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**Mechanisms for cooperation, consultation, clarification and dispute settlement:
possible lessons from the Joint Comprehensive Plan of Action for a Middle East
zone free of nuclear weapons and other weapons of mass destruction**

Mechanisms for cooperation, consultation, clarification and dispute settlement are an integral part of many multilateral international instruments, including with regard to the non-proliferation of weapons of mass destruction (for example, the Comprehensive Nuclear-Test-Ban Treaty or the Chemical Weapons Convention). The treaties establishing all the existing nuclear-weapon-free zones in populated parts of the world – Latin America and the Caribbean (Treaty of Tlatelolco), the South Pacific (Treaty of Rarotonga), South-East Asia (Treaty of Bangkok), Africa (Treaty of Pelindaba) and Central Asia – contain provisions on consultation, clarification and dispute settlement. In most cases, these treaties provide for so-called “collective” dispute settlement, with the possibility of referral to appropriate bodies (such as the United Nations Security Council, the International Atomic Energy Agency (IAEA) or the International Court of Justice, depending on the treaty in question). Thus, it is reasonable to assume, in relation to the potential establishment of a Middle East zone free of nuclear weapons and other weapons of mass destruction, that the elaboration of a treaty in that regard would entail the development of such a mechanism.

The example that will be discussed in the present working paper is the Joint Comprehensive Plan of Action aimed at resolving the situation concerning the Iranian nuclear programme, which was agreed by the United Kingdom of Great Britain and Northern Ireland, Germany, the People’s Republic of China, the Russian Federation, the United States of America, France and Iran, with the participation of the High Representative of the European Union for Foreign Affairs and Security Policy, and reinforced by Security Council resolution [2231 \(2015\)](#).

It should be noted first and foremost that the Joint Comprehensive Plan of Action remains an agreement that was conceived and designed solely for one specific situation. At the same time, we can certainly use the experience gained when considering similar mechanisms. Given that the Russian Federation is one of the participants in the Joint Comprehensive Plan of Action and actively participated in



the negotiation process for it, we wanted to make use of our institutional memory and share some basic principles, considerations and recommendations on consultations, clarifications and dispute settlement that could be useful in the context of a possible treaty on a zone free of weapons of mass destruction.

There is clearly no unequivocal answer to the question of the extent to which the relevant mechanisms under the Joint Comprehensive Plan of Action are applicable to a possible treaty on a zone free of weapons of mass destruction, or whether they are applicable at all. Any dispute settlement mechanism must derive from the specific parameters and terms of a multilateral agreement (in this case, the treaty establishing the zone) and from the obligations of the States Parties. Such a mechanism is always derived from the nature of the agreement itself. At the same time, dispute settlement is one of the most difficult elements of any treaty, most often because of the deep distrust between the Parties to the agreement. Thus, an analysis of the substance of the relevant mechanisms prescribed in the Joint Comprehensive Plan of Action and the experience relating to their development may well be of interest.

1. At this stage, it is not clear whether, if a treaty on a zone free of weapons of mass destruction were elaborated, an appropriate organization would be established to verify and monitor the compliance of States Parties with their obligations. In the various existing nuclear-weapon-free zones, different approaches to this issue are taken. Separate structures were established under the Treaty of Tlatelolco (Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean), the Treaty of Pelindaba (African Commission on Nuclear Energy) and the Treaty of Bangkok (Commission for the South-East Asia Nuclear-Weapon-Free Zone). Under the Treaty of Rarotonga, the functions in question are assigned to an existing organization, the Pacific Islands Forum. The Treaty on a Nuclear-Weapon-Free Zone in Central Asia does not provide for the establishment of any structure: the States Parties rely solely on the implementation of safeguards agreements with IAEA and the additional protocols thereto.

In the case of the Joint Comprehensive Plan of Action, such functions are performed by the Joint Commission in accordance with the provisions of the Plan of Action; the Joint Commission is entrusted with the consideration of all issues arising from the implementation of the Plan of Action. The Joint Commission consists of the States participating in the Joint Comprehensive Plan of Action and the High Representative of the European Union for Foreign Affairs and Security Policy, as coordinator. The main functions of the Joint Commission are described in annex IV to the Joint Comprehensive Plan of Action.

The Joint Commission under the Joint Comprehensive Plan of Action may meet at different levels, from the expert level to the level of Ministers for Foreign Affairs. The Joint Commission shall meet quarterly or at the request of any participant. Decisions of the Joint Commission are taken by consensus. Working groups may be established as necessary. During the period of full implementation of the Joint Comprehensive Plan of Action, before the United States unlawfully withdrew from it in 2018, the Joint Commission had working groups on nuclear issues, on the lifting of sanctions, and on the implementation of the project to modernize the Arak heavy-water reactor. There is also the Procurement Working Group, whose mandate is to consider applications from States wishing to participate in the supply of certain categories of goods, technologies and/or associated services and/or to authorize their transfer to Iran. The Joint Commission may also invite observers (such as representatives of IAEA) to attend its meetings.

When the Joint Comprehensive Plan of Action was fully functioning (before the United States withdrew), the Joint Commission format was shown to be effective in resolving issues relating to the practical implementation of the Plan of Action. For

example, Iran was able to raise with the Joint Commission the issue of difficulties or inconsistencies that were arising in the lifting of sanctions or that were adversely affecting trade relations with Iran. The Joint Commission reviewed the issue, and the party involved took steps to rectify the situation. The same was true for nuclear-related issues that arose.

What, then, are the practical advantages of this format? Unlike with international/regional organizations, the establishment of a structure such as the Joint Commission provides some political flexibility not only for dealing with routine cooperation issues but also for settling disputes. The Joint Commission proved to be an inclusive yet results-oriented format: the Commission itself managed its own procedures. Returning to the question of applicability in the context of the possible establishment of a zone, depending on the parameters of the zone, the format could be made even more flexible, for example by rotating the chairship, or through other measures that would better reflect the arrangements and distinctive features of a particular zone.

2. As mentioned above, the Joint Commission under the Joint Comprehensive Plan of Action is also empowered to settle disputes between the participants. For those purposes, the Plan of Action contains another key element for consultation, clarification and dispute settlement: the dispute settlement mechanism. The dispute settlement mechanism is described in paragraphs 36 and 37 of the Joint Comprehensive Plan of Action:

36. If Iran believed that any or all of the E3/EU+3 were not meeting their commitments under this JCPOA, Iran could refer the issue to the Joint Commission for resolution; similarly, if any of the E3/EU+3 believed that Iran was not meeting its commitments under this JCPOA, any of the E3/EU+3 could do the same. The Joint Commission would have 15 days to resolve the issue, unless the time period was extended by consensus. After Joint Commission consideration, any participant could refer the issue to Ministers of Foreign Affairs, if it believed the compliance issue had not been resolved. Ministers would have 15 days to resolve the issue, unless the time period was extended by consensus. After Joint Commission consideration – in parallel with (or in lieu of) review at the Ministerial level – either the complaining participant or the participant whose performance is in question could request that the issue be considered by an Advisory Board, which would consist of three members (one each appointed by the participants in the dispute and a third independent member). The Advisory Board should provide a non-binding opinion on the compliance issue within 15 days. If, after this 30-day process the issue is not resolved, the Joint Commission would consider the opinion of the Advisory Board for no more than 5 days in order to resolve the issue. If the issue still has not been resolved to the satisfaction of the complaining participant, and if the complaining participant deems the issue to constitute significant non-performance, then that participant could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part and/or notify the UN Security Council that it believes the issue constitutes significant non-performance.
37. Upon receipt of the notification from the complaining participant, as described above, including a description of the good-faith efforts the participant made to exhaust the dispute resolution process specified

in this JCPOA, the UN Security Council, in accordance with its procedures, shall vote on a resolution to continue the sanctions lifting. If the resolution described above has not been adopted within 30 days of the notification, then the provisions of the old UN Security Council resolutions would be re-imposed, unless the UN Security Council decides otherwise. In such event, these provisions would not apply with retroactive effect to contracts signed between any party and Iran or Iranian individuals and entities prior to the date of application, provided that the activities contemplated under and execution of such contracts are consistent with this JCPOA and the previous and current UN Security Council resolutions. The UN Security Council, expressing its intention to prevent the reapplication of the provisions if the issue giving rise to the notification is resolved within this period, intends to take into account the views of the States involved in the issue and any opinion on the issue of the Advisory Board. Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part.

During the negotiations on the Joint Comprehensive Plan of Action, the most difficult element of the dispute settlement mechanism was how to structure the process itself. Given the deep distrust between the Plan of Action participants, the negotiators deliberately designed the Plan of Action with as many different stages as possible. The calculation was that the inclusion of such an extensive set of steps to be taken by the complaining party could reduce the risk that every dispute would culminate in measures leading to a reduction in countries' compliance with their obligations. The complex process described in paragraphs 36 and 37 of the Joint Comprehensive Plan of Action is intended to reduce tensions concerning the subject matter of the dispute during the dispute settlement process. During that process, the strength of feeling of the complaining party can be significantly reduced, and there are a range of opportunities to resolve problematic issues.

That is, by formulating the dispute settlement mechanism thus, the creators of the Joint Comprehensive Plan of Action sought to elaborate an agreement that would last as long as possible, regardless of the disputes that arose. This was done in order to maintain the sustainability of the Plan of Action, thus preventing a situation in which disputes that arose would lead to the destruction of the agreement from within. That would have remained the case if the United States had not withdrawn from the Plan of Action in 2018.

3. Unfortunately, the state of the Joint Comprehensive Plan of Action following the withdrawal of the United States inevitably raises the question of the validity of the Plan of Action and of the entire architecture that was constructed pursuant to it. The last time the Joint Commission convened was in 2022, during the Vienna negotiations to restore the Plan of Action, which, unfortunately, were unsuccessful.

Nevertheless, it is important to bear in mind the fact that any multilateral agreement is effective and sustainable as long as all the Parties to it have the political will to adhere to it and to remain within the aforementioned multilateral format with the rest of the participants. Thus, this is a question not for the Joint Comprehensive Plan of Action, but for the participant that left it. While it was fully functioning, the Plan of Action proved to be the only viable way to resolve all existing issues regarding the Iranian nuclear programme. Moreover, it also served as a working and effective channel of communication between the participants. To this day, no alternative has

been proposed by anyone. In that regard, the experience relating to the Plan of Action, be it the basic principles on which it is based or issues relating to the substantive content of its provisions, can be taken up for consideration in relation to future multilateral arrangements, including a possible Middle East zone free of weapons of mass destruction.
