



Eighth Cooperative Idea:

Exploring the Transfer Potential of the JCPOA for Zonal Disarmament Arrangements in the Middle East/Gulf

Daniel Müller

This POLICY FORUM issue advocates using elements of the Joint Comprehensive Plan of Action (JCPOA or agreement/accord) in prospective negotiations to create a zone free of weapons of mass destruction (WMD) and their delivery vehicles (DVs) in the Middle East. In a stalemated situation resembling efforts to negotiate a zonal arrangement, the JCPOA after more than 12 years of negotiations succeeded in striking a multilateral deal among adversaries with diverging capabilities and agendas who doubted each other's intentions and were reluctant to make concessions. By establishing an incentive-based mechanism that encouraged and facilitated cooperation, the JCPOA succeeded in trading various issues to reach common ground in an incremental step-by-step approach of carefully sequenced quid pro quos. Framed as an agreement among equals and safeguarded by multiple compliance mechanisms, the JCPOA (or aspects of it) could serve as a toolbox for zonal negotiations on disarmament, help to link hardened actors, and break up entrenched interest structures and dogmatic policy positions.

Background and Context: The Joint Comprehensive Plan of Action as an Ambivalent Point of Reference

After the JCPOA was struck between Iran and the E3/EU+3 (i.e. France, Germany, the United Kingdom and the European Union (EU) plus China, Russia, and the United States) on 14 July 2015, it was hoped it might provide a new toolbox of arms control instruments (e.g. Glaser et al., 2015), or alter regional security thinking, providing new impetus for initiatives aimed at establishing a zone free of weapons of mass destruction and their delivery vehicles (WMD/DVs-free zone) in the Middle East/Gulf (Harnischfeger and Kubbig, 2016). However, negotiations about such a zonal arrangement in the region have been deadlocked since the failed Review Conference of the Nuclear Non-Proliferation Treaty (NPT) because of disagreements between the Arab states (as well as Iran) and Israel. These disagreements primarily concern the question of how to address arms control and regional peace and security matters (see POLICY FORUM No. 3 on this topic). Unfortunately, the JCPOA has not changed regional policies pertaining to the creation of a WMD/DVs-free zone. Nevertheless, one should not overlook the fact that this multilateral accord has prevented a regional war and a nuclear-armed Iran by striking a complex deal among adversaries

with diverging military capabilities and political agendas. Therefore, it was rightly hailed as a triumph of diplomacy (Fitzpatrick, 2015), and the main elements of the multilateral accord might indeed serve as tools for possible WMD/DVs-free zone negotiations.

Key Aspects of the JCPOA and Their Potential for Zonal Disarmament Arrangements

The agreement has demonstrated that it is possible to create the political will needed to enable such a milestone agreement. The accord was negotiated among adversaries who were highly doubtful of one another's intentions, concerned about possible delaying tactics and/or relative gains (a phenomenon with a decades-long history), highly mistrustful of one another, and reluctant to be the first to make concessions. Despite the differences among the E3/EU+3, they were all unified by the goal of preventing a nuclear-armed Iran. What is more, the JCPOA constitutes a complex and well-balanced design that successfully linked entirely different issues such as effective arms control measures, easing sanctions and reducing Iran's isolation (Harnischfeger and Kubbig, 2016: 2; ICG, 2015: i, 7; ICG, 2017: i). The successful conclusion of the multilateral JCPOA with its manifold compromises and mechanisms might thus be instructive for possible negotiations on a potential treaty-/agreement-based WMD/DVs-free zone.

What is more, the JCPOA has shown impressive robustness even in view of the Trump administration's strong criticism of the accord: the International Atomic Energy Agency (IAEA) has issued clear-cut statements that all sides have so far abided by the agreement.

The Basic Incentive-based Mechanism

To begin with, the JCPOA contains an *incentive-based mechanism* that recognises and addresses the interests of both Iran and the E3/EU+3. In doing so, it does what most agreements do: it brings together crucial interests and loosely related (and, in part, imposed) ones to enable a quid pro quo (Perkovich et al., 2015) in the form of assuring the peacefulness of Iran's nuclear programme in exchange for sanctions relief and economic recovery. At the same time, it excludes issues that were deemed non-negotiable: negotiations were restricted to nuclear-related matters, leaving showstoppers out of the equation (H. Müller, 2015: 20-25; ICG, 2017: 10). The accord managed to address enough issues to reach common ground while avoiding too-controversial ones such as Iran's missile programme and its political activities in the region.

The Incremental Character of the JCPOA and Its Confidence-building Measures

Different types of sequencing probably represent the most elaborate part of the

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JCPOA mechanism. Since mutual mistrust and suspicion (as well as pride and resentments) tend to impede unilateral concessions, the timing of mutual steps is always an issue. The JCPOA operates in terms of simultaneous, proportional quid pro quos within a framework of steady gradualism with common benchmarks (JCPOA, preamble, §I; ICG, 2014: 7). The JCPOA aims at achieving interim goals (the five “Days”¹) by working through an agreed Implementation Plan containing highly specified and, in part, verified steps (JCPOA, §34, “Implementation Plan”, “Annex V-Implementation Plan”; CSIS, 2017). The JCPOA thus represents an incremental, confidence-building, step-by-step approach that inherently facilitates cooperation (Meier and Zamirirad, 2015: 3) in a manageable, precise time sequence. The JCPOA combines *precision of duties and definitions with sufficient flexibility* in the implementation process. To address both sides’ concerns, the 160-page-long JCPOA establishes an elaborate network of mutual responsibilities. There was limited faith in, for example, Iran’s compliance with its obligations and the sincerity of the E3/EU+3’s promise to ease sanctions, or in the neutrality of the IAEA’s verification measures. So it was necessary to clearly define what constitutes compliance and initiates reciprocal steps in the JCPOA’s quid pro quo design. The five “Days”/benchmarks were scheduled as precisely as possible, mitigating the risk of procrastination. However, the agreement also remains sufficiently flexible to provide more time to deal with contingencies and/or implementation problems or to set incentives for more speedy progress (ICG, 2017: 2). “Implementation Day” had no predefined date, but was to occur simultaneously with the IAEA’s implementation report and the E3/EU+3’s easing of specified sanctions (JCPOA, §34.III). “Transition Day” is to occur eight years after the “Adoption Day” or at the date when the IAEA has reached its “Broader Conclusion” – “whichever is earlier” (JCPOA, §34.IV).

Ensuring Cooperation and Compliance by Institutions and Procedures, Enforcement and Verification Mechanisms

Multiple compliance mechanisms ensure mutual agreement-based cooperation. According to an Iranian diplomat, in case of non-compliance, the JCPOA as an inher-

ently “quid pro quo diplomatic process could easily give way to an escalatory tit-for-tat” (cited in ICG, 2015: 13-14): even minor breaches of commitments could be answered with a broad range of retaliatory measures. Moreover, the accord *establishes institutions* committed to the implementation of the agreement. This pertains to the Joint Commission and the Joint Commission’s Procurement Working Group, but also to the establishment of a joint Nuclear Safety Centre and cooperative projects in Iran (Samore [ed.], 2015: 65-67). The strongest part of the JCPOA’s compliance mechanism is its connection to the United Nations Security Council (UNSC). The agreement becomes *legally binding* due to its endorsement by UNSCR 2231(2015), granting (vast parts of) the agreement legal status for roughly ten years, until “Termination Day” (Bellinger, 2015; Davenport, 2017). The connection of the accord to the UNSC is completed by an innovative and effective *sanctions and enforcement system*: in case of disagreements, the JCPOA’s *consultation and clarification procedures* provide means for conflict resolution (Perkovich et al., 2015). Should these efforts fail, a reinstatement of sanctions and the termination of the accord could follow shortly. Each of the five permanent members of the UNSC can re-establish the sanctions system (“snapback”), since the UNSC would again have to agree on the extension of sanctions relief (H. Müller, 2015: I, 17-18). In combination with the IAEA *verification system* related to the JCPOA, it is highly likely that violations of the agreement would be both recognised and sanctioned. In extremis, *enforcement* could even include coercive measures in line with Chapter VII of the UN Charter (Meier and Zamirirad, 2015: 1).

Mutual Respect and Face-saving Mechanisms for In-built Inequalities

Granting one another respect and recognition in accordance with reciprocity and equality principles is another feature of the agreement. Iran had to make considerable concessions during the JCPOA negotiations, the composition of the Joint Commission, which can overrule Iran on settling controversial issues, is just one case in point. The most sensitive topics were handled with discretion, however (H. Müller, 2015: 10-29): Tehran was reluctant to accept long-term special responsibilities, which explains why the duration of JCPOA obligations was left somewhat open to interpretation.

¹ Finalisation Day, Adoption Day, Implementation Day, Transition Day, Termination Day.



Some long-term obligations were shifted to Iran's Enrichment Research and Development Plan as part of the country's Additional Protocol, and some intrusive elements were shifted to the Joint Commission's procedures. The JCPOA's wording constantly stresses "simultaneous" or "voluntary" action even in cases where operational regulation rather demands preliminary concessions (e.g. in case of the timing of "Implementation Day"). In sum, the JCPOA aims at being an agreement among equals in the best interests of all parties. In those areas where inequality persists, it strives to maintain a mutually face-saving character.

Limits to and Prospects of Adapting Elements of the JCPOA

Constructively Handling Differences Among Actors with Diverging Interests and Dogmatic Positions

Can the above-mentioned strengths of the JCPOA, i.e. *its specific multilateral setting and its incentive-based structure*, including the successful balancing of its extremely divergent nuclear- and sanctions-related components, be made fruitful for the negotiations on zonal disarmament arrangements? As to the so far resilient multilateral character of the JCPOA, the question arises whether the E3/EU3+3 and Iran setting is transferable to the Middle East/Gulf context. This is not necessarily the case: the homogeneous interests of the six powers to prevent Iran from becoming a nuclear-armed state do not exist when it comes to the crucial question of how to deal with Israel as the only nuclear-armed state in the region. This is an essential difference that has created difficulties during recent decades, including at the time of the Glion/Geneva consultations in 2013-14 (see POLICY FORUM No. 3).

Here again, it was not possible to create a joint and constructive political will at the co-conveners' level, as the often-uncoordinated and divergent policies of the Russian Federation, the United States, and the United Kingdom have shown. But even if the six powers were unified on crucial issues, the situation of Iran as one partner cannot be compared with the traditionally divergent interests dominating the zonal disarmament debates: the incompatible "Disarmament First!" stance of the

Egypt-led Arab countries versus "Regional Peace First!" advocated by Israel as the main reasons for traditional diplomatic failure could so far not be bridged (Müller and Müller 2015). And yet, bringing the setting of the six powers into play could have advantages: it would transcend the NPT context, which is strictly rejected by Israel, being a non-member to this Treaty. Because of the mix of incentives and assurances that could be associated with the policies of the six powers, this setting might open the door for Israel to become more forthcoming towards the demands of the Arab countries when contemplating a WMD/DVs-free zone.

Warming up for More Flexible Approaches

As to the *incentive-based structure* of the JCPOA, transferring the successful formula of give and take and the inclusion/exclusion of subjects of negotiation could facilitate discussions/negotiations on zonal arrangements. Addressing matters of mutual concern in a (probably lengthy) process would require a change of attitude in some Arab capitals. This would include an alleviation of the traditional stance demanding the short-term dismantlement of the Israeli nuclear arsenal. It would also require continued patience on the part of the Arab countries, especially Egypt. As the five Glion/Geneva consultation meetings between October 2013 and June 2014 have shown, without such a change of attitude, negotiation strategies relying on bracketed language aimed at bridging discontent and postponing or leaving out controversial issues are bound to fail (see POLICY FORUM No. 3, especially Boxes 1 and 2). However, a reconsideration of past approaches could be worthwhile for the Arab states, since their mixture of 'sticks and carrots' has so far failed to induce policy changes by Israel.

Here the wide and divergent spectrum of the quid pro quo design in the JCPOA comes once more into play. *At the politico-conceptual level*, there is a need to broaden the traditionally narrow military focus of arms control efforts by (re-)introducing what has already been claimed and offered by the Arab states in the Saudi Peace Initiative (Eldar et al., 2015). The still-standing Arab offer for diplomatic recognition (an important Israeli foreign policy goal), if conceptualised in concrete interim steps as quid pro quos for Israeli concessions, would put nuclear weapons into the re-

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The Author

Daniel Müller, an associated Researcher at the Peace Research Institute Frankfurt (Germany) with an emphasis on nuclear arms control and the Middle East, undertook research at the Arab Institute for Security Studies in Amman (Jordan) and the American University in Cairo (Egypt).

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gional context and increase the level of what the Arab countries can negotiate about with Israel. *At the operational level*, the constructive stance presented by the Russian Foreign Ministry at the First NPT Preparatory Committee on 8 May 2017 in Vienna is a good starting point for discussing the dimensions of disarmament and regional peace simultaneously during this NPT cycle: Moscow proposed to devote one session of the prospective conference on regional security matters. Building on this proposal, POLICY FORUM No. 3 has concretised this dual-track approach with respect to the regional security dimension as a way of engaging Israel more strongly.

Conclusions and Next Steps

Given some political goodwill and diplomatic skill in identifying and tailoring suitable bargaining chips, the above-mentioned gradual character of the JCPOA, and its in-built confidence-building measures, the mechanisms to ensure cooperation and compliance by institutions and procedures and the agreement's clear

verification techniques could be helpful for political practitioners negotiating and drafting an agreement/treaty for a WMD/DVs-free zone. Of special relevance for the *Cooperative Idea* of this POLICY FORUM issue is the transfer of the successful sequential issue: the challenge that regional peace and security have to evolve in parallel to a zonal initiative, but without being tied to the creation of a zone in a strict sequential “first one, then the other” or a synchronic “all or nothing” logic (D. Müller, 2015: 256). There has to be sufficient parallelism between both issues to satisfy the concerns of all parties involved. Efforts to achieve progress in arms control and regional peace and security have to be marked by sufficient flexibility and achievable incremental steps that facilitate gradual progress (Müller and Baumgart-Ochse, 2015). The JCPOA between Iran and the E3/EU+3 has some of these features, which is why it might be worthwhile studying in greater depth the applicability of its crucial elements to solving regional arms control disputes as an essential part of peace and security efforts in the Middle East. ■

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