

# **Managing Political Transitions in Seoul and Washington: The ROK-US 123 Agreement**

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## **Background**

On October 22-23, 2012, the Asan Institute for Policy Studies and the Center for Strategic and International Studies (CSIS) co-hosted a conference titled “Blind-sides: Managing Political Transitions in Seoul and Washington.” Held under the Chatham House Rule, the conference invited experts from relevant fields to address the political transitions in the United States and the Republic of Korea and to discuss some of the key issues that could “blindsides” the two administrations. The topics discussed ranged from ROK-US bilateral issues to non-bilateral issues that have far-reaching consequences in Northeast Asia. With ROK-US relations reaching an all-time high during the past few years, whether President Park Geun-hye and President Barack Obama can continue the relationship will depend largely upon how the two leaders manage these issues.

This report is the first in a series of issue briefs that will cover the contents of the conference, with added comments from the two authors.

## **The ROK-US 123 Agreement**

This first issue brief will examine the future of the ROK-US civil nuclear cooperation vis-à-vis the ROK-US 123 agreement. Nuclear cooperation between the two countries is governed by Section 123 of the Atomic Energy Act of 1954, which prevents the United States from carrying out nuclear energy activities with another country without a nuclear cooperation agreement. This agreement is commonly known as a “123 agreement.” The ROK-US 123 agreement was originally signed in 1972 (revised in 1974) and was set to expire in March 2014. In October 2010, the two governments entered into negotiations to revise and replace the agreement. Through six rounds of negotiations, however, both sides failed to narrow differences in their respective stances regarding the revision of the agreement. Instead, the two governments agreed and announced in April of this year to extend the agreement for two years and to hold a round of negotiations every three months beginning in June 2013.

During the negotiations, the main issue in contention has been and will continue to be the inclusion of clauses providing advanced consent for Korea to enrich fuel on the front end of the fuel cycle and to reprocess spent nuclear fuel on the back end of the cycle. While the issue appears technical in nature, it has the potential to deal a blow to the broader ROK-US relations. It also has negative implications on Korea’s energy security as the United States will be prohibited from exporting nuclear materials to Korea and all existing export licenses for nuclear reactors and major components will be suspended should the current agreement expire without a renewal.

### ***The Korean perspective***

For Korea, the need for a new and improved deal has centered on its increasing spent fuel storage. With the current storage space expected to run out by 2016, the Korean government has requested Washington’s advanced consent, also called “programmatic consent,” to allow civilian reprocessing and enrichment of US-origin nuclear fuel.<sup>1</sup> Specifically, Korea has argued that a reprocessing technology known as pyroprocessing would resolve its spent fuel storage problem by reducing the volume of spent fuel discharged from the nuclear power plants and has insisted that it be in-

cluded in the provisions of the new 123 agreement. Given that nuclear energy now accounts for 30-40 percent of Korea's total energy supply and is expected to reach 60 percent by 2030, addressing the nuclear waste storage problem will be Seoul's utmost priority in future negotiations.<sup>2</sup>

Korea also seeks to acquire enrichment capability based on economic and commercial calculations. It argues that the acquisition of enrichment capability is essential for a sustainable supply of enriched fuel for its nuclear reactors. Seoul also views that enrichment capability will allow it to become more competitive in the global nuclear market, which in the past has been dominated by American, Japanese, French, and Russian companies. Korea's potential as a major nuclear supplier has already been proven in 2009, when a Korean consortium beat Areva and General Electric-Hitachi to sign a \$20.4 billion deal to build four nuclear reactors in the United Arab Emirates. Washington's programmatic consent will help realize that potential by allowing Korean companies to offer full nuclear fuel cycle services to customers of nuclear power plants. It will also be a huge step towards Korea's goal to capture 20 percent of the global nuclear power plant market over the next 20 years.<sup>3</sup>

### *The US perspective*

From Washington's perspective, giving Korea advanced consent to reprocess and enrich US-origin nuclear fuel comes with considerable risks. First and foremost is the risk for proliferation. Washington's concerns lie with the lack of non-proliferation mechanisms currently in place within Korea. Adding to this is the fact that pyroprocessing is not yet a proven technology. Pyroprocessing advocates have argued that the technique is proliferation-proof and that other concerns regarding its safety can be addressed with proper safeguards. However, many in the US and the non-proliferation community hold a view that pyroprocessing is not proliferation-safe and are concerned about the relative ease with which plutonium can be further processed from the reprocessed spent fuel and made into weapons-usable plutonium. Moreover, pyroprocessing involves working with plutonium in metallic form—a form most often used for nuclear weapons. Although the two countries decided to launch a joint fuel cycle study in 2010 to better understand the viability of the technology, it is expected to take as much as ten years to complete

and questions regarding its proliferation safety will continue to linger for the next few years.

Washington's other concern is that it might be setting a precedent for other countries to follow and taking a step backward from its commitment to global non-proliferation. Washington also believes that allowing Korea to possess enrichment and reprocessing capabilities will complicate its diplomatic effort to manage or eliminate North Korea's nuclear threat. When the two Koreas signed the "Joint Declaration of South and North Korea on the Denuclearization of the Korean Peninsula" in 1992, both countries had agreed not to "possess nuclear reprocessing and uranium enrichment facilities."<sup>4</sup> If Washington grants Korea its advanced consent for reprocessing and enrichment capabilities, many will regard the declaration null and void. The United States will lose diplomatic leverage that it could exercise to bring North Korea back to the negotiation table. In the end, this could make US diplomatic efforts to denuclearize North Korea even more challenging.

### *The current stalemate*

So far, the 123 negotiations have developed into a zero-sum game. Obtaining programmatic consent will benefit Korea because it will provide a solution to the spent fuel management problem and allow Korea to be more competitive in the global nuclear power plant market. However, Washington's proliferation concerns and its management of the North Korean nuclear threat will be left unaddressed. On the other hand, an agreement without an advanced-consent revision will pacify Washington's concerns regarding non-proliferation and civil nuclear global norms but will leave Seoul searching for alternative solutions to its permanent storage problem.

If the two sides fail to negotiate a new agreement, Korea has the option to import replacement nuclear fuel from countries such as Russia or France that do not impose as strict controls as the United States. However, both sides will have more to lose without a nuclear cooperation agreement. For Korea, importing nuclear fuel from other countries will strain its relationship with Washington, a predicament Seoul will not want to find itself in. Similarly, Washington will want to maintain its relationship with Seoul and will face pressures from the domestic nuclear industry,

which has much to gain from a new ROK-US nuclear cooperation agreement. Nevertheless, negotiations so far have proven that strong disagreements continue to exist between the two countries.

## **Obstacles to an Agreement: Conference Summary**

During the October conference, discussants pointed out a number of obstacles that could hinder progress in future negotiations. The most obvious one is the political transitions that have been taking place concurrently within the two countries. They emphasized that, for Korea, the transition period tends to be shorter while, for the United States, the relevant government personnel will not be in place until late spring or early summer. They were particularly concerned about the mismanagement of the negotiations that could occur during transition periods. While the two-year extension appears to have put these concerns to rest, at least for now, whether the two sides could come to an agreement that could be mutually beneficial remains to be seen.

Another issue that was brought up during the conference referred to the existence of external factors that could “reverberate” and make the 123 agreement more than just an energy issue. For example, if Korea signs an agreement without Washington’s programmatic consent, many Koreans will interpret the deal as a sign of Washington’s lack of trust in its long-time ally. Given that the agreement could provide Korea with the opportunity to be a global leader in terms of setting rules and norms for non-proliferation within the civil nuclear energy industry, many Koreans will be disappointed that the United States has failed to give them the appropriate degree of recognition and trust. More importantly, it will send a message to the Korean public that Washington does not fully trust Seoul as much as it trusts Japan, a country that was given advanced consent for its nuclear fuel cycle. Many will ask the question, “if Japan can have it, why can’t we?”

A number of conference participants were equally concerned that the negotiations may be interpreted as a political issue framed in the context of Korea’s nuclear sovereignty. The Korean public has been paying close and growing attention to the negotiations and many have already asserted that reprocessing and enriching nuclear

materials is a matter of nuclear sovereignty. As far as Korean domestic politics is concerned, the politicization of the negotiations may also create strange bedfellows as it could potentially unite the conservatives and the progressives. The general progressives in Korea have argued for a shutdown of Korea's nuclear programs, especially after the Fukushima disaster in Japan. However, a few outspoken progressives have called for Korea's nuclear sovereignty and have sided with the conservatives, who have argued that Korea deserves equal treatment as Japan, no matter the issue.

Another possible reverberation that could have an impact on the negotiations is the increasingly prevalent view in Korea that the current ROK-US missile guidelines are preventing Korea from advancing its missile technologies. Although the two countries have recently updated the guidelines to add longer range and more payload to Korean missile capabilities, the use of solid propellants continues to be prohibited. After Korea's two failed attempts at launching its Naro-1 satellite and North Korea's successful launch of the Unha-3 satellite, the public has become increasingly critical of the United States, believing that Washington does not fully trust Korea and is holding back the country's missile development.

These political and social circumstances within Korea have the potential to turn the civil nuclear cooperation negotiations into a litmus test of the broader ROK-US alliance. In Korea, Washington's actions will be largely framed and interpreted as an issue of trust and equity and the refusal to give Korea advanced consent will become increasingly difficult to justify. For example, Washington's argument that granting programmatic consent to Korea will somehow prevent North Korea from returning to the denuclearization agenda will not find sympathetic ears within Korea. North Korea's violations of the 1992 declaration—including nuclear tests in 2006, 2009, and 2013—have convinced many in Korea that they are no longer bound to the agreement and that North Korea will continue to develop and harness its nuclear weapons program regardless of the 123 agreement. Therefore, they argue, North Korea should not feature in the nuclear negotiations between Korea and the United States.

## Looking Ahead

Although it is too early to tell how President Park and her administration will approach the negotiations, one thing is clear: she will commit to strengthening Korea's science and technology, including its civil nuclear program. During the Korean presidential campaign, especially during her third debate against opposition party candidate Mr. Moon Jae-in on December 16, 2012, President Park iterated her commitment to the future development of science and technology as one of her major presidential platforms and promised to commit five percent of Korea's GDP to scientific research.

At this early juncture, she appears to be keeping her promises. She created the Ministry of Science, ICT and Future Planning (*mirae-changjo-gwahakbu*) and promised to put the ministry at the top of her priorities. She also confirmed her commitment to civil nuclear energy development by incorporating the previously independent Nuclear Safety and Security Commission (NSSC) into the newly created science ministry. Considering President Park's commitments and firm statements during her meetings with high-level US officials thus far, it appears that Washington will face a president who is pro-science and pro-nuclear. Domestically, she will be backed by the conservatives as well as the progressives and this will give her the public support she needs to continue her demand for Korea's reprocessing and enrichment capabilities.

## Conclusion

While the two-year extension of the current ROK-US 123 agreement appears to have bought time for the two countries, whether it would lead to significant progress in signing a new agreement remains to be seen. Both sides will need better understanding of each other's agenda and will need to approach the negotiations with the broader ROK-US alliance in mind. As one conference participant pointed out, negotiating the 123 agreement will require, on the part of Korea, innovative thinking and a better understanding of Washington's concerns. Washington, on the other hand, will need to understand that the negotiations could turn into a litmus test of the alliance. Also, Washington must face the reality that it is not likely to

continue to be the dominant rule-setter in the global nuclear market. The US and its allies must, therefore, ask themselves whether they want countries such as Russia or China to be the definers of a global civil nuclear non-proliferation regime or if they can work together to set the highest standards for civil nuclear energy cooperation.

CSIS does not take specific policy positions; accordingly, all views expressed herein should be understood to be solely by those of the author(s).

The views expressed herein do not necessarily reflect the views of the Asan Institute for Policy Studies.

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  4. Joint Declaration of South and North Korea on the Denuclearization of the Korean Peninsula, ROK-DPRK, February 19, 1992.





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