

Option WTO to Assist Nuclear Nonproliferation - With Minuses and Pluses

Written by Ece Aksop

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Let me be clear from the beginning: In this paper, I will argue that proliferation as an international issue can change the basket and move itself from the security to the non-security sphere. As such, I argue, de-securitization (Buzan et al 1998) as well as normalization can be achieved. The shift of baskets will take place between the domains of security and commerce, the United Nations (UN) representing the former and the World Trade Organization (WTO) the latter.

Before elaborating on the argument, I will make three assumptions.

The Joint Comprehensive Plan of Action (JCPOA) was a historic deal which indicated that the quest for nuclear weapons is not one-way, it is not obligatory to proliferate and is possible to achieve (at least the talk of) nonproliferation. Hence comes the first assumption that as all the P5+1 but the US are still committed to the word and spirit of the JCPOA (EEAS 2018), the JCPOA is still alive. Second assumption is that despite President Trump proved to be a man of his words by withdrawing from the JCPOA, a similar withdrawal of the US from international organizations like the WTO is not at sight.[1] To add more spice, the last but most important assumption embraced here is the Waltzian approach to International Relations, which provides a theoretical framework that enables us to live with the nukes both of Nonproliferation Treaty (NPT) nuclear weapon states and others like India, Pakistan, North Korea, etc (Waltz 1981). Therefore, this paper will provide novel ways and means of normalizing relations with a country that is recently added to the nuclear club like North Korea or agreed to stop its quest for nuclear weapons like Iran, instead of achieving nuclear disarmament.

As Pyongyang has not applied for membership, and as keeping the JCPOA alive through further engagement with Tehran is important as it will set a precedent, Iran will be our case-study. The choice of institutions also is not coincidental. The UN, without doubt, amounts to the security elite of the international sphere, while securitization is handled by the Security Council Resolutions. The Resolutions not only define the security issue but also bring countermeasures like controlling exports of certain sensitive items to sanctioned country. The WTO, on the other hand, is working for setting liberalization as a global trade rule. This paper will open up new avenues for the WTO to prove relevant in a world of increasing protectionism, and be more an international forum for overtly political issues like export controls. This will open up a new avenue in a world where reform of the UN is widely discussed but reforming the way we approach to international issues goes underrated. Hence, the approach offered here not only links soft and hard issues, but also gives a brand new role as well as an increased presence at the international fora to the WTO in global peace.

Membership to the WTO

The WTO has two types of members. The first ones are the “original members,” the signatories of the GATT as well as those that became members before March 1997. The countries that are not the “original members” of the WTO can become parties to the Organization through a long process of negotiations. Known as the accession

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negotiations, the process covers bilateral and multilateral negotiations in which the candidate country makes its trade-related legislation as well as policies transparent, and engages in a series of bargaining on tariff levels.

Asymmetric Nature of Negotiations

Marrakesh Agreement Art. XII regulates the accession process. It is a very brief Article and unfortunately “gives no guidance on the ‘terms to be agreed’ which is left to the negotiations between the members and the acceding country” (UNESCAP 2001, 7). The lack of clear procedural guidance results in pullings and haulings during the negotiation period, and as the WTO is a consensus-based organization, bilateral negotiations determine the fate of the whole accession process. Any mutual problem can slow down if not block the whole process easily.

While the consensus principle that gives each and every single member the power to block the whole process, the most-favored-nation (MFN) rule also creates asymmetry between the members and the acceding countries.

That is to say, in order to become a member, the acceding country has to solve all its problems on bilateral basis, and pay the price of the solution not only to its negotiating partner but also to all WTO members. Critics take this reality one step further, and argue that the consensus principle creates a system that is structurally biased against the acceding country, because “any unresolved issue between an applicant and a single member can result in a deadlock ... As a consequence, a remarkable outcome that emerges out of this process is that bilateral agreements during accession negotiations may take over multilateral trading rules and procedures” (Grynberg et al 2006, 4).

WTO-Plus and –Minus Commitments

The WTO is a “take it or leave it” type of a monolithic package. It is called as the “single undertaking,” neither members nor acceding countries have the option of “GATT *a la carte*” since the conclusion of the Uruguay Round. In this sense, acceding countries know their rights and obligations beforehand. However, critics argue that the vagueness of the whole process “have resulted in the proliferation of ‘WTO-plus’ and ‘WTO-minus’ demands by members pressing applicant countries for commitments beyond the requirements of the WTO agreements” (Ibid).

Highlighting the fact that the WTO members offer nothing but membership in return, critics claim that the whole process is flawed and “acceding countries may feel a lack of ownership of the reforms they have committed to undertake” (Ibid, x). They also maintain that while formal rules of accession remained the same since 1947, the actual practice has changed in time. “What was for many developing countries and transition economies little more than the formal transmittal of bound tariff rates in the pre-1995 era has now become a procedure whereby WTO members in general, and the Quad in particular [the US, the EU, Japan and Canada], use their unique negotiation position by virtue of inherent flaws of the accession process, to win ever greater concessions from acceding countries, irrespective of their size and economic significance, in the course of their accession to the WTO” (Ibid, 4).

A general example for a WTO-plus commitment is the push for privatization of state trading enterprises. Under the GATT 1994, there is no such requirement, yet major developed countries press for privatization as well as for a commitment to report periodically to the Working Party.

If privatization is a WTO-plus demand, an example for a WTO-minus demand can be deprivation of acceding countries from the special and differential treatment. For instance, “acceding countries have not been allowed to use the ‘tariffication method’ for the existing quantitative restrictions in agriculture or to use special safeguard provisions for the same sector” (Ibid, 5). Another example comes from CIS countries, some of which applied for the developing country status on the way to acceding to the WTO. Aim was to relieve the obligations regarding the liberalization of the agriculture sector. None was granted; yet only Kyrgyzstan was allowed to use input and investment subsidies, i.e. despite not being recognized as a developing country, it was allowed to use measures available only for developing countries (Roberts and Wehrheim 2001, 319). I will elaborate on how the WTO-plus and –minus commitments can be used to ensure Iran’s accession protocol serves for nonproliferation purposes further below.

Iran’s Accession Adventure

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Regardless the flaws in the procedure, there are currently 22 states (plus Holy See) that want to benefit from the fruits of the WTO system. The Speedy Gonzales ever in the negotiation process is Kyrgyzstan with two years, whereas the Algerian accession negotiations have been continuing since 1987. Looking from this perspective, Iranian adventure seems to have taken an average amount of time – up to now, at least.

Iran applied to the WTO in 1996. Its Working Party was established roughly a decade later, in 2005. Since then, as there is no chairperson appointed, the Working Group could not have gathered for an official meeting. Despite that, Iran submitted its memorandum in 2009, and an exchange of questions took place in 2011 (WTO 2018), but this does not remove the fact that Iranian accession negotiations are under the heavy influence of politics.

Sui Generis Nature of Iranian Accession: Role of Politics

Before moving on to the accession negotiations, let's pause a little here and make a short historical trip on Iranian nuclear quest.

Iran first encountered the nuclear technology during the Cold War. The US begun planting the seeds of the nuclear program back in 1957 as “[t]he shah emerged as an important American ally in the Persian Gulf” (Samore 2005, 8). A year after, Iran became a party to the International Atomic Energy Agency (IAEA). In the following decade, it also became party to the Nuclear Nonproliferation Treaty (NPT) and declared its desire to have nuclear reactors. In 1970s, the US supported Iran in developing non-oil energy bases, even to a degree that just in the year before the Revolution, US-Iran Nuclear Energy Agreement was signed. “Had the bilateral agreement put into effect it would have resulted in wide-ranging nuclear assistance from the US to Iran” (Pirseyedi 2012, 116).

At that time Iran managed to complete six nuclear reactors, of course with intensive assistance not only from the US but also the Europeans, namely, Germany, France and Belgium. Soon before the Revolution, the nuclear program began to lose its pace. The Shah government suspended negotiations with the West Germany and the US, and limited its reactor purchases from Kraftwerk Union (Siemens) for Bushehr, and one other from Fromatome for Darkhvin (Ibid). The cooperative spirit abandoned the nuclear discourse following the Islamic Revolution in 1979.

Following the Revolution, the new leadership revised all the policies of the Shah era, including the nuclear ones. The deals for two units of reactors were cancelled; additionally Iran announced that it “would not purchase enriched uranium from ... Eurodif... of which the Shah had acquired a ten per cent share in 1974 by lending \$1 billion to the French-led consortium” (Ibid). All these steps turned into conflicts as Iran demanded full refunding and France declared in the early 1980s that it would not repay Iran. Similarly, when Iran tried to get its money back from Germany and demanded 2.1 billion DM; the firm in turn sought for 1.8 billion DM bill of the machinery produced but never delivered because of the suspension of the agreements (NTI 2018, 388). The firm neither paid the money back, nor finished construction, or delivered the already-purchased machineries (Sahimi 2004).

In addition to the efforts to erase Shah's legacy, Iran-Iraq War (1980-1988) also played an important role in defining Iranian policies towards armament. That is to say, it was not only a pure criticism of Shah's efforts to strengthen and modernize Iranian armed forces for amounting to a huge waste of national wealth (Pirseyedi 2012, 32, 34), but also the inability to win over Iraq during a period of eight years that shaped Iranian policies in the post-Revolutionary years. Especially the use of chemical weapons by Iraqis made Iranians seek for an effective international arms control policies. The new state ideology also assisted this policy as Islam would not approve mass destruction.

Despite some like Bobi Pirseyedi (2012) argue that arms control was a tool for remedying military weakness, some others like Michael Eisenstadt argue just the opposite by stating that the inability to win over Iraq traumatized Iran and in 1989, it started a modernization project with regard to its armed forces. However, not only the small size of Iran's land forces or its inability in replacing combat losses, but also its relative naval inferiority with regards to the US and the arms embargoes made it impossible for Iran to afford a conventional war. In addition to these factors, there was also the given target of undermining US dominance in the Gulf (Eisenstadt 1996, 3, 35). Thus, for Iran, acquiring non-conventional weapons climbed up to the top of the agenda.

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Officially, Iran so far has neither tacitly nor overtly declared to pursue a nuclear weapon program. The official rhetoric always focused on the need for electricity. Looking through Iranian prism, increasing population meant increasing electricity demands. Simply because “a barrel of oil is too precious... to be used for generating electricity” (Sahimi 2003), the search for nuclear energy was justified. However, following the disclosure of Iranian quest in 2002, the Western response to the Iranian claims for peaceful nuclear energy was based on the fact that Iran is the second largest natural gas reserve owner, hence the quest was alleged to be not for electricity but for weapons.

Besides being an international issue, the Iranian quest for nuclears has multiple other dimensions: Domestically, the very fact that the program has been on the agenda for nearly half a century shows the administrative dedication. Politically, the US engagement in the region makes Iran feel encircled by the US which enjoys a presence in Afghanistan and Iraq, and holds military bases in Turkey, Saudi Arabia and Oman. Having six of the existing –at least- eight nuclear powers closeby,[2] the Iranian sense of insecurity is understandable (Wallerstein 2004). Strategically, the increasing gap between the haves and have-nots adds fuel to the imbalance and insecurity in the region; and “[p]art of the problem in ... nuclear disarmament is that international community has, as yet, developed no alternative to a reliance on nuclear deterrence” (el-Baradei 2005). But logically, in a region where nuclear doctrines related with “non-resort” and “not military but diplomatic weapon” notions are absent, proliferation may actually be another headache.

In this respect, the JCPOA, signed in 2015 and went into effect on the Implementation Day of 16 January 2016 was a very important step. The Plan had a precise calendar for Iran and the others to take certain steps and remove certain sanctions. Moreover, it is not a deal between governments; the JCPOA has been endorsed an international legal document via UNSCR 2231 of 20 July 2015. Secretary General of the UN Antonio Guterres in his fifth report to the Security Council on JCPOA noted that “The Council further called upon all Members States, regional organizations and international organizations to support its implementation and to refrain from actions that undermine the implementation of commitments under the Plan. In this regard, it is important that the withdrawal of one country not impede the ability of others to fully implement their commitments under the Plan or to engage in activities consistent with resolution 2231 (2015) and the provisions and objectives of the Plan” (UNSC 2018).

In such a tense context, it may be timely to change our perceptions and look at the issue from a different dimension. As such, just as Iran’s nuclear quest was shifted from the IAEA basket to the UN in back 2006, it can shift from the UN basket to the WTO for purposes of preventing further alienation of Iran via achieving economic engagement.

Allure d’Escargot: History of Iranian Accession Negotiations

As stated above, negotiations is a long and hard process heading to membership. For Iran, only the formation of the Working Party took nine years and 81 meetings of the General Council. Considering that accession itself takes a total of 20 meetings in average, and usually the request for establishment of the Working Party does not take more than a few months, it is safe to state that Iran made a slow-paced start.

Iran applied for WTO membership in 1996, and a working party was established in 2005. Working Group has not convened yet; however, Iran submitted its accession memorandum on 29 November 2009, and an exchange of questions and replies took place only on 8 December 2011 (WTO 2018).

As mentioned above, the accession process is actually member-driven. Because of the consensus rule, each and every single member can block the negotiations, ask for more concessions, and in the end, decline the request for membership. This gives an absolute disadvantage to the acceding countries because the negotiations does not start on equal footing.

In addition to this inherent imbalance, the *sui generis* nature of the Iranian accession complicates things even further. Iranian accession negotiations are heavily influenced by political environment; hence economic give-and-take type of solution does not seem to be enough for neither party which is concerned with Iran’s accession to the WTO – this goes especially for the US.

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The impact of the 1979 Revolution and the Hostage Crisis is also seen overtly when one compares the progress in the accession processes of some other countries. As observed, “ ‘[i]n contrast with Iran and Syria, the General Council approved requests from Afghanistan and Iraq to begin negotiations to join the WTO’ [despite the fact that the widespread presence of violence in these two countries undermines the rule of law needed for the membership to mean anything in practice]” (Ibid). There, indeed, is not much to be said following this observation.

In addition to the politics-laden nature of accessions, Iran has long carried the psychological baggage of MFN principles. That is to say, when the US became Iran’s main trading partner by exporting food, arms, and other war time items for a brief period during World War 2, it wanted to introduce the MFN principle to the bilateral trade. However, Iran, having already given generous concessions to Russians with the Turkmencai Treaty, refused as it perceived MFN as a variation of capitulations (Alavi 2010).

Politics and psychology aside, there seems no reason for Iran not to be a part of the WTO. That is valid even when we consider the sensitive world of export controls. In the end, North Korea has been under sanctions for decades and is the most isolated country on the earth, yet gained the nuclear capability, which makes me conclude that an isolated Iran can well keep searching for a nuclear capability. Indeed, history shows many examples when Iranians sat and remained on the table solely for purposes of buying time. One sample is delivered by Rowhani himself who said “that the concessions which Iran *appeared* to make when it agreed to suspend particular activities actually cost the country nothing ... because the activities ... suspended were those that Iran’s nuclear technologists were not ready to pursue ... [and] during that period [of suspension] we could concentrate all of our efforts and energy on other activities ... The day when Natanz was suspended, we put all our effort into Esfahan. Now that Esfahan is in suspension, we are fixing other existing flaws” (Mohammedi 2005, 11). Therefore, as isolation does not provide a way away from a downward spiral, engagement seems to be the only viable alternative for normalization of relations with Iran.

Argument for engagement here derives from the fact that any country that is marginalized and left outside of the system will have motivations to nurture security concerns, and will ratchet its nuclear capabilities, making it difficult to achieve the goals of nonproliferation (example being North Korea). As a novel approach to nuclear proliferation, I argue that the WTO, as being the only international organization to set and regulate global trade, can be used for engaging Iran. In doing so, the members will offer MFN-based market access to Iran, hence provide export revenues while regulating trade with Iran through globally accepted set of rules. Moreover, as negotiations are member-driven and tailor-made for each acceding country, accession protocol of Iran can contain WTO-plus or -minus commitments.

For example, a WTO-plus concession can result in Iran accepting (i) to be subject to future UN-imposed sanctions implemented by the WTO *without* carrying them to a panel under the Dispute Settlement Unit, and (ii) to agree with unilateral inspections by a determined international organization or by the exporting country itself. A WTO-minus concession can be Iran agreeing not to sue for export control regimes of member countries for a transitional period (as a full waiver will run against the word and spirit of the GATT) and in return getting a full list of controlled items without any “catch-all” phrase — hence it can get predictability: a fixed or periodically reviewed list provides more transparency than discretion-based “catch-all” systems. Therefore, the WTO can be used as a tool to engage with Iran and prevent further isolation of the country, hence, can well assist the nonproliferation process.

Conclusion

This paper emanates from the idea that as globalization makes political borders more and more porous, it also makes political issues more and more connected. Nonetheless, while the academics are pushing for more interdisciplinarity in research and in analysis, there is still a tendency to solve security problems with hard measures. As soft power is a useful tool, I argue, soft measures can also be beneficial in introducing solutions for hard issues like nuclear proliferation.

The case this paper focused on was Iran and its hypothetical entry to the WTO. The claim was that accession is not a “purely technical” issue. Therefore, the accession negotiations can be used for political purposes like preventing marginalization of Iran via managing economic engagement. Given the developments like the US withdrawal from the

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JCPOA, engagement may not only be timely but also an appropriate tool in preventing history repeat itself and Iran follow the footsteps of North Korea.

The research here indicates that it is possible to use WTO accession procedure to extract a variety of concessions from acceding countries. In a hypothetical Iranian accession, I argued, it is possible to take Iran agreeing to be subject to future UN-imposed sanctions implemented by the WTO members *without* carrying them to a panel, and to agree with inspections conducted by a specialized international organization or by the exporting country itself as a WTO-plus concession. In contrast, a WTO-minus concession can be Iran agreeing not to look for absolute free trade to curb existing export control measures, and respect the Security Exceptions provided under GATT for each individual member country. As such, I maintain that a hard question like proliferation will be (assisted to be) settled in a soft environment, and that de-securitization is possible so long as we are ready to shift our approach to nuclear issues.

Notes

[1] In my opinion, the former was a promise made during election campaign and promises given are to be delivered; the latter, on the other hand, is more an outburst which looks like a reaction to the US failure to win the disputes at the WTO.

[2] These countries are China, India, Israel, Russia and Pakistan bordering Iran, and the USA; being in Iraq and Afghanistan. The other two states of the nuclear club are France and the UK.

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About the author:

Ece Aksop is a PhD candidate at Area Studies of the Middle East Technical University, Ankara Turkey. She graduated from IEP Paris Law School with summa cum laude degree, and recently completed an internship at NATO.