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Japan-India Civil Nuclear Energy Cooperation: Implications of the New BJP Government^{*}

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Abstract

This paper elaborates on possible policy changes in nuclear armament and nuclear energy fields under the new BJP government, and their implications for Japan-India civil nuclear energy cooperation negotiation. Essentially, the scope of possible civil nuclear energy cooperation between Japan and India may be limited; their cooperation will probably not exceed the level that the U.S. has agreed to because of Japan's strict position on nuclear non-proliferation. Even so, whether or not civil nuclear energy cooperation between Japan and India can be realized *primarily* depends on the will and attitude of the new BJP government regarding the issues of nuclear armaments and nuclear energy, especially the new government's treatment of the 2010 Civil Nuclear Liability Act.

I. Introduction: Is it Possible to Realize Japan-India Civil Nuclear Energy Cooperation under the New BJP Government?

As with the former Indian government, the United Progressive Alliance (UPA) led by the Indian National Congress Party (hereafter referred to as "Congress"), the Bharatiya Janata Party (BJP) also emphasizes in their manifesto that "nuclear power is a major contributor to India's energy sector" and, thus, they will "[t]ake steps to maximize the potential of... nuclear sources" as well [BJP 2014: 34; 39]. It appears that India under the new BJP government is going to proceed even further with civil nuclear energy cooperation. In fact, the Japanese ambassador to India, Takashi Yagi, declared on June 14, 2014, that "[c]urrently, the two sides are holding intense negotiations to conclude

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the civil nuclear deal during [Prime Minister Modi's visit to Japan on July 3rd and 4th, 2014]" [Chaudhury 2014].¹ However, Prime Minister Modi's visit to Japan was eventually postponed, and eventually, both governments failed to reach an agreement at the end of August 2014.

That being said, the answer to the question of whether it is possible for Japan and India to realize civil nuclear energy cooperation remains unclear. This is because the BJP has been a proponent of using nuclear arms to project national strength since 1964, when China conducted their first nuclear test, and the party itself eventually conducted a nuclear test in an attempt to make India a *de facto* nuclear weapons state in 1998 when they were in power. In this regard, Japanese people who are sensitive to nuclear matters worry about the implication of returning the BJP to power, especially in light of the possibility that India could make a radical change to its nuclear armament policy. Of course, it appears that after the Fukushima Daiichi (No.1) Nuclear Reactors Accident happened in March 2011, Japanese public opinion on international civil nuclear energy cooperation has turned cold. However, Prime Minister Shinzo Abe and his cabinet are currently still keen to conduct the negotiations more aggressively than any previous Japanese government. Even so, it is unclear whether Japan under the Abe government will accept further development of India's nuclear arms, even if they expect India to play a role in stabilizing the East Asian region. Japan's national goal of achieving the abolition of nuclear weapons under the nuclear non-proliferation regime remains firm, even under the Abe government [Nakanishi 2014: 2]. In addition, it should also be understood that the Japanese non-proliferation lobbies are powerful and still unhappy with an international arrangement that provides for civil nuclear energy cooperation with India, who is not a party to the Nuclear Non-Proliferation Treaty (NPT) and possesses nuclear weapons, even if that nation's non-proliferation record is impeccable.

This paper elaborates on possible policy changes in nuclear armament and nuclear energy fields under the BJP government, and their implications for Japan-India

¹ The Japanese Ambassador to India, Yagi, further stated as follows:

There are three weeks still for the visit and we may finish negotiations in the meantime to have the deal. Key rounds of negotiations have been held on the civil nuclear agreement since PM Abe visited India this January. We are hopeful of an early conclusion [Chaudhury 2014].

It is fair to say that some differences, supposedly contentious ones between Japan and India, have not yet been fully resolved in the round of negotiations conducted in January 2014. According to the remarks of the Director-General for Press and Public Diplomacy of the MOFA, Kuni Sato, in a press statement on January 26, 2014, "[t]he differences between the two government have been narrowed down" [Nakanishi 2014: 5].

civil nuclear energy cooperation. To conclude, the scope of possible civil nuclear energy cooperation may be limited (at least right now), and it probably cannot exceed the level that the U.S. has agreed to because of Japan's strict position on the issue of nuclear non-proliferation. However, whether or not Japan-India civil nuclear energy cooperation can be realized depends *primarily* on the will and attitude of the new BJP government toward the issues of nuclear armament and energy policies, especially their treatment of the 2010 Civil Nuclear Liability Act (CNLA).

II. Limitations of Japan-India Civil Nuclear Energy Cooperation

In the media briefing regarding the Japanese Prime Minister Abe's visit to India, held on January 23, 2014, in response to the question "what is the expectation from India's side to Japanese technology," the Joint Secretary on East Asia, Gautam H. Bambawale, answered that India expects Japan's "large-scale forging" technology to be used for the production of a reactor vessel for a light water nuclear reactor [MEA 2013]. It has been said that if civil nuclear energy cooperation between India and Japan could be realized, roughly \$86.1 billion in business could come to Japan [Nakanishi 2014: 1]. Nevertheless, the question of how much Japan and India can cooperate in the area of civil nuclear energy, and also what kind of conditions should be satisfied to conclude such a bilateral agreement, should be carefully inspected. The following section clarifies these points by briefly focusing on the negotiating process to date between Japan and India over civil nuclear energy cooperation.

Originally, Japan was reluctant to conduct any civil nuclear energy cooperation because of India's status, in particular the fact that India is a non-party to the NPT and a *de facto* nuclear weapon state. However, in July 2005 the U.S., Japan's ally under the Japan-U.S. Security Treaty, officially announced they would accommodate India as a *responsible state with advanced nuclear technology* that should be allowed to acquire the same benefits and advantages of nuclear energy cooperation under the existing global nuclear non-proliferation regime. Japan, under a coalition government led by the Liberal Democratic Party (LDP), also changed its stance toward India, and eventually welcomed the decision at the Nuclear Suppliers Group (NSG) Extraordinary Meeting, held on May 8 and May 9, 2008, to allow India's special treatment. The NSG member states, including Japan, allowed India to not only remain a non-party to the NPT and retain a special safeguard agreement with the International Atomic Energy Agency, but also to receive international assistance for civil nuclear energy cooperation. The Japanese position is clear that this special treatment should not be recognized unless

India abides by some nuclear non-proliferation commitments, such as complying with moratorium on conducting further nuclear tests, which are mentioned in the statement given by the Minister of the Ministry of External Affairs (MEA), Pranab Mukerjee, to the NSG on May 8, 2008. The Japanese government sees the statement as a “pre-condition” of the NSG’s decision on India’s special treatment.

While the LDP government could not initiate negotiations with India on civil nuclear energy cooperation, probably because of strong resistance within Japanese public opinion, the coalition government led by the Democratic Party of Japan (DPJ) party held the first meeting with Indian officials regarding civil nuclear energy cooperation in Tokyo on June 28, 2010. The Minister of the Ministry of Foreign Affairs (MOFA), Katsuya Okada, who decided to initiate the negotiations, stated in the 175th Meeting of the Budget Committee, the House of Councillors of Japan, (held on August 5, 2010), that because continuing the status quo no longer makes sense in the context of other major NSG member states concluding or negotiating new civil nuclear energy cooperation agreements with India, Japan should undertake negotiations with India in order to curtail further nuclear proliferation by at least forcing India into some kind of framework, even though it may be insufficient [Nakanishi 2014: 4].

From the Japanese perspective, there are two crucial points pertaining to the negotiations with India. First, Japan should persuade India that any draft of a bilateral agreement on civil nuclear energy cooperation must contain an explicit provision stipulating that if India conducts a nuclear test, Japan will immediately stop any nuclear energy cooperation. This needs to be formalized because other bilateral agreements reached with Japan have applied such stipulations indiscriminately. Thus, it can be seen that the Japanese position could not involve any compromise in civil nuclear energy cooperation with India. It should be understood that even if India rejected the insertion of such an explicit provision in a bilateral agreement with Japan, if India did conduct nuclear test, the minister of the Ministry of Economy, Trade, and Industry could exercise its power to ban the export of any nuclear materials and components from Japanese nuclear industries to India, under the Japanese export control portion of the nuclear non-proliferation law, the 1949 Foreign Exchange and Foreign Trade Control Act [Nakanishi 2014: 12]. Second, India is requesting that Japan conduct the transfer of a high-tech advanced nuclear technology as well. It is, however, Japan’s peculiar position that sensitive exports of nuclear technologies, such as enrichment and reprocessing (ENR) technology, to India are restricted by the 2008 NSG Statement *per se* [Nakanishi 2014: 10]. In the case of civil nuclear energy cooperation with Turkey, the Minister of MOFA, Fumio Kishida, told the Committee on Foreign Affairs and

Defense of Japan, on April 15, 2014, that although the bilateral agreement between Japan and Turkey contains a provision to allow the ENR technology transfer, Japan never conducts such a transfer in deference to the terms of Japan's strict nuclear non-proliferation policy [CFAD 2014a]. Therefore, the scope of possible civil nuclear energy cooperation between Japan and India may be limited, and most likely will not exceed the level that the U.S. has agreed to because of Japan's strict position on nuclear non-proliferation.

Furthermore, in order for Japan and India to realize civil nuclear energy cooperation, inserting an explicit provision for a nuclear test ban in a bilateral agreement will most likely be required.² According to an Indian media report on January 23, 2014, although the Indian delegation suggested attaching the 2008 Statement "as an annexure to the main text of the agreement with Japan," the "Japanese negotiators want India should go a step further with Japan than it has with the U.S." [Roy 2014a].

III. Implications of Possible Policy Changes under the New BJP Government to Japan-India Civil Nuclear Energy Cooperation

In the following section, some possible changes in nuclear armament and energy policies under the new BJP government are clarified, and, then these implications for Japan-India civil nuclear energy cooperation are elaborated in more detail.

A. Nuclear Armament Policy

On India's Republic Day, January 26, 2014, the Japanese Prime Minister (PM) Shinzo Abe was invited to attend the parade, in order to symbolize a strong tie between India and Japan. In the parade, the display of Agni-V, which is capable of carrying a nuclear warhead, was cancelled out of careful consideration of the Indian side. This is because, as Indian media correctly insists, "Japan, the only country to have suffered an atom bomb, is extremely sensitive to display of nuclear weapons" [Roy 2014]. This probably had to happen in order to make the civil nuclear energy cooperation negotiations successful.³ Nevertheless, the BJP states in their 2014 election manifesto that they will

² It seems like that the Minister of MOFA Kishida does not deny the original Japanese plan of inserting an explicit provision of a nuclear test ban in Japan-India civil nuclear energy cooperation agreement so far.

³ According to an Indian media report, "[Indian] government sources said that the Japanese side did not raise the issue [of displaying any nuclear weapons at the Republic Day parade] through diplomatic

“follow a two-pronged independent nuclear programme, unencumbered by foreign pressure and influence, for civilian and military purposes,” by “[s]tudy[ing] in detail India’s nuclear doctrine, and revis[ing] and update[ing] it, to make it relevant to challenges of current times” and to “[m]aintain a credible minimum deterrent that is in tune with changing geostatic realities” [BJP 2014: 39]. Soon after the manifesto was unveiled, Indian media and scholars started to worry about the implications for India’s nuclear doctrine, particularly whether or not some core part of the doctrine, especially the commitment to not using nuclear weapons first, could be diluted. The Committee on Foreign Affairs and Defense, of the House of Councillors of Japan, also discussed this issue on April 17, 2014, and Kishida, the Minister of the MOFA, stated that regardless of the result of the Lok Sabha election, Japan will maintain its stance that if India conducts a nuclear test Japan will halt all nuclear energy cooperation, since India’s commitments to comply with the moratorium on conducting nuclear tests and the strict separation of nuclear facilities into military and civilian parts, mentioned in the 2008 Statement, should be a “*dai zentei* (basic premise)” of Japan and India’s civil nuclear energy cooperation [CFAD 2014b].⁴

In response to this public anxiety, on April 16, 2014, Modi clarified that the manifesto does not insist on a radical reform of India’s nuclear doctrine, saying that “[n]o first use (a reflection of our cultural inheritance) was a great initiative of Atal Bihari Vajpayee, and thus there is no compromise on that” [NDTV 2014]. The BJP Chief, Rajnath Singh, also adopted the same position [Pandit 2014]. Even so, the BJP’s hidden agenda is not only to amend the no-first-use position, but also the concept of the “non-use against non-nuclear weapons [states]” and “credible deterrence with minimum force” postures, as Jaswant Singh, who had served as the Minister of External Affairs under the NDA government, stated in the Lok Sabha on March 15, 2011 [Nakanishi 2013: 15]. The words “minimum force” clearly mean that the BJP was not satisfied with nuclear armament policies adopted by the UPA government, and they are thus keen to conduct development of nuclear armaments on a broad and rapid scale, in the name of a

channels,” and the “[the] Defence Ministry [of India] confirmed that Agni-V was not being displayed [simply because] it has been displayed last year and they are not going to repeat it[, and t]his time [India is] displaying Arihant nuclear submarine at the parade.” See Roy 2014b. It should be also noted that a ‘float’ of the model of (probably not nuclear) submarine was eventually displayed at the parade.

⁴ Prime Minister Abe appears to maintain the same stance as Minister Kishida. In the 186th Plenary Session of the House of Representatives of Japan, on April 11, 2014, he answered a question raised by a congressman by saying that India remaining in line with the 2008 NSG Statement is a “*touzenn no zentei* (logical premise)” since undermining the nuclear non-proliferation regime should be avoided by entering into civil nuclear energy cooperation with India. Furthermore, he said that this precondition has also been confirmed by both the Japanese and Indian governments. See HOR 2014.

credible “minimum” deterrent.⁵ Careful consideration should also be given to the BJP’s stance on the non-use of nuclear weapons against non-nuclear weapons states, and the party’s attitude toward an international effort to reduce the role and salience of nuclear weapons in security strategies as well.

In particular, it should be noted that the concept of a “massive” retaliation was suddenly introduced into India’s nuclear doctrine, with the publication of the Press Statement on The Cabinet Committee on Security Reviews Operationalization of India’s Nuclear Doctrine, on January 4, 2003, suggesting that India is pursuing a Cold War nuclear doctrine like that of the U.S. and Soviet Union [Nakanishi 2013: 11]. It is obvious that a massive retaliation requires an aggressive development of nuclear armaments. Indeed, one of the top six priorities for India’s Ministry of Defense, announced by the new regime on May 26, 2014, is to “[c]omplete India’s nuclear weapons triad by faster induction of nuclear submarine INS Arihant and its follow-on sister ships with long-range missiles” [TOI 2014a]. The words “completion” and “faster” were not emphasized as much under the UPA government. In general, the UPA government’s stance on nuclear armament development was seen as a delaying tactics. It can be said the Congress’s understanding of nuclear doctrine is a sort of dynamic transformation of the previous nuclear option open policy [Nakanishi 2013]. Indeed, the language used in the Congress’s 2014 manifesto was clearly more modest than that of the BJP as mentioned above, simply stating that “India will maintain a credible deterrence and second strike capability[,] continu[ing] the missile programme to meet potential threats in the region” [INC 2014: 40]. Prime Minister Modi is currently trying to reshape the nation’s nuclear command structure so that it is sufficient and similar to those of other legitimate nuclear weapons states under the NPT, such as the U.S. and China [Swami 2014]. Thus, these facts indicate that the new BJP government is keen to take an aggressive posture on India’s nuclear armament policy, though they may not conduct a nuclear test again, and this posture may thus make Japanese public opinion of and attitude toward India colder than before.

B. Nuclear Energy Policy

The BJP originally criticized the Indo-U.S. nuclear agreement in terms of not only a

⁵ In response to the proposed revision of India’s nuclear doctrine suggested by Jaswant Singh, the Minister of External Affairs, S.M. Krishna clearly answered on March 16, 2011, that “there is no [need to] change... our [nuclear] policy” because the UPA government has “committed to taking effective steps to safeguard India’s security and defence interests consistent with our doctrine of credible minimum nuclear deterrent.” See Nakanishi 2013: 15.

strategic point of view but also the following economic and energy perspectives:

Even the power that will be generated under th[e Indo-U.S. Nuclear] Deal will only be just 5% of the country's requirement [of electronic supply] and that too after spending a few hundred crores of rupees-a cost that is prohibitive and which is much higher than the cost of electricity presently generated in our hydro-electric projects or the thermal plants. Even this energy will not be available to the country before 2020 after spending so much [BJP 2008].

Even after the Indo-U.S. nuclear deal was reached under the UPA government, the BJP supported making the Civil Nuclear Liability Bill stricter than that of any other country in the world; specifically, the party introduced the concept of a supplier liability, stating that “the [UPA] government [should] reconsider the draft legislation contending that it ‘shielded’ private suppliers,” referring to the painful lesson from the 1986 Bhopal Gas tragedy [IE 2010].⁶ As a corollary to the enactment of the Act in 2010, any negotiation on civil nuclear energy cooperation between the Nuclear Power Corporation of India Ltd. (NPCIL) and Western nuclear supplier companies, especially those of the U.S. and France, could not run smoothly and stalled. The U.S. and other Western countries have requested that India, as a signatory of the Convention on Supplementary Compensation (CSC), amend the Act by diluting the supplier liability stipulation, since the CSC cannot legitimately stipulate a supplier liability in terms of retaining the principle of *exclusive* liability of the nuclear power operator.⁷

Given this background to the 2010 CNLA, the BJP was believed to be in a position to strictly implement the Act, especially the supplier liability portion [IE 2013].⁸ Remarkably, however, one of the top six priorities for India's Ministry of

⁶ In fact, Article 17 of the Civil Nuclear Liability Bill was requested to be revised by the Department-Related Parliamentary Standing Committee on Science & Technology, Environment & Forests, Rajya Sabha, as follows: “the operator of the nuclear installation,... shall have a right of recourse where... the nuclear incident has resulted as a consequence of an act of supplier or his employee, which includes supply of equipment or material with patent or latent defects of sub-standard services.” The original text of Article 17 of the Bill simply “if the suppliers or his employee causes damage through gross negligence or a willful act” (emphasis was added by the author). See DRPSCSTEF 2010. This means that the concept of supplier liability was strengthened so as to be easily exercised as a right of recourse for a foreign supplier company from an Indian nuclear power operator, that is, the NPCIL.

⁷ India signed the CSC on October 27, 2010, after the enactment of the CNLA on August 25, 2010, and assented to September 21, 2010. The Act took effect on November 11, 2011.

⁸ According to an Indian media report, “[the] Leader of Opposition in Rajya Sabha[,] Arun Jaitley Sunday said the violation of the provisions of the Civil Liability for Nuclear Damages Act in any contract between Indian nuclear power operator - [NPCIL] - and a U.S. firm would amount to corruption under the Prevention of Corruption Act.” See IE 2013.

External Affairs, announced by the new regime on 26 May 2014, is that “[t]he civil nuclear liability [act] needs to be amended to open India to nuclear energy industry [and to] mak[e] Indo-U.S. relationship] more transactional and business-like” [TOI 2014b]. This means that the new Indian government is attempting to amend the Act’s stipulation of a supplier liability. According to the views of some Japanese practitioners, the CNLA could be an obstacle to conducting nuclear commerce between Japan and India, a concern currently shared by other foreign countries and industries as well.

By contrast, at the press conference at the U.S.-India Energy Dialogue, held on March 11, 2014, Dr. Montek Singh Ahluwalia, the Deputy Chairman of the Planning Commission, made the following statement:

[I]t is true that it’s not only the United States [and their suppliers] that has raised th[e] issue [of “rationalizing” the 2010 CNLA]. Other partners with whom we want to pursue nuclear cooperation[, such as French, Canada, Russia and their suppliers,] have similar concerns. And what I said was that we are hopeful that within - I don’t like the use of the term “dilute” - within the existing framework of the nuclear - [civil] nuclear liability [act], it should be possible to resolve these problems. ...we’ll resolve this one way or the other [EUSND 2014. Emphasis added].

In this regard, it is obvious that the word “amendment” as used by the new BJP government is not in accordance with the original idea, at least not the idea held by India’s bureaucrats when the UPA was in power. Furthermore, another question that arises here is whether the new regime can successfully amend the 2010 CNLA in accordance with the CSC, especially at a time when the Rajya Sabha is still occupied by the Congress-led political parties as well as anti-civil nuclear energy cooperation forces.⁹ It would be likely that the BJP could be blamed for betraying past principles and not protecting a “strict” nuclear liability. This is simply because the party has heavily committed itself to amending the Bill to strengthen supplier liability. If the new BJP government could manage to properly rationalize a supplier liability stipulation in the 2010 CNLA in accordance with the CSC, negotiations between Japan and India over civil nuclear energy could be furthered.

Moreover, an Indian media report insisted that the Modi government’s new

⁹ It should be also noted that the Communist Party of India (Marxist) insists in their manifesto for the 2014 Lok Sabha election that the scope of their “anti-nuclear” plank just means they are against development of civil nuclear energy with any international cooperation, mentioning that India should “[r]evis[e] the Indo-US [civil] nuclear [energy cooperation] agreement; no[t conduct] import of foreign nuclear reactors; [and] pursue self-reliance in civilian nuclear energy based on domestic uranium and thorium reserves.” See CPI (M) 2014.

energy policy can no longer be pro-nuclear but should instead be a pro-renewable energy policy, referring to the views of Sambitosh Mohapatra, the Executive Director of Energy Utilities, Price-waterhouse-Coopers (PwC), and an industrial expert of KPMG.¹⁰ Such a story might happen because “Piyush Goyal, who is from Maharashtra, where [the] BJP ally[,] Shiv Sena [who] was opposing the 9,900 MW Jaitapur nuclear project” supported by the French nuclear company, Areva, has presented a new energy policy in the Cabinet meeting that does not emphasize the growth of nuclear energy [PTI 2014]. It should also be noted that the BJP originally opposed the Indo-U.S. nuclear deal restricting India’s independent status on nuclear armament development - at least this is what the BJP sought - from the beginning, and, thus, such a radical change might happen in the near future.¹¹ If so, the basis of negotiation for pursuing civil nuclear energy cooperation between Japan and India may be ruined. It should, however, not be supported that the BJP will abandon any development in the nuclear energy field, since their election manifesto clearly states that they will “[i]nvest in India’s indigenous Thorium Technology Programme” [BJP 2014: 39].

IV. Conclusion

This paper clarified possible policy changes in nuclear armament and nuclear energy fields under the new BJP government.

The study illuminates the following three points. First, the scope of possible civil nuclear energy cooperation between Japan and India may be limited (at least right now), and it is not likely to exceed the level that the U.S. has agreed to because of Japan’s strict position on nuclear non-proliferation. Second, the new BJP government may take a more aggressive posture on India’s nuclear armament policy than the former UPA government, thus creating another obstacle to achieve civil nuclear energy cooperation. If such a change happens, Japanese public opinion and attitudes may turn against conducting civil nuclear energy cooperation, even if the Abe government is keen to do so. Third, if the new BJP government could manage to properly rationalize a

¹⁰ Mohapatra told the media that “[n]uclear projects are not likely to be on the radar of the Modi government, at least for the next two years [because the government] will first focus on increasing coal production, allocation and pricing, apart from clearing the balance sheets of distribution companies.” On the other hand, an KPMG expert stated “[t]hough countries like Russia, Canada, the US, France and Japan are keen on investing in the country’s nuclear energy growth story, the [Modi] government, which is looking at FDI in power sector, will not take hasty decisions,” and thus “it will go slow on [the nuclear energy growth story] and meet [India’s] energy security target through other renewable sources.” See PTI 2014.

¹¹ See BJP 2008.

supplier liability stipulation in the 2010 CNLA in accordance with the CSC, negotiations between Japan and India over civil nuclear energy cooperation could be furthered and eventually be concluded sooner than we think. However, it should be understood that if a radical policy shift from pro-nuclear energy to pro-renewable energy happens under the new BJP government, the basis for civil nuclear energy cooperation between Japan and India will be undermined. Therefore, whether or not Japan-India civil nuclear energy cooperation can be realized is *primarily* dependent on the will and attitude of the new BJP government.

Needless to say, if they really hope to become a “strong” nation, creating a good relationship with the Western and advanced countries in economic and energy fields should be crucial.

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