanctions were lifted against Iran, and the results showed the agreement delayed their breakout time significantly.

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It is true that the agreement had a sunset provision, but the goal of the agreement was to eventually treat Iran like every other party of the Nuclear Non-Proliferation Treaty. The agreement reinforced the consensus that Iran will never be allowed to have nuclear weapons and did not bar future negotiations and agreements. By pulling out prematurely over these concerns, the effects that the previous US administration worried the sunset provision would bring about were sped up. President Biden cannot try to bring change in Iran on every issue under one agreement, but rather must focus on one at a time. The administration must re-enter talks with the other members of the JCPOA and find a solution that would work for both parties and does not alter the provisions of the agreement that was agreed upon in 2015.
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Gabčíkovo-Nagymaros Project (International Court of Justice September 25, 1997) (Dist. file).


CARTA ABIERTA A COLOMBIA - FELLOWS INSTITUTO DE PAZ DE LOS ESTADOS UNIDOS

“Dentro de la escala de la vida del cosmos, una vida humana no es más que un pequeño punto de luz. Cada uno es un visitante en este planeta, un huésped que solo tiene un tiempo limitado para quedarse. ¿Podría haber una mayor locura que pasar este corto tiempo sintiéndose solo, infeliz y en conflicto con nuestros hermanos, los demás visitantes? Claramente es mucho mejor usar nuestro tiempo en búsqueda de una vida significativa, enriquecida por un sentido de conexión y servicio hacia los demás”

Dalai Lama

Colombia, 03 de junio, 2021.

En vista de que la situación actual es una expresión tanto del aumento de la desigualdad económica por el COVID-19, como de las demoras en la implementación del Acuerdo de Paz, los Jóvenes Becarios del Programa Generación del Cambio del Instituto de Paz de los Estados Unidos (USIP por sus siglas en inglés) enfatizamos la urgente necesidad de humanizar los canales y estilos de diálogo, coyunturales y permanentes, entre la diversidad de grupos y geografías de Colombia.

Hacemos un llamado a escuchar activamente a quienes piensan y viven distinto, entendiendo que las diferencias son una oportunidad para ampliar nuestra visión del mundo. Por encima de todo, somos el mismo ser humano: todos buscamos sentirnos aceptados, pertenecer, evitar el sufrimiento y vivir tranquilamente. Hoy, tal vez más que siempre, los colombianos necesitamos abrirmos al aprendizaje y entendimiento mutuo con el gobierno y entre todos los sectores de la sociedad. Para lograrlo, es fundamental que pasemos de la inferencia a la empatía y de la empatía a la compasión. Interconectados como estamos, solo podemos estar bien si el otro también lo está.

Por eso hoy transmitimos un mensaje de no-violencia o ahimsa, un término de la India que significa no causar daño con nuestras manos, palabras ni pensamientos. Escoger la no-violencia no solo es el camino para solucionar conflictos, sino para que nuestra paz mental y discernimiento crezcan. Ese es el verdadero coraje. Líderemos a través del ejemplo. Como red de jóvenes constructores de paz, y con base en la Resolución 2250 de la ONU que promueve la participación juvenil significativa en asuntos de paz y seguridad, comunicamos a la opinión pública los aprendizajes más relevantes (algunos transmitidos a nosotros personalmente por el Dalai Lama) que nos ha dado la experiencia para que las conversaciones que se den con el gobierno, así como entre vecinos, estudiantes, amigos y familias, sean un ejemplo de cómo entendernos pacíficamente. De hecho, al haber sido entrenados para facilitar diálogos que trascienden la dinámica de debate, nos ponemos a disposición para asesorar procesos a nivel comunitario e institucional.
Indudablemente hay una seria crisis de representatividad. Así como los indígenas y los excombatientes, los jóvenes (estudiantes, ninis, profesionales y/o emprendedores) no nos sentimos representados ni por el Comité del Paro ni por los líderes políticos tradicionales. Nuestras razones para salir son el desempleo, la falta de acceso a educación y la violencia que en todas sus manifestaciones busca silenciar a una generación indignada. Esto no es de Petro, es nuestro. Proponemos al gobierno y a quienes corresponda reconocer los errores (somos humanos y nos equivocamos), bajar las armas y asistir a espacios de escucha verdaderos, horizontales y abiertos con la Primera Línea y organizaciones juveniles de cada ciudad y municipio.

Este primer paso es vital para que juntos identifiquemos y nombremos el verdadero problema. Analicemos las causas de raíz de la violencia y del Paro en el país: qué tiene que cambiar y qué es realista que cambie para que no continúe o se repita. Solo entonces podemos imaginar y negociar soluciones estructurales que beneficien a todas las partes. Dejemos de hablar de “ellos” contra “nosotros” y propongamos hacerlo en términos de “todos nosotros”. Es urgente diseñar e institucionalizar el diálogo intergeneracional e intersectorial representativo en cada región, idealmente con una metodología que permita ver y transformar los prejuicios y premisas que nos impiden reconocernos.

Sin embargo, dichas conversaciones solo pueden tener lugar en condiciones de respeto mutuo por los DDHH. En este sentido, pedimos poner fin al abuso de la fuerza de donde provenga y adelantar la investigación oportuna de los hechos violentos que, aún en investigación, hasta el momento suman 60 personas muertas (45 por uso excesivo de la fuerza), 25 casos reportados de violencia sexual, 65 lesiones oculares y más de 100 desaparecidos según Human Rights Watch, Indepaz, Temblores Ong y la Defensoría del Pueblo.

También hacemos un llamado al periodismo responsable con el uso de la palabra. Nos preocupan las declaraciones y narrativas generalizantes que profundizan divisiones sociales de clase y raza, discursos de odio, desencuentros, extremismo violento y trauma colectivo. Este momento es una oportunidad para reconocer que durante 60 años de conflicto armado hemos heredado narrativas incompletas y lealtades que dividen. Se necesita un periodismo ético y propositivo que pase el micrófono a voces que permitan entender y reimaginar el país que poco hemos podido recorrer. Conozcámonos.

Invitamos a cada miembro de la sociedad a tomar unos segundos y respirar para elegir cómo reaccionar.

Firman (con lugar de origen y/o área de trabajo)

Fellows Programa Generación del Cambio de Colombia y Venezuela

Jeison Palacios (Chocó); Miguel Angel Salazar (Casanare); Lorena Gómez (Bogotá-Cauca-Amazonia); Adriana Cómbita (Bogotá); Sebastián Arévalo (Bogotá); Juan Sebastián Huertas (Bogotá-Montes de María); Luisa Romero (Cauca); David Sánchez (Bogotá); Tania Rosas (La
Guajira); Luis Alvarado (Venezuela); Michelle Bernier (Venezuela); y una becaria venezolana cuya identidad protegemos