



Original research article

Resolving potential energy conflicts among allies: The 2015 United States–Republic of Korea nuclear cooperation agreement[☆]



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ABSTRACT

After four years of sometimes contentious negotiations (that at one point required a two-year extension from the U.S. Congress), the United States and Republic of Korea signed a new nuclear cooperation agreement in the summer of 2015. These negotiations caused strain in one of the closest bilateral relationships the U.S. has in Asia – a regional priority for the Obama administration. This paper examines energy conflict within the confines of an otherwise cooperative and productive partnership. It examines the strategic, technical, economic, and political factors that extended the negotiation period and the creative compromises that led to a final agreement. It then considers the potential pitfalls in implementing the agreement and the implications, in terms of process and substance, for future negotiations regarding civilian nuclear cooperation.

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On Wednesday April 22, 2015 the United States Ambassador to the Republic of Korea (ROK), Mark Lippert,¹ joined the ROK's chief negotiator, Park Ro-byug in initialing the text of a new nuclear cooperation agreement in a ceremony in Seoul. The agreement concluded an almost five-year negotiation process that involved significant disagreements over the ROK's aspiration to receive advance consent to develop a uranium enrichment and pyroprocessing capability.² The previous agreement, reached in 1972 and

extended in, followed discussions between (or dictates from) a superpower and a dependent ally. The maturation of the South Korean nuclear industry, the development of a bilateral trade agreement between economic partners, the rise of the North Korean nuclear program, and the new global status of the ROK provided a fundamentally different context for the nuclear cooperation renewal negotiations. As the bilateral partnership between the two countries approached an apex of positive sentiment in the early part of this decade, the contentious nuclear cooperation negotiations threatened to derail hard won progress in the evolution of the alliance. The draft agreement, delivered two years after the U.S. Congress extended the original deadline, was met with widespread approval from U.S. officials and the American nonproliferation community.

In a Carnegie Endowment for International Peace discussion on the following Friday, four top U.S. experts discussed their views of the substance and implications of this resolution of the long-running and sometimes contentious negotiations. Scott Snyder, the Director of the Council on Foreign Relations' Program on U.S.–Korea

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¹ Perhaps symbolic of the difficulty of the negotiations, Lippert's right cheek revealed the faint outlines of the carefully concealed scar from an early March attack by a knife-wielding protester advocating reunification between the ROK and DPRK.

² The final draft of the agreement was signed on June 15, 2015 by Korea's Foreign Minister, Yun Byung-see, and the U.S. Secretary of Energy, Ernest Moniz, and submitted to Congress the next day. After a 30-day consultation period and a 60-day review

period (of continuous session) the agreement went into effect on November 25, 2015 without positive Congressional action. For the full text see "Text of Proposed Agreement for Cooperation Between the Government of the U.S. and the Government of the Republic of Korea Concerning Peaceful Uses of Nuclear Energy," accessed May 30, 2016, <https://fas.org/irp/news/2015/06/123rok.pdf>. The State Department fact sheet summarizing the text is available at <http://www.state.gov/t/issn/rls/fs/2015/243872.htm>.

Policy, breathed a sigh of relief over a “potential train wreck” that had been avoided and called the nuclear agreement a “load-bearing beam” in the U.S.–ROK relationship. He also applauded the creation of a high-level bilateral commission to address issues in the future as a further “institutionalization” of relations in a new area (apart from defense and commerce) that exhibited the expanded strength of the alliance. Robert Einhorn, former Obama administration Special Advisor for Nonproliferation and Arms Control, noted his support for the agreement as a “creative compromise” between “peers” and that the agreement marked the arrival of the ROK in the “first tier” of world nuclear energy powers. Mark Hibbs, Senior Associate of Carnegie’s Nuclear Policy Program, highlighted the fundamental integration of the U.S. and ROK nuclear industries in the period since the original 1972³ agreement and described the new accord as an “opportunity to reinforce that industrial partnership.” Finally, Victor Cha, Korea Chair at the Center for Strategic and International Studies and Professor at Georgetown University, lauded an agreement that “met the needs of both sides” and “reinforced transparency and nonproliferation principles” championed by the U.S. and ROK, but not shared by other states in the nuclear community. Cha also scoffed at those that predicted the nuclear negotiations would become a “lightning rod” in South Korean domestic politics, attributing the greatest opposition to “a far right conservative fringe” unable to pose an electoral threat to the current government.⁴

The successful conclusion of this long and at times difficult negotiation between close bilateral allies leads to the following questions. How were nuclear negotiators from these two states able to avoid the “slow-motion train wreck” or “litmus test” for the alliance? Indeed, why were the negotiations so difficult to begin with, requiring almost five years and a congressional extension? Now, with an agreement in hand, what are the implications for U.S.–ROK nuclear cooperation and the broader alliance? Finally, what does this agreement suggest for the future of U.S. nuclear cooperation agreements with other countries?

1. Nuclear cooperation agreements

After the passage of the Atomic Energy Act in 1954, many forms of U.S. nuclear cooperation with other states required a “peaceful nuclear cooperation agreement.”⁵ In particular, these agreements were necessary when U.S. origin special nuclear material (plutonium or enriched uranium) was transferred for commercial, medical, industrial, or research purposes. The ROK received such materials through participation in the Eisenhower administration’s “Atoms for Peace” program in 1956 and joined the International Atomic Energy Agency in 1957.⁶ When the last nuclear cooperation agreement between the two countries was forged in 1972, the ROK had no operating nuclear power plants and relied mainly on coal, oil, and natural gas for energy production. With only a nascent domestic nuclear industry and little involvement in the global export of nuclear technology, the 1972 agreement included the

strict nonproliferation principles enshrined in the recently enacted Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and previous U.S.–ROK agreements. Since 1972 the ROK, in conjunction with the U.S. at the governmental, academic, and industrial levels, has developed a vibrant domestic nuclear industry and become a major player in the global nuclear-energy community. Operating its first “turn-key” nuclear power plant, Kori I, in only 1978, the ROK now operates 25 reactors that provide approximately one-third of its electricity needs.⁷ In other words, originally a dependent recipient of American technology, the ROK has become a major exporter of commercial nuclear technology and a “fully-integrated interdependent partner”⁸ with the U.S. nuclear industry. While this development of the ROK nuclear industry was good for the Korean economy and for the U.S.–ROK partnership more broadly, it fundamentally altered the context of nuclear cooperation for the two countries. Each side anticipated major changes and difficult discussions when negotiations began over renewal.

When the first stages of negotiations opened in 2010–11, the U.S.–ROK relationship was at a post-Cold War apex, as both sides contemplated the maturation of the alliance. U.S. President Barack Obama and ROK President Lee Myung-bak were developing a personal bond and the effort to bring a bilateral free trade agreement (KORUS-FTA) to legislative approval was approaching fruition. President Lee’s vision of a “Global Korea” seemed within reach as Korean marques replaced Japanese brands at U.S. electronics and appliance stores, Hyundai managed to increase its share of the American auto market, and Ban Ki-moon was re-elected to a second term as Secretary-General of the United Nations. At the cultural level, Korean food was a fixture in the “food truck revolution” in many American cities and K-pop musician Psy would dominate the billboard charts with his “Gangnam Style” single. The sense of a “rising” ROK no longer could be reconciled with their role as a “dependent” or “junior” partner in the alliance. Domestically, critics on both sides called for significant changes in the agreement. Some in the U.S. called for a restructuring of the military alliance in which an increasingly wealthy ROK should bear more of the financial burden for its defense.⁹ In the ROK some chafed over U.S. constraints on weapons deployments in the South and continued U.S. restrictions on civilian nuclear activities. At the time, three major issues simultaneously confronted U.S.–ROK diplomats: negotiating a new nuclear cooperation agreement, implementing the transfer of wartime operational control from a U.S. commander to the ROK Joint Chiefs of Staff, and implementing the KORUS-FTA. Having weathered tumultuous ROK–DPRK conflicts in 2010 – the *Cheonan* sinking and artillery exchange with Yeonpyeong Island – 2011 seemed like an opportune time to address these issues. Particularly as the North appeared to turn inward in order to manage the succession from Kim Jong-il to Kim Jong-un.

Despite the successful development of its indigenous nuclear industry, the ROK was legally compelled to participate in the negotiations to secure a new peaceful nuclear cooperation agreement with the United States. The ROK continues to possess a large stockpile of U.S. origin special nuclear materials, either in current use to fuel its fleet of reactors or as spent fuel in water-cooled pools. The ROK also continues to design and engineer power plants that are considered to be American-licensed products, often due to collaborative agreements with American companies (such as Westinghouse) or from previous purchases of U.S. companies or

³ The last U.S.–ROK nuclear cooperation agreement was signed in 1972 and extended from 30 to 41 years in May of 1974.

⁴ “What the New U.S.–South Korea Civil Nuclear Cooperation Means,” accessed May 4, 2015, <http://carnegieendowment.org/2015/04/24/what-new-u.s.-south-korea-civil-nuclear-cooperation-means>.

⁵ See CRS Report RS22937 *Nuclear Cooperation with Other Countries: A Primer*, by Paul K. Kerr and Mary Beth D. Nikitin, 1. These agreements are alternatively labeled “123 Agreements” due to Section 123 of the AEA which sets forth nine key nonproliferation criteria and the process for submission to, and review by, Congress. These agreements are occasionally described as “treaties” by the media, but are actually congressional-executive agreements that require review, but not ratification.

⁶ See Matthew Fuhrmann, *Atomic Assistance: “How Atoms for Peace” Programs Cause Nuclear Insecurity* (Ithaca: Cornell University Press, 2012) for a critique of these efforts.

⁷ See CRS Report R41032 *U.S. and South Korean Cooperation in the World Nuclear Energy Market: Major Policy Considerations*, by Mark Holt, 4.

⁸ “What the New U.S.–South Korea Civil Nuclear Cooperation Means.”

⁹ See Doug Bandow “The U.S.–South Korea Alliance: Outdated, Unnecessary, and Dangerous,” last modified July 14, 2010, <http://www.cato.org/publications/foreign-policy-briefing/ussouth-korea-alliance-outdated-unnecessary-dangerous>.

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