

**APPLICABILITY OF THE JCPOA EXPERIENCE TO THE KOREAN PENINSULA
CRISIS RESOLUTION**

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ABSTRACT

This paper explores what lessons can be drawn from the process and framework of the negotiations on the Joint Comprehensive Plan of Action (JCPOA) that might be applicable to crisis resolution on the Korean Peninsula. Particular focus is put on aspects related to conflict mediation and trust-building during the early stages of the negotiations, rather than on the substance of the negotiated agreement, and their applicability to efforts aimed at restarting dialogue with the Democratic People's Republic of Korea (DPRK). The findings are based on an analysis of numerous interviews with key individuals involved in the JCPOA negotiation process.

INTRODUCTION

There is no doubt that the nuclear issues and challenges related to the Islamic Republic of Iran are distinct and different from those associated with the DPRK. One week after the signing of the JCPOA in Vienna on 14 July 2015, a spokesperson for the DPRK's Ministry of Foreign Affairs described the key differences between the two as follows:

“Iran's nuclear agreement is the achievement made by its protracted efforts to have its independent right to nuclear activities recognized and sanctions lifted. But the situation of the DPRK is quite different from it. The DPRK is the nuclear weapons state both in name and reality and it has interests as a nuclear weapons state. ... It is illogical to compare Iran's nuclear agreement with the situation of the DPRK which is exposed to constant provocative military hostile acts and the biggest nuclear threat of the U.S. including its ceaseless large-scale joint military exercises.”¹

The JCPOA itself explicitly states that the JCPOA “should not be considered as setting precedents for any other state or for fundamental principles of international law and the rights and obligations under the NPT [Treaty on the Non-Proliferation of Nuclear Weapons] and other relevant instruments, as well as for internationally recognised principles and practices.”²

¹ KCNA, *FM Spokesman Slams U.S. for Deliberately Linking Negotiations with Iran over Nuclear Issue with DPRK*, 21 July 2015

² *Preamble and General Provisions (xi.)*, *Joint Comprehensive Plan of Action, Vienna, 14 July 2015*, available at: https://eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf

Nonetheless, there are a number of reasons why, particularly at the time of this writing, it is worth examining whether there are lessons that can be drawn from the process of the negotiation of the JCPOA that might be applicable to negotiations on the denuclearization of the Korean Peninsula.

First, similar to the history and current state of relations between the US and Iran, the US and the DPRK have experienced decades of mutual mistrust and failed attempts at diplomacy. The dominant narrative has been in both cases that this record would prevent progress in overcoming key differences on the nuclear front that would be required for a fundamental change in relations.³ The JCPOA case has shown, however, that, while in the words of former Deputy Secretary of State and now Director of the Central Intelligence Agency William J. Burns “it is much easier to tear down diplomacy than to build it,”⁴ diplomacy can also succeed in bringing parties to a negotiated solution when war is a likely alternative.

Second, numerous US high-level officials in the current Biden Administration who are likely to be involved in DPRK-related matters played a key role in the negotiation of the JCPOA, including Secretary of State Antony Blinken, Deputy Secretary of State Wendy Sherman and National Security Advisor Jake Sullivan. Secretary of State Blinken has openly stated that he views the JCPOA as a potential model for future negotiations with the DPRK, noting that the approach of first looking to agree on an interim solution and then progressing towards a comprehensive solution should also be adopted vis-à-vis the DPRK.⁵ However, he also acknowledged that the US withdrawal from the JCPOA under the Trump Administration has potential repercussions for future negotiations with the DPRK: “[US withdrawal] also makes getting to yes with North Korea that much more challenging. Why would Kim Jung Un [sic] believe any commitments president trump [sic] makes when he arbitrarily tears up an agreement with which the other party is complying?”⁶

Third, DPRK officials have closely monitored developments surrounding the JCPOA and are likely themselves to have drawn lessons from their own observations.⁷ Following US withdrawal from the deal, those lessons may have been particularly negative. It is also possible, however, that more recent developments have elevated a potential argument in Pyongyang that a multilateral framework could make a deal more sustainable. While the DPRK is still insistent that the Six-Party Talks framework should not be revisited, First Vice Foreign Minister Choe Son Hui noted as recently as 2017 that some engagement in a multilateral format to address nuclear issues on the Korean Peninsula was still conceivable.⁸

³ Suzanne DiMaggio, *Dealing with North Korea: Lessons from the Iran Nuclear Negotiations*, Arms Control Today, July/August 2017, available at:

<https://www.armscontrol.org/act/2017-07/features/remarks-dealing-north-korea-lessons-iran-nuclear-negotiations>

⁴ William J. Burns, *The Back Channel*, New York: Random House (2019), p. 387

⁵ Antony Blinken, *The Best Model for a Nuclear Deal with North Korea? Iran*, The New York Times, 11 June 2018, available at: <https://www.nytimes.com/2018/06/11/opinion/trump-north-korea-iran-nuclear-deal.html>

⁶ Tweet by Antony Blinken @ABlinken, 8 May 2018, available at:

<https://twitter.com/ABlinken/status/993970625776668672>

⁷ This was confirmed to the authors by several interviewees with direct knowledge of this issue. See also: The International Institute for Strategic Studies and Center for Energy and Security Studies, *DPRK Strategic Capabilities and Security on the Korean Peninsula: Looking Ahead*, 14 July 2021, p. 74, available at:

<https://www.iiss.org/blogs/research-paper/2021/07/dprk-strategic-capabilities-security-korean-peninsula>

⁸ Choe Son Hui, *Plenary Session VII “Reducing Tensions on the Korean Peninsula: Possible Steps and the Role of Multilateral Diplomacy,”* Moscow Nonproliferation Conference, Center For Energy and Security Studies, 21 October

Mindful of the principal differences between the situations in Iran and the DPRK, the authors believe that there are enough similarities between the two cases that lessons can be drawn focusing not so much on the substance of their respective nuclear issues, but on the framework and approach to negotiations that contributed to the conclusion of the JCPOA.

With that in mind, the authors conducted twelve interviews with key individuals from the E3/EU+3⁹ and Iran who were either directly involved as part of the JCPOA negotiating delegations or were involved at the margins of the process. The questions posed to them aimed at identifying key moments in the process when the parties were able to cooperate constructively and overcome differences, what made that possible, and, on the other hand, where they encountered stumbling blocks. The following summary reflects the results of those interviews.

LESSONS LEARNED FROM THE JCPOA

Context

Having political will at the highest level

Political will at the highest levels is essential for progress. In the context of the JCPOA, the presidents of the two key negotiating partners, Iran and the US, were deeply committed to working out a deal and had sufficiently empowered their lead negotiators to bring the negotiations to a successful conclusion. For both presidents, the Iran deal was a key foreign policy priority and they were able to exercise their executive powers to overcome domestic opposition.

But that political will needed to be demonstrated in some concrete way. In the case of the Iran negotiations, it was the joint willingness of the US and Iran to establish an authoritative channel of communication (the Oman talks).¹⁰ In the case of the DPRK, no US administration has thus far demonstrated the political will approaching that demonstrated by the Obama Administration vis-à-vis Iran. While recent high level leader-to-leader diplomacy between the US and the DPRK in 2018 and 2019 displayed some political will at the highest level, little suggests that that will was as tested and acted upon as it was in the case of the JCPOA.

Acting on windows of opportunity

Perhaps as important as political will are windows of opportunity: in the case of the Iran deal, the parties were able to take advantage of a rare confluence of factors. President Obama's commitment coincided with the election in Iran of President Rouhan, Iran's former chief nuclear negotiator in the early 2000's. Both were personally invested in the issue and realized that continuation of the crisis would only lead to further deterioration of the situation. A sense of urgency to resolve the crisis at that particular moment was a key driver to success.

2017, transcript available at:

http://ceness-russia.org/ceness/transcripts/7_The%202017%20MNC%20Transcript%20Reducing%20Tensions%20Peninsula%20RUS.pdf

⁹ China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy.

¹⁰ Trita Parsi, *Losing an Enemy, Obama, Iran, and the Triumph of Diplomacy*, New Haven & London: Yale University Press (2017), p. 163

Domestic politics also played a significant role. In the case of the JCPOA, the Obama Administration faced significant domestic opposition to a deal with Iran, including in particular in Congress. Most of the Administration's efforts were spent on convincing Democrats to overcome congressional opposition following the passage of the Iran Nuclear Agreement Review Act, which required a congressional vote on a final deal.¹¹ Less attention was paid to opposition by Republicans, which then allowed the Trump Administration to capitalize on the resulting discontent. Given the views in the US about the DPRK, similar resistance is certain to be present in the case of any eventual deal. The JCPOA case suggests that more effort should be spent in ensuring bipartisan support.

Actors

Ensuring unity on mutual goals

In the context of the JCPOA, it was important for the E3/EU+3 to act as a single unity and to ensure that all the parties, including Iran, had a unity of purpose. Most importantly, this purpose included the mutual goal of averting war and achieving a negotiated settlement of the outstanding issues on the nuclear and sanctions fronts. The ability to set aside unilateral interests and bilateral issues among the parties was crucial to keeping the negotiating momentum. There were not six countries negotiating independently with Iran, but rather six unified parties who shared the same overarching goal, albeit not always with the same positions, while negotiating with Iran. Such unity would also be important in talks on the Korean Peninsula, where individual agendas of regional players should be subordinate to a clearly clarified joint goal of all the parties.

Communicating through intermediaries

In the process of negotiating the JCPOA, the EU played an important coordinating and mediating role. The EU's insistence on a multilateral solution significantly lowered the risk of a military solution. It also provided continuity throughout the process, given the EU's role since the early 2000's in attempting to broker a deal between Iran, France, Germany and the UK. The EU has no similar background in the case of the DPRK. However, establishing more normalized diplomatic relations and repeated interactions could be a first step in moving towards a similar direction.

Apart from the EU's role, a major breakthrough in the Iran process happened as a result of secret negotiations in Oman and Turkey. Oman was critical for providing a direct channel between Washington and Tehran at a time when it was still difficult, if not impossible for the two to have direct talks without intermediation. Interviewees credited Oman, in particular, for facilitating the first US offer to "explore the possibility of a limited domestic enrichment program as part of a comprehensive agreement."¹² Crucially, this also included convincing Tehran that this concession and major shift in policy by the US could be trusted. In the DPRK case, this type of role could be filled, for example, by a European country, such as Finland, Norway or Switzerland, or one of the closer regional states, such as Vietnam or Mongolia.

¹¹ Ben Rhodes, *The World As It Is, A Memoir of the Obama White House*, New York: Random House (2018), p. 328

¹² William J. Burns, *The Back Channel*, New York: Random House (2019), p. 361

Building personal relationships

Personal relationships between the negotiators can be powerful. However, there are distinct differences between Iran and the DPRK in this regard. In the case of Iran, the negotiators were well known to each other and many of the Iranian experts had lived and studied abroad in the US or the UK, such as Ernest Moniz and Ali Akbar Salehi. That is not the case with the DPRK interlocutors. There is great value in building such relationships through repeated interactions at the level of key officials as well as at the working level.

Balancing groups of interest

China and Russia played a special role in the negotiation of the JCPOA by offering support to Iran at particularly sensitive moments of the talks, while staying committed to the goal of the broader negotiations. China and Russia also played a crucial role in offering their technical services both during negotiations (coming up with innovative technical solutions) and during the implementation phase,¹³ such as in converting the Fordow Enrichment Facility and resolving the issue of the Arak heavy-water reactor by modifying its potential to produce weapons-grade nuclear material.¹⁴ They are likely to play a similarly special role in the case of the Korean Peninsula and, as such, it would be important to encourage their constructive participation early on.

Format

Having a bilateral track within a multilateral format

In the case of Iran, the catalyst for key negotiations was bilateral interaction between the US and Iran. As described by then Deputy Secretary of State Burns, who led the effort to achieve a breakthrough in negotiations by offering to depart from the zero-enrichment position, “the purpose of the secret bilateral talks [was] to test Iranian seriousness on the nuclear issue, and jump-start the broader P5+1 process.”¹⁵

While it became clear in both capitals that the key concessions had to be made bilaterally, transitioning to the broader multilateral process had to occur for the deal to receive international support and to ensure its implementation. The Security Council’s buy-in was crucial for the lifting of international sanctions and for providing a legal framework (in the form of UNSC resolution 2231 (2015)) to endorse the agreement and serve as a backstop in case of violations.

The multilateral framework also allowed for the deal to endure despite US withdrawal, although the ultimate fate of the JCPOA has yet to be determined. Regardless of the outcome, however, it is clear that a bilateral deal alone would not have survived the withdrawal of one of the parties.

¹³ Adlan Margojev, *Russian-U.S. Dialogue on the Iranian Nuclear Program: Lessons Learned and Ignored*, Security Index 8(23), 2021: p. 23-24; John W. Garver, *China and the Iran Nuclear Negotiations in The Red Star and the Crescent, China and the Middle East* edited by James Reardon-Anderson, New York: Oxford University Press (2018), p. 138-144.

¹⁴ Fars News Agency, *AEOI Chief: China Helping Iran Redesign Arak Reactor*, 10 February 2016, available at: <https://www.farsnews.ir/en/news/13941121000954/en/Arcive>

¹⁵ William J. Burns, *The Back Channel*, New York: Random House (2019), p. 361

Negotiating at multiple levels

Whether bilateral or multilateral, the JCPOA negotiations needed to include participation at the political, technical and legal levels. There was also an important role for Track 1.5 at all levels – the JCPOA benefitted from multiple Track 1.5 consultations, which allowed for signaling at deniable levels.¹⁶ Interviewees pointed out that having technical experts in the room during the negotiations was particularly instrumental. As some of the JCPOA negotiators recall, when chief negotiators were discussing political issues and came to a deadlock on technical matters, technical experts from all sides were on site to offer a possible solution. That ensured a less interrupted negotiating process. Technical experts were also engaged on a parallel track of talks where they were able to clarify differences in knowledge or understanding of technicalities.

The breakdown of US-DPRK talks following the joint summit in Hanoi demonstrated the dangers of foregoing working level talks (whether in form of Track 1 or Track 1.5 consultation) and leaving the outcome hostage to individual positions and personalities.

Process

Signaling to the counterpart

Signaling to the counterpart is also important. In the case of Iran, President Obama made several public efforts to engage the President of Iran, including extending congratulations to President Rouhani upon his election and sending him multiple personal letters. Interviewees also pointed out that public signaling to convince domestic audiences of the necessity of negotiations had the additional useful side effect of demonstrating to Iran the US's commitment to the promises it had made. Investing substantial political capital domestically helped convince Iran that it would be worth testing the seriousness with which the US would conduct itself during the progression and potential conclusion of negotiations.

Compartmentalizing issues

Establishing unity of purpose in the multilateral setting and staying focused on the core issues were critical to the JCPOA negotiation process and essential to its eventual success. The parties were able to compartmentalize their individual agendas and focus exclusively on Iran's nuclear programme, rather than on ballistic missiles or regional matters.

Achieving interim baseline understandings

As noted above, the first major breakthrough in the Iran negotiations came about as a result of bilateral talks between Iran and the US in Oman. They were low key, direct talks that allowed the

¹⁶ Jay Solomon and Carol E. Lee, *U.S.-Iran Thaw Grew From Years of Behind-the-Scenes Talks*, The Wall Street Journal, 7 November 2013, available at: <https://www.wsj.com/articles/SB10001424052702303309504579181710805094376>; Daniel Wertz, *Track II Diplomacy with Iran and North Korea, Lessons Learned from Unofficial Talks with Nuclear Outliers*, The National Committee on North Korea, June 2017, available at: https://www.ncnk.org/sites/default/files/NCNK_Track_II_Conference_Report_0.pdf; Suzanne DiMaggio, *Track II Diplomacy*, in *The Iran Primer: Power, Politics and U.S. Policy* edited by Robin B. Wright, Washington D.C.: United States Institute of Peace, 2010, p. 206-208

parties to clarify expectations, intentions and red lines, and to reach an interim understanding. This understanding, which led to the Joint Plan of Action, laid the groundwork for successful follow-on multilateral negotiations in Geneva and Vienna by establishing a two-step framework: some nuclear activities would be frozen in exchange for limited sanctions relief. Crucially, it also came with the understanding that this exchange would be a building block for a long-term deal and that some limited enrichment would be accepted.

Having preliminary “talks for talks” where parties were able to discuss the scope, format and setting of future negotiations was crucial for the successful conclusion of the JCPOA. In particular, it was important to establish broadly what the end-state of a long-term deal would look like. This was a shift in policy by the E3/EU+3, which, up until 2013, had refused to signal openness to accepting indigenous enrichment capabilities in Iran as a final outcome of negotiations. In addition, the E3/EU+3 had focused primarily on establishing confidence building measures aimed at limiting the most troubling parts of Iran’s nuclear programme.¹⁷ That did not work for Iran; it insisted that the issue of enrichment be clarified upfront as an inalienable right. While the language with which this issue was ultimately resolved was crafted more subtly, talks could not have progressed without this baseline understanding.

Challenges

Addressing withdrawal and non-compliance

There are significant risks associated with assuming that only one party might not comply with the provisions of an agreement. As demonstrated by the case of the JCPOA, there is a need to “raise the cost” of withdrawal for all the parties. During the interviews conducted by the authors, several participants referred to the difficulty of agreeing on a format that could make it more difficult for a party to withdraw. Some referred to the approach of ensuring approval by the legislative body. In the case of the US, a congressional-executive agreement requiring simple majority approval by the House and Senate was suggested as a more feasible alternative given the contentious nature of both Iran and DPRK-related issues in the US.¹⁸

As also noted by some of the interviewees, many of the US commitments were easier to reverse, while some of the actions agreed to by Iran were closer to being irreversible, such as the modification of the Arak facility. Ultimately, a key challenge was for the two parties to agree on mutual commitments they both deemed as similarly reversible or irreversible.

Avoiding maximalist positions and compromising

One of the key breakthroughs for the JCPOA was when the Obama Administration decided to forego the previous zero-enrichment stance by the US. In 2010, when the administration primarily focused on additional sanctions on Iran, as Trita Parsi writes, “negotiations would be pursued, but

¹⁷ Robert Einhorn, *Getting to ‘Yes’ With Iran*, Foreign Policy, 10 July 2013, available at: <https://foreignpolicy.com/2013/07/10/getting-to-yes-with-iran/>

¹⁸ Robert Einhorn, Richard Nephew, *Constraining Iran’s Future Nuclear Capabilities*, March 2019, Brookings Institute, p. 10, available at: https://www.brookings.edu/wp-content/uploads/2019/03/FP_20190321_nuclear_capabilities_WEB.pdf

mostly to inquire whether the other side was ready to yield, not to engage in a proper search for a compromise. It was a contest of resilience, determination, and perseverance. It was a race between several clocks, in which the United States needed its sanctions clock to tick faster than both Iran's nuclear clock and Israel's pressure for military action."¹⁹

Only in Istanbul in April 2012 were the parties able to establish a process guided by the principle of a "step-by-step approach and reciprocity."²⁰ Talks would occur within the framework of the NPT, which Iran viewed as tantamount to accepting a right to enrich. This convinced Iran to agree to bilateral negotiations directly with the US, which in itself, as pointed out by several interviewees, was one of Iran's main concessions.

Maximalist positions do not result in sustainable agreements, and compromises are necessary on both sides. In the DPRK case, this was evidenced by the events at the Hanoi summit in 2019. The US called for "fully dismantling North Korea's nuclear infrastructure, chemical and biological warfare program and related dual-use capabilities; and ballistic missiles, launchers, and associated facilities"²¹, while the DPRK called for partial sanctions relief in exchange for a shutdown of the nuclear facilities at Yongbyon. Clearly, the two sides were not ready to depart from what the other side viewed as an unacceptable maximalist position.

¹⁹ Trita Parsi, *Losing an Enemy, Obama, Iran, and the Triumph of Diplomacy*, New Haven & London: Yale University Press (2017), p. 123

²⁰ BBC, *Iran nuclear talks in Istanbul 'constructive'*, 15 April 2012, available at: <https://www.bbc.com/news/world-middle-east-17716241>; Laura Rozen, *How Iran Talks Were Saved From Verge of Collapse*, Al-Monitor, 16 April 2012, available at: <https://www.al-monitor.com/originals/2012/al-monitor/exclusive-how-iran-talks-came-ba.html>; Ash Ü. Bâli, *Iran Will Require Assurances: An Interview with Hossein Mousavian*, Middle East Research and Information Project, 18 May 2012, available at: <https://merip.org/2012/05/iran-will-require-assurances/>

²¹ Lesley Wroughton, David Brunnstrom, *Exclusive: With a piece of paper, Trump called on Kim to hand over nuclear weapons*, Reuters, 29 March 2019, available at: <https://www.reuters.com/article/us-northkorea-usa-document-exclusive-idUSKCN1RA2NR>; John Bolton, *The Room Where it Happened: A White House Memoir*, New York: Simon & Schuster, 2020, p. 302

CONCLUSIONS

Despite the substantive differences between the nuclear issues in connection with Iran and the DPRK, some valuable lessons, both positive and negative, can be drawn from the JCPOA negotiation process. The JCPOA experience has demonstrated the importance of coming to the negotiating table with a realistic position and being ready to compromise. When negotiating with an adversary, sides come to the table with the recognition that there is mutual distrust and great skepticism that an agreement can be reached. However, even in the most adversarial circumstances, it is important to demonstrate respect for the counterpart and signal preparedness to negotiate. Successful negotiators seek to clarify and recognize at the outset where there are differences that simply cannot be bridged (red lines) as well as the differences that have the potential for reconciliation. Real progress can then be made by focussing on areas where there is a convergence of interests, even when the overall interests between the parties diverge significantly.

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