

## Entering a new, uncertain phase of the U.S. - Japan Nuclear Cooperation Agreement

Takehiro Fujitsuka, J.D.  
Researcher, Energy Project Team  
New Diplomacy Initiative

### What is a nuclear cooperation agreement?

A nuclear cooperation agreement sets the framework for cooperation in the field of nuclear energy. At the same time, it is an international agreement concluded to regulate the use of nuclear fuel and equipment from a non-proliferation standpoint, keeping in mind the two-sided nature of nuclear material and its ability to be used for both peaceful, and military purposes.

As a general rule, in order to prevent the spread of nuclear weapons, these agreements have mechanisms to stop countries from unilaterally engaging in reprocessing (the process of extracting plutonium, a raw material for nuclear weapons, from spent nuclear fuel). If one of the concerned parties engages in reprocessing, the other country who provided the nuclear materials or equipment which would be used must give consent (individual consent system).

When it comes to the individual consent system, there is always the possibility that consent will not be obtained. For that reason, the country's nuclear policy would remain in a state of uncertainty.

### Peculiarities of the U.S.-Japan Nuclear Cooperation Agreement

The current U.S.-Japan Nuclear Cooperation Agreement includes a clause for prior consent (prior comprehensive consent), so the individual consent process, which requires consent be obtained from the country supplying nuclear technology, would not be applied in case reprocessing becomes necessary. At the conclusion of the current agreement, Japan succeeded in revising the old agreement's individual consent system. This enabled the country to implement a nuclear policy that eliminates uncertainties surrounding consent.

However, the prior comprehensive consent clause threatens to contradict the purpose of nuclear cooperation agreements, which are supposed to be regulatory devices preventing proliferation. For that reason, there are not many other examples of this around the world. Acquiring the current U.S.-Japan Nuclear Cooperation Agreement with the prior comprehensive consent clause is said to be Japan's greatest diplomatic success.

## Japan's Greatest Diplomatic Success

Looking back to the past, it is clear that it was not easy for Japan to acquire this prior comprehensive consent clause.

The old U.S.-Japan Nuclear Cooperation Agreement concluded in 1968 did not include a prior comprehensive consent clause and instead stipulated that if Japan wanted to engage in reprocessing, both Japan and the U.S. would have to come to a joint decision (Art. 8c). Although it was called a joint decision, in reality, the U.S. held the power to veto Japanese reprocessing policy. This clause was seen as a high risk for Japan, as its nuclear policy could be influenced by the U.S.

In fact, there was an event where the U.S. veto was almost triggered. In 1977, when Japan's first reprocessing plant, the Tokai Reprocessing Plant, was about to start operations, the U.S., where the Carter administration had begun to make its non-proliferation policy stricter, objected to the plan. Japan's plan was not able to eliminate the risk of nuclear materials being used for military purposes and, therefore, the U.S. insisted that that type of reprocessing could not be approved. If reprocessing were not possible, the nuclear fuel cycle, a pillar of Japan's nuclear policy, would be broken. This caused uproar in Takeo Fukuda's administration at the time.

Although a joint decision was made to allow the operation of the Tokai Reprocessing Plant, with conditions regarding the plant's duration and throughput, this was a traumatic event for the Japanese government.

This experience led Japan to move forward with diplomatic negotiations aimed at obtaining a prior comprehensive consent clause in order to minimize the influence of U.S. interests on Japanese policy.

There had never been a case in which the U.S. gave a non-nuclear weapon state prior comprehensive consent. The draft agreement with the prior comprehensive consent clause was strongly opposed by the United States Nuclear Regulatory Commission (NRC) and the Department of Defense due to proliferation and security concerns. That being said, it was decided that a prior comprehensive consent clause would be included in the agreement.

It is said that there was a desire to restore the U.S.-Japan relationship after the incident concerning the Tokai Reprocessing Plant.

U.S. congressional deliberation was the climax in the process of reaching the current agreement. In the U.S., in order for a nuclear cooperation agreement to pass, it is necessary that a 90-day continuous session of congress adjourn without a resolution disapproving of the agreement being passed (Atomic Energy Act of 1954, Article 123).

During congressional deliberation for the U.S.-Japan Nuclear Cooperation Agreement, in addition to strong dissenting opinions stemming from safety concerns relating to the transportation of plutonium, the issue of whether or not the agreement would influence the non-proliferation policy was raised.

At the congressional hearings, there were critical opinions from a non-proliferation perspective, such as whether giving Japan prior comprehensive consent would render the U.S. incapable of meeting its requirements under non-proliferation laws.

The Senate Committee on Foreign Relations decided to issue a letter requesting that the president resubmit the agreement to congress for renegotiation and recommend that the senate make a decision to return the agreement to the president.

As such, there was a strong movement against the agreement and even a moment when the agreement's chance of being passed by Congress was threatened. However, there was also strong lobbying on behalf of the Japanese government, and although the prospect of the draft agreement passing changed again and again, in the end, a joint resolution disapproving of the draft agreement was not adopted and the agreement was approved.

The circumstances under which the current agreement was concluded show that the U.S. has deep-rooted fears over non-proliferation in connection to reprocessing, and this must be kept in mind when thinking about U.S.-Japan nuclear policy in the future.

## **Destabilization of the Agreement due to its Automatic Extension**

The current U.S.-Japan Nuclear Cooperation Agreement was concluded in 1988 and was valid for a 30-year period. The future of the agreement attracted attention among the concerned parties on its maturity date in July 2018.

For a Japanese government looking to promote nuclear policy stability, the best scenario was to complete procedures to extend the existing 1988 agreement for a considerable period. However, for that to happen, it would have to clear further debate in the U.S. Congress.

In the end, because deliberations in the U.S. Congress do not always warrant optimism, the current U.S.-Japan Nuclear Cooperation Agreement was settled with an automatic extension that required no special procedures.

In the case of an automatic extension, Article 16 (2) of the agreement stipulates that the agreement can be terminated by a written notice from either Japan or the U.S. within six months of maturity. Therefore, there is potential for the agreement to be unilaterally terminated in the future, putting the agreement in a state of uncertainty.

## **Increasing Fears in the U.S.**

As a country that wants to continue reprocessing, it is unthinkable that Japan would submit a termination notice under Article 16 (2).

That being said, is it possible for there to be a termination notice from the U.S., a country that continues to express concern over Japan's plutonium stockpiles?

When considering this question, it is important to recognize that Japan tends to look at nuclear policy as an energy issue, whereas the U.S. sees it also as a security issue. The future will depend on how the U.S.

judges whether or not the current U.S.-Japan Nuclear Cooperation Agreement impacts non-proliferation. In this regard, it has been clear that even within the Trump administration, which seems to be less sensitive to proliferation issues, there is still skepticism surrounding Japan based on proliferation concerns. These concerns come not only from a nuclear security perspective, but are also based on growing distrust toward Japan in Northeast Asia and the threat of regional tensions increasing if a reprocessing competition were to occur. Furthermore, there is the concern that it will be difficult for the U.S. to persuade other countries to stop reprocessing (in fact, South Korea and Saudi Arabia have made demands for similar nuclear agreements to Japan's, causing difficulty for the U.S.).

In fact, the U.S. Senate Committee on Foreign Relations asked for a review of the U.S.-Japan Nuclear Cooperation Agreement (February 2018), and a major news story was released in which it was stated that the U.S. demanded that Japan reduce its plutonium stockpile (2018 June 10, *The Nihon Keizai Shimbun*, etc.). In response, the Japanese government has been forced to take concrete measures, such as determining a cap on the amount of plutonium it stockpiles (for more information, see future Policy Brief).

## Revisiting Japan's Reprocessing Policy

Given the current situation in Japan, where plutonium stockpiles have been increasing without a clear consumption cycle, it can be said that some U.S. government officials and experts' concerns surrounding reprocessing in Japan are even greater than when the current U.S.-Japan Nuclear Cooperation Agreement was concluded. The fact that the Japanese government, which is thought to have obtained prior comprehensive consent for stability, had no other choice other than to automatically renew the agreement, may also indicate that concern from the U.S. is growing.

Responding to concerns from the U.S. should be top priority for the Japanese government and active discussions are expected among stakeholders in Japan.