

THE 2020 NPT REVIEW CONFERENCE

PREPARE FOR PLAN B



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LIST OF ACRONYMS AND ABBREVIATIONS

CTBT	Comprehensive Test Ban Treaty
IAEA	International Atomic Energy Agency
INF	Intermediate-Range Nuclear Forces Treaty
JCPOA	Joint Comprehensive Plan of Action
MC	Main Committee of the NPT
New START	Treaty on Measures for the Further Reduction and Limitation of Strategic Offensive Arms
NPT	Nuclear Non-proliferation Treaty
NNWS	NPT non-nuclear-weapon State(s)
NWS	NPT nuclear-weapon State(s)
ODA	United Nations Office for Disarmament Affairs
PrepCom	Preparatory Conference
RevCon	Review Conference
TPNW	Treaty on the Prohibition of Nuclear Weapons
WMD	weapons of mass destruction

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1. INTRODUCTION

At the April–May 2020 Non-Proliferation Treaty (NPT) Review Conference (RevCon), NPT parties can be expected to seek a comprehensive final document approved by consensus that reviews the operation of the Treaty and sets forth recommendations for follow-on actions. The parties sought such a consensus outcome at all previous RevCons, which were held at five-year intervals, but achieved it at only four of the nine previous conferences.¹ Agreement on a consensus final document has been widely seen as the litmus test of a successful RevCon and an indication of a healthy NPT regime, whereas the inability to arrive at a consensus document has been portrayed as a conference failure and a warning sign of an NPT under stress.

The 2020 RevCon will take place in a challenging international security environment—with the reemergence of great power rivalries and the bleak outlook for further steps toward nuclear disarmament, at least in the near term. Given growing concerns about the future of the global nonproliferation regime—and the symbolic importance of the 2020 RevCon, which commemorates the 50th anniversary of the NPT’s entry into force—the costs of another failure (or perceived failure) at the upcoming conference could be high. But many observers view the probability of arriving at a consensus final document this year as low. In the event that a consensus document does not prove achievable, therefore, the parties should be prepared to pursue a ‘Plan B’—a positive conference outcome that includes both consensus and non-consensus elements in the final document and reaffirms the indispensable role of a strong and durable NPT in promoting non-proliferation, disarmament, and the peaceful uses of nuclear energy.

¹ Comprehensive, consensus final documents were achieved at the 1975, 1985, 2000, and 2010 RevCons, and were not achieved in 1980, 1990, 1995, 2005, and 2015. However, at the 1995 Review and Extension Conference, despite the failure to reach consensus on a comprehensive final document, the parties were able to agree on a package of decisions covering the principles and objectives of nuclear non-proliferation and disarmament, the strengthening of the NPT review process, the establishment of a zone free of all weapons of mass destruction in the Middle East, and, most importantly, the indefinite extension of the NPT.

2. A CONSENSUS FINAL DOCUMENT—HOW VALUABLE?

Adoption of a RevCon final document by consensus can have considerable value. It can demonstrate a shared interest by the NPT's diverse membership in promoting the success of the Treaty. It can provide authoritative interpretations of the Treaty's provisions, which was especially important in the early years to assist parties in implementing the Treaty. It can give impetus to proposals for advancing the goals of the non-proliferation regime and increase the likelihood that, in the wake of a RevCon, such proposals will be followed up and put into practice. And at least in theory, the requirement for consensus can provide an incentive for RevCon participants to reach substantive compromises for the sake of a successful conference outcome.

But experience with Review Conferences over close to a half century suggests that the value of producing a comprehensive final document by consensus is not as great as is often assumed. Agreed formulations in consensus texts are frequently arrived at not through genuine substantive compromise but through the negotiation of watered-down, least common denominator language that papers over unresolved differences but does nothing to promote real progress. Moreover, a consensus final document may overstate actual support for particular findings or recommendations. Some delegations may oppose elements in a consensus document but, rather than face criticism for blocking a consensus, will join the consensus cynically, knowing that they can later ignore those elements with impunity.

A critical reason why a consensus final document may not lead to follow-up action is that RevCon recommendations are not self-implementing. It is not the RevCons themselves that operationalize and implement the recommendations they make but specialized international bodies (e.g. the International Atomic Energy Agency and its Board of Governors, the Nuclear Suppliers Group, the Conference on Disarmament, the Security Council), particular groups of States (e.g. the United States and the Russian Federation, States whose ratification is required for entry into force of the Comprehensive Test Ban Treaty), and national policymaking authorities (both executive and legislative). And the likelihood that such organizations or other actors responsible for follow-up will put RevCon recommendations into practice has little to do with whether they were contained in a Review Conference final document and more to do with the international and domestic circumstances prevailing at the time.

A related reason why recommendations in consensus documents may not be implemented is that NPT parties do not have a common understanding of the legal status of such RevCon recommendations. Many parties view recommendations contained in RevCon final documents adopted by consensus, including in consensus documents from past RevCons, as binding on NPT parties—if not binding in a strict international legal sense (although some argue that they are legally binding), then at least binding as a solemn political commitment that should continue to guide the behaviour of States Parties despite any changes in national governments or policies or international circumstances. However, some other NPT members, including the United States and probably others reluctant to articulate a position believed to be unpopular in NPT circles, do not regard consensus recommendations as binding—certainly not legally binding, but also not politically binding on their behaviour indefinitely, especially in the event of changes in national governments or policies or international circumstances.

For the United States and some others, RevCon consensus recommendations are important expressions of the then-current political will of NPT parties, indicating the priority they collectively attach to pursuing certain objectives and actions. They are political commitments that should be entered into in good faith, with every intention of promoting conscientious follow-up in the wake of the RevCon. They help set the international agenda on NPT-related issues, at least for the near term. But according to this view, they are commitments undertaken at a particular point in time and under particular circumstances. They are subject to change and should not be expected to guide behaviour indefinitely. It is up to each Review Conference to consider and hopefully agree on priorities and recommendations for the period ahead—drawing on and presumably renewing some key recommendations adopted in the past, but without necessarily being bound by them.

So, for a variety of reasons, adoption of RevCon final documents by consensus does not guarantee progress in promoting NPT goals. And conversely, the inability to achieve a consensus final document at supposedly ‘failed’ Review Conferences has not prevented significant advances in non-proliferation from being made.

Proposals discussed and widely supported at Review Conferences at which no final document was reached have later become significant elements of the global non-proliferation regime. Recommendations made at RevCons sometimes achieved a consensus in one of the RevCon’s Main Committees but, under the ‘nothing is agreed until everything is agreed’ rule, received no formal recognition when efforts to agree on a RevCon final document collapsed. Still, several such recommendations eventually made important contributions.

Take the ‘failed’ 1990 RevCon, which could not agree on a final document. A proposal made at the conference called on the International Atomic Energy Agency (IAEA) to consider new safeguards approaches, including randomized inspections, and later led to the development of the IAEA Model Additional Protocol. Similarly, in the wake of the 1986 Chernobyl disaster, the 1990 RevCon was the first to focus heavily on nuclear safety, which eventually led to the 1994 Convention on Nuclear Safety.² And in 1990, Main Committee II called on all nuclear exporting States, as a condition of nuclear supply, to jointly require full-scope safeguards in non-nuclear weapon States not party to the NPT—a recommendation that was adopted in 1992 by the Nuclear Suppliers Group.³

In addition, the belief that the requirement for consensus provides a powerful incentive for RevCon participants to reach substantive compromises is not borne out by experience at previous conferences. Some parties, especially among the non-aligned, seem to have assumed that the nuclear weapon States (NWS) would make concessions on nuclear disarmament that they would not otherwise make in order to have a consensus final document. But the NWS have not compromised what they consider to be their national security interests for the sake of a harmonious conference outcome. Nor have NPT parties, both NWS and non-nuclear weapon States (NNWS), been prepared on other matters

² Robert Einhorn, “The NPT Review Process: The Need for a More Productive Approach”, *Arms Control Today*, September 2016, <https://www.armscontrol.org/act/2016-09/features/npt-review-process-need-more-productive-approach>.

³ Carlton Stoiber, “The Evolution of NPT Review Conference Final Documents, 1975–2000”, *The Nonproliferation Review*, Fall–Winter 2003, p. 135.

to compromise what they considered to be their core interests to achieve a consensus.

It might have been different if the States urged to make such compromises had regarded a failed Review Conference (i.e. one without a consensus final document) as costly to their interests. But the costs to them of a failed conference have been viewed as small and easily tolerable—much more tolerable than making difficult concessions. And while many NPT parties may believe that the stakes for the non-proliferation regime this year are higher and the costs of failure greater, they are still likely to give priority to protecting what they see as their core interests.

3. THE OPPORTUNITY COSTS OF INSISTING ON CONSENSUS AS THE ONLY CONFERENCE OUTCOME

It is not just that the benefits of a consensus final document are not as great as is often assumed. It is also that the opportunity costs of insisting on such an outcome are substantial.

With nothing agreed until everything is agreed, the time and energy of Review Conferences tend to be devoted inordinately to finding generally acceptable language on a handful of the most contentious issues. Countless hours of these four-week conferences are spent in private, closed-door drafting sessions trying, often without success, to hammer out agreed, even if substantively weak, formulations. Of course, Review Conference participants should make strenuous efforts to arrive at agreed conclusions and recommendations that advance the NPT's goals. But spending the lion's share of conference time seeking to resolve—or simply paper over—unresolvable differences does not serve the Treaty's goals.

Moreover, round-the-clock, ultimately unrewarding drafting sessions that result in no agreement or meaningless agreements consume valuable time that could usefully be devoted to more productive conference activities, including assessing the impact of current international and technological developments on the global non-proliferation regime and engaging in detailed discussions of proposals, especially new initiatives, for strengthening it.

4. SEEKING A COMPREHENSIVE FINAL DOCUMENT

At all previous Review Conferences, the parties have sought to cover almost every conceivable NPT-related issue in the final document. This comprehensive coverage has obviously increased the difficulty of achieving a final document by consensus. Moreover, past efforts have not only sought to address such a wide range of issues; they have also sought to incorporate consensus formulations from virtually all previous final documents. It is understandable that NPT parties would want to record developments affecting all aspects of the non-proliferation regime and that they might also wish to recall findings and recommendations from previous Review Conferences. But this practice has resulted in documents of extraordinary length and complexity.

The final document of the 2010 RevCon, the last one to achieve a consensus, ran close to 50 pages.⁴ While such a document may be of value to cognoscenti in the non-proliferation community, it is unintelligible to the public and even to government officials outside the non-proliferation community. It is also indecipherable to news reporters, who cannot figure out what is new or important and are therefore at the mercy of government briefers to decode conference results for them. It is instructive to contrast the comprehensive final document from the 2010 RevCon with the user-friendly package of decisions from the 1995 NPT Review and Extension Conference, which came in at roughly 10 pages.⁵

⁴ https://www.nonproliferation.org/wp-content/uploads/2015/04/2010_fd_part_i.pdf.

⁵ <https://www.un.org/disarmament/wmd/nuclear/npt1995/>.

5. PROSPECTS FOR CONSENSUS AT THE 2020 REVCON

Optimists might cite a few reasons why the 2020 RevCon could defy low expectations and produce a comprehensive, consensus final document. Despite differences among the parties on how effectively certain NPT objectives are being pursued, there is a deep reservoir of support for the Treaty itself and a reluctance to place it in jeopardy, especially on its 50th anniversary. A related factor is that governments strongly advocating more rapid progress on nuclear disarmament may nonetheless appreciate that the current international security environment is not conducive to such progress and may therefore be prepared to scale back their demands and settle for much more modest outcomes than they would prefer in order to avoid putting strain on the NPT.

In addition, some contentious issues that posed obstacles to consensus at previous Review Conferences are now being addressed outside the NPT review process, which may decrease the likelihood that they will become deal-breakers at the upcoming RevCon. In this connection, an international conference on a Middle East zone free of all weapons of mass destruction, as called for by a 2018 resolution of the General Assembly, was convened in November 2019 under United Nations auspices. Similarly, in a negotiation called for in a 2016 General Assembly resolution, the Treaty on the Prohibition of Nuclear Weapons (TPNW) was completed in July 2017. While proponents of both the Middle East zone and the TPNW may wish to have their issues addressed at the RevCon, they may be satisfied with factual references that would not impede a consensus.

But while it is possible to find hopeful signs, the grounds for pessimism about prospects for a consensus outcome are probably stronger. Many NPT parties are deeply concerned not just that further nuclear reductions are stalled indefinitely but, more fundamentally, that existing US–Russian arms control agreements (already the INF Treaty and possibly New START) are unraveling and that ambitious nuclear and missile modernization programmes (in Moscow, Washington, Beijing, and elsewhere) may fuel destabilizing nuclear arms competitions and increase the risks of nuclear war. Although some NPT parties may be realistic about what is achievable in the current international environment and choose not to pursue their disarmament demands aggressively, others may insist on registering their alarm at the upcoming RevCon at what they see as serious backtracking by the NWS on their article VI commitment and on pressing hard for urgent steps to revitalize the nuclear arms control process.

Further grounds for pessimism can be found in the sharp deterioration of bilateral relations between the United States and the Russian Federation and the United States and China. These increasingly adversarial bilateral relationships greatly heighten the difficulty of getting productive arms control negotiations on track. But they also pose a significant challenge to cooperation by the five NPT NWS (i.e. the ‘P5’) at the RevCon itself. In the past, the P5, despite often serious policy differences among themselves, usually managed to work together effectively to promote RevCon success—adopting a united front to defend their record of article VI implementation and coordinating their efforts to encourage other parties to moderate their demands and accept a consensus the P5 could live with. If at the 2020 conference the P5 cannot set aside their differences—and instead go their separate ways and engage in

mutual recriminations—prospects for a positive conference outcome will diminish.

The results of the 2019 session of the Preparatory Committee (PrepCom) for the 2020 Review Conference tend to reinforce skepticism that a consensus final document can be achieved. The 2019 PrepCom was unable to arrive at an agreed set of recommendations to pass on to the Review Conference, which is hardly unusual given that PrepComs have never been able to reach a consensus in advance of the RevCons. But the way in which the PrepCom concluded highlighted the difficulties ahead.

With the PrepCom unable to reach agreement, PrepCom Chair Syed Hussin of Malaysia issued his own draft of recommendations to the RevCon,⁶ which was a revision of an earlier draft and reflected, in the Chair's view, the positions taken by a majority of the participants during the two-week meeting. In transmitting his draft to the RevCon as a working paper, Ambassador Syed Hussin struck a note of optimism: "There remain many more points of convergence in the views of States parties than there are divergences".⁷

But comments by various delegations demonstrated that the parties remained far apart. Referring to the Chair's draft, US Ambassador Robert Wood said he had "nothing good to say about this document", which he called "dramatically worse" than the previous version.⁸ In a closing statement, Ambassador Wood asserted that the Chair's working paper "cannot serve as a basis of work for next year's RevCon" and warned that "getting agreement among all NPT Parties on any outcome in 2020 will be an incredibly difficult task".⁹ Roughly a dozen delegations joined the United States in calling for a return to the original draft.¹⁰ The French ambassador said the revised draft contained "harmful elements", some of which threaten the existence of the NPT.¹¹ However, the Non-Aligned Movement, representing over 100 States, welcomed the Chair's version, stating that it was significantly improved from the earlier draft. The South African delegation maintained that the revised version better reflected PrepCom deliberations and should be the basis of work at the 2020 RevCon.¹²

The discrepancies between the two sets of PrepCom recommendations and the controversy surrounding them provide a preview of issues that are likely to be contentious at the RevCon and possibly stand in the way of consensus. Following are several of them:

⁶ Recommendations to the 2020 Review Conference, 9 May 2019, NPT/CONF.2020/P.C.III/CRP.4/Rev.I.

⁷ "Reflections of the Chair of the 2019 session of the Preparatory Committee", 10 May 2019, NPT/CONF.2020/P.C.III/14.

⁸ Ray Acheson, "Rain or Shine, the NPT Must Be Implemented", *NPT News in Review*, vol. 16, No. 6, 10 May 2019, <http://www.reachingcriticalwill.org/disarmament-fora/npt/2019>

⁹ Closing Statement by the United States, Ambassador Robert Wood, Third Session of the Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 10 May 2019, http://statements.unmeetings.org/media2/21492305/us-closing-statement_for-submission-to-un.pdf.

¹⁰ Alicia Sanders-Zakre, "NPT Looks Ahead to 2020 Review Conference Without Consensus Recommendations", Nuclear Watch, 10 May 2019, <https://nukewatch.org/new-and-updated-item/2019-preparatory-meeting-for-2020-nonproliferation-treaty-review-conference-ends-in-failure/>.

¹¹ Ray Acheson, "Rain or Shine, the NPT Must Be Implemented", *NPT News in Review*, vol. 16, No. 6, 10 May 2019, <http://www.reachingcriticalwill.org/disarmament-fora/npt/2019>

¹² Alicia Sanders-Zakre, "NPT Looks Ahead to 2020 Review Conference Without Consensus Recommendations", Nuclear Watch, 10 May 2019, <https://nukewatch.org/new-and-updated-item/2019-preparatory-meeting-for-2020-nonproliferation-treaty-review-conference-ends-in-failure/>.

- Declaring the continued validity of past Review Conference consensus recommendations, such as the 2010 RevCon Action Plan¹³—and reaffirming allegiance to those recommendations—is unlikely to gain universal support at the RevCon due to differences among parties, as discussed above, on the legal status of such recommendations.
- Although many parties recognize that the current international security environment is not conducive to further concrete progress on nuclear disarmament and that more modest nuclear confidence-building and risk-reduction steps may be more realistic at this juncture, several proposals related to article VI may be made that would draw opposition from certain parties, such as recommendations to refrain from qualitative improvements in existing nuclear arsenals, reduce the alert status of nuclear weapons systems, ratify the Comprehensive Test Ban Treaty, and extend the New START Treaty (depending on the Trump administration’s position on extension at the time of the RevCon).
- The TPNW could become a major source of discord. While the parties may be able to agree on a factual status report regarding TPNW ratifications, any effort to include positive references to the “ban treaty” or assert that it is complementary to the NPT (which is disputed by many ban treaty opponents) would stir controversy.
- Handling of the IAEA Additional Protocol (AP) could become divisive. While many NPT parties support universal adherence to the AP as an essential contribution to ‘an enhanced verification standard’ and ‘an integral part of the IAEA safeguards system’, some others resist making AP adherence mandatory and emphasize that concluding an AP agreement with the IAEA is a ‘sovereign decision’ by individual States.
- Differences among parties on efforts to discourage the acquisition of enrichment and reprocessing capabilities could surface at the RevCon. Formulations calling for ‘eliminating undue constraints’ on transfers of nuclear technology—depending on how explicitly such formulations criticize restrictions on transfers of fuel cycle technologies—could be strongly resisted by a number of States.
- Implementation of the 1995 RevCon resolution on establishing a Middle East zone free of all weapons of mass destruction—an issue that blocked consensus at the 2015 RevCon—could become a problem again if zone proponents are not content with a simple reaffirmation of the 1995 resolution and an acknowledgement that the November 2019 conference on the zone had taken place and instead seek to gain RevCon endorsement of steps that have proved controversial in the past.
- Consensus could be difficult to achieve regarding the Islamic Republic of Iran’s nuclear programme and the Joint Comprehensive Plan of Action

¹³ https://www.nonproliferation.org/wp-content/uploads/2015/04/2010_fd_part_i.pdf.

(JCPOA). In light of US withdrawal in 2018 and the Islamic Republic of Iran's incremental steps to reduce its JCPOA commitments, it is not clear whether the agreement will even exist at the time of the RevCon. Most NPT parties may wish to endorse the JCPOA and support efforts to revive it. But finding a formulation acceptable to both the United States and the Islamic Republic of Iran may prove impossible.

- Agreement on the Democratic People's Republic of Korea may be easier to achieve, in part because the Democratic People's Republic of Korea (unlike the Islamic Republic of Iran) will not be present at the conference and in part because virtually all NPT parties favour negotiations to achieve denuclearization of the Democratic People's Republic of Korea and at least nominally support existing Security Council resolutions on the State. It may be possible to adopt a simple formulation calling for continued negotiations to achieve denuclearization of the Korean Peninsula and avoidance of provocations. But much will depend on the situation at the time—whether US-DPRK talks are still alive and whether the tensions of 2017 have returned. Disagreements among parties could develop on how to respond to any major provocations by the Democratic People's Republic of Korea, such as nuclear tests or flight tests of ICBM-range missiles, with the United States and others seeking a strong punitive response and China and the Russian Federation possibly acting to shield the Democratic People's Republic of Korea from harsh measures and strong condemnations in RevCon documents.

Ambassador Syed Hussin is right that there are more points of convergence in the positions of NPT parties than points of divergence. On a wide range of RevCon issues—including the role of the IAEA, support for the IAEA's Technical Cooperation Program and Peaceful Uses Initiative, arms control measures such as a ban on the production of fissile material for use in nuclear weapons, the strengthening of national export controls, support for international nuclear security and safety conventions—the parties can readily agree and will be able to reach a consensus at the RevCon. Most fundamentally, they agree that the NPT is the 'cornerstone' of the global nuclear disarmament and non-proliferation regime, is integral to international peace and security, and facilitates international cooperation on peaceful uses of nuclear energy.

But it only takes a few contentious issues, even a single one, to block a consensus final document, and there are a number of issues, including the ones mentioned above, where it will be very difficult to reconcile strongly held opposing positions. It is conceivable, of course, that the parties, in the interest of avoiding what would widely be portrayed as a damaging failure in an important anniversary year, will swallow their differences and come together on a consensus final document watered-down to the point of meaninglessness. But many parties are likely to object to sweeping all disagreements under the rug and pretending there is agreement on the state of the NPT regime and on prescriptions for sustaining and strengthening it. As we approach the 2020 RevCon, therefore, it appears that the challenge of achieving a comprehensive, consensus final document will be daunting.

6. THE WAY AHEAD—SEEK CONSENSUS BUT PREPARE FOR PLAN B

NPT parties have no illusions about that challenge. But when the 2020 RevCon gets underway in April, their objective will be the kind of consensus final document that RevCon participants have sought in the past.

6.1 FORMAT OF A FINAL DOCUMENT

The outcome pursued at previous Review Conferences has typically taken the form of a two-part document. One part has contained a rather dry, factual description of the organization and work of the Conference covering such items as the timing and location of PrepCom and RevCon meetings, financial arrangements, agenda, allocation of issues to the various main committees and subsidiary bodies, and conference participants. A second, more important, part has set forth the substantive results of the Conference—a review of the operation of the NPT to date (usually formatted on an article-by-article basis) as well as a forward-looking set of recommendations for strengthening the Treaty and the global non-proliferation regime generally.

This more substantive part has been handled in different ways. At the 2000 RevCon, it combined the review and forward-looking elements into a single section, whereas the 2010 RevCon treated them as separate sections. 2020 RevCon participants can choose either of these models—or decide to pursue a new approach.

6.2 THE DRAFTING PROCESS

As in the past, the initial stage of the drafting process is expected to take place in the three Main Committees (MCs), which are responsible for reviewing different provisions of the NPT. The Chairs of the Main Committees at the upcoming RevCon—a representative of Malaysia for MC I, a representative of Poland for MC II, and a representative of The Netherlands for MC III—will oversee this stage of drafting. Taking into account input from a range of sources (including working papers and statements from the PrepCom and RevCon) and consulting closely with other delegations, the Chairs and their staffs will prepare reports covering the issues allocated to them. Ideally, all the formulations contained in those reports will be approved by consensus in their committees. But where consensus is not possible, the reports may contain bracketed areas of disagreement or some other means (e.g. comments by the Chair) to indicate where further efforts to build consensus will be required.

The responsibility for pursuing a consensus final report will then fall heavily on the RevCon President, who will presumably be from Argentina.¹⁴ Drawing on the Main Committee reports and assisted by representatives from the United Nations Office of Disarmament Affairs (ODA) and the IAEA, the President, his staff, the RevCon Bureau (which includes the Chairs of the three Main Committees), and delegations interested in particular issues will seek to hammer out agreements on remaining unresolved issues and produce a consensus final document before time runs out on the four-week conference.

6.3 DEGREES OF CONSENSUS

¹⁴ Ambassador Rafael Grossi, the Argentine official chosen at the Third PrepCom to be RevCon President, was later elected as Director-General of the IAEA and therefore is unable to serve at the RevCon. His presumed replacement as President is Argentine Deputy Foreign Minister Gustavo Zlauvinen, but politics within the Non-Aligned Group has delayed his formal selection. It is unclear whether the delay in formally constituting the Bureau will affect RevCon preparations.

The best outcome of these deliberations would clearly be a final document whose sections on reviewing the operation of the Treaty and recommending follow-on actions were fully supported by all the parties. But in the past, Review Conferences have sometimes produced final documents that were regarded as consensus outcomes despite some differences or reservations held by a number of the parties.

At international conferences, ‘consensus’ is generally taken to mean an absence of objections. It does not necessarily mean unanimity, although often a consensus will be based on unanimous support. In the NPT review context, parties have at times had reservations about certain conference findings or recommendations, but their reservations were not strong enough to motivate them to exercise their right to block a consensus. Various Review Conferences have devised means of acknowledging such reservations without contradicting the conclusion that a consensus had been achieved.

In 1975, for example, some delegations chose not to block consensus but insisted on including their own national or group statements in the conference documentation to ensure that their concerns would be part of the record.¹⁵ In 1985, the parties agreed to adopt a consensus final document even though it explicitly cited an issue of disagreement. It said that the Conference, “except for certain parties,” regretted that a CTBT had not yet been concluded and called on all NWS to participate in the urgent negotiation and conclusion of a CTBT.¹⁶ And at the 2010 RevCon, the section on reviewing implementation contained several formulations indicating where parties held differing views (e.g. “many States” recognize that comprehensive safeguards agreements and additional protocols are integral elements of the IAEA safeguards system; “numerous States” believe that export controls facilitate peaceful nuclear cooperation). But the forward-looking section outlining recommendations for follow-on actions—the more important and usually more contentious of the two sections—did not display any such differences, and the 2010 final document as a whole was regarded as a consensus outcome.¹⁷

Despite clear indications of a lack of unanimity, no party in such cases decided to block consensus. For that reason—and because the number of issues lacking unanimity was small, the number of delegations holding dissenting positions on those issues was relatively small, and the overall document was seen as accurately reflecting the general will of the parties—these near-unanimous final documents have gone down in history as consensus outcomes. In a sense, they were consensus outcomes because all the parties were willing to accept them as consensus outcomes.

Such not-quite-unanimous consensus outcomes would, of course, be available to participants at the 2020 RevCon, but it is unclear how workable they would be this year. There are limits to how much disagreement is compatible with an outcome portrayed as reflecting a consensus. At the upcoming RevCon, disagreements may be too numerous, too contentious, and too fundamental

¹⁵ <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/pdf/finaldocs/1975%20-%20Geneva%20-%20NPT%20Review%20Conference%20-%20Final%20Document%20Part%20I.pdf>.

¹⁶ <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/WMD/Nuclear/pdf/finaldocs/1985%20-%20Geneva%20-%20NPT%20Review%20Conference%20-%20Final%20Document%20Part%20I.pdf>.

¹⁷ https://www.nonproliferation.org/wp-content/uploads/2015/04/2010_fd_part_i.pdf.

to be finessed with clever drafting. Delegations may not be prepared to go along with formulations indicating that positions with which they strongly disagree are supported by ‘numerous’ parties, ‘most’ parties, a ‘majority’ of parties, or even ‘many’ parties.

An alternative to such formulations that express strong, even if not unanimous, support for a particular position—especially when there is significant opposition to that position—is to display opposing positions and state that ‘some believe’ X, while ‘others believe’ Y. Resorting to such a device a very small number of times may be compatible with the perception of a consensus conference outcome. But relying on it frequently could undermine the claim that a consensus has been reached—and once it is used to deal with disagreement on one issue, it is difficult to rule it out for others. Indeed, a document replete with ‘some believe, others believe’ formulations would highlight divisions among the parties rather than convey the impression that the parties were basically in agreement.

6.4 PURSUING PLAN B

If ‘pure’ (i.e. unanimous) consensus outcomes are not possible, not-quite-unanimous consensus outcomes are not workable, and ‘some believe, others believe’ formulations do not credibly convey consensus, RevCon participants will need to explore an alternative to a comprehensive consensus final document—a ‘Plan B’ consisting of a package of elements not all of which reflect a consensus.

At the 1995 NPT Review and Extension Conference, a comprehensive consensus final document was not achievable. So the participants shifted to their own Plan B—agreement on a package of four decisions covering the principles and objectives of nuclear non-proliferation and disarmament, the strengthening of the NPT review process, the establishment of a zone free of all weapons of destruction in the Middle East, and—most importantly—the indefinite extension of the NPT. Despite the failure to produce a comprehensive final document, the Conference is regarded almost universally as a success.

The 1995 Conference established a useful precedent for a final document that does not purport to address comprehensively all NPT-related issues but instead provides a relatively brief and forward-looking package of discrete elements that together demonstrate the shared commitment of the parties to a strong and enduring Treaty.

From the outset, 2020 RevCon participants, like the parties at previous Review Conferences, should make their best effort to reach agreement on a comprehensive final document. But as they work toward that goal, they should simultaneously begin to consider—perhaps only within their own delegations or privately with a few other delegations—what Plan B might look like in the event that consensus proves futile. If thinking about Plan B is put off until the RevCon’s final days, it could be too late.

Should a comprehensive consensus not be achievable, there are any number of possible Plan B outcomes—in terms of substance and format—that could signal success. Conference leaders—the President and his Bureau and key delegations—should not get locked into a single, preferred Plan B. Instead,

they should be creative and flexible in devising a package of discrete elements—not all of them supported by consensus—that could be incorporated into a final document capable of gaining broad support.

6.5 ELEMENTS OF A POSSIBLE PLAN B PACKAGE

In that spirit, the following ideas are offered as contributions to a menu of options on which RevCon participants may wish to draw:

- Especially in this 50th anniversary year, it would be desirable to have a brief (one- or two-page) declaration issued at a very senior level (perhaps foreign ministers or even heads of government) reaffirming the parties' strong support for the Treaty as indispensable to international efforts to promote non-proliferation, disarmament, and the peaceful uses of nuclear energy. The declaration could draw on principles and objectives identified in the past and dedicate the parties to ensuring in the future that their commitments are fulfilled and that the goals of the Treaty are realized.
- The Main Committees can be expected to identify many recommendations for follow-on actions that can be approved by consensus. These consensus recommendations can be grouped together and given special prominence in a separate section of the conference final document. In past 'all or nothing' RevCons that did not achieve a consensus, there were no final documents to record and give a boost to such recommendations. But under Plan B, they would be adopted and given standing even if other RevCon recommendations did not achieve consensus.
- Another component of the final document (placed in the document itself or in an annex) could be a list of recommendations that could not achieve a consensus. Parties could decide whether to try to characterize the amount of support such recommendations received (e.g. most, majority, many, etc.); whether to identify their principal supporters (e.g. the Non-Aligned group, the P5, etc.); whether to briefly include arguments for and against non-consensus recommendations; or whether simply to list the recommendations themselves without further elaboration.
- In a separate section of the final document, the parties might commission studies by experts on issues relevant to the future of the NPT and the broader non-proliferation regime (e.g. the implications of emerging technologies for the proliferation of nuclear weapons capabilities; possible means of preventing abuse of the NPT's withdrawal provision). The final document could specify how such studies would be organized and the time frame in which they should be carried out (e.g. in time for consideration by the second or third PrepCom of the next review cycle).

- The RevCon could borrow an innovative feature from the 2010–2016 Nuclear Security Summit process by providing an opportunity for delegations to bring ‘gift baskets’ to the 2020 RevCon—that is, voluntary commitments by individual States or groups of States to take specific, concrete steps to advance the goals of the NPT (e.g. individual or group pledges to adhere to the Additional Protocol, contribute to the IAEA Technical Cooperation Program, continue a unilateral moratorium on nuclear testing for another five years, join nuclear security or safety conventions, etc.) The final document could contain a separate section recording such pledges.
- Since the 1995 decision on strengthening the NPT review process, the parties have regularly given attention, including during the most recent review cycle, to how the process could be further improved. The final document of the 2020 RevCon could devote a section to new ideas for strengthening the review process.
- As noted earlier, two issues that could stand in the way of a RevCon consensus are the Middle East WMD-free zone and the TPNW. Assuming the proponents of these measures will want to see them addressed in the conference final document and assuming a conference consensus will not be possible on either of them, there are several options for handling them. Recommendations regarding the measures could be included in a list of non-consensus recommendations or each could have its own separate item in the final document addressing the measure briefly and factually (e.g. noting the convening of the November 2019 United Nations-organized conference on the Middle East zone; providing the number of States that had ratified the TPNW).
- As key factors affecting the future of the globally non-proliferation regime, the nuclear issues of the Democratic People’s Republic of Korea and of the Islamic Republic of Iran will have to be addressed in some fashion in a Plan B final document. But as indicated earlier, those issues could change dramatically before the RevCon, with the JCPOA becoming a dead letter and US–DPRK negotiations terminating. On the basis of the situation at the time, both issues might receive factual references in the review section. In the forward-looking section, the parties might agree to call for a continuation/resumption of US–DPRK negotiations and the avoidance of provocations. Given sharp divisions among NPT parties on the JCPOA and the Islamic Republic of Iran, a forward-looking recommendation will be more difficult, perhaps resulting in the recording of opposing non-consensus recommendations or a bland consensus formulation simply urging restraint.

These ideas—not necessarily listed in order of importance—are illustrative of the kinds of items that could be incorporated into a conference final document if a consensus is not achievable. Many variations are possible.

6.6 A SHORTER FINAL DOCUMENT?

It would be desirable to make a 2020 final document shorter than its predecessors. A shorter document would be more readable and accessible to a wide range of audiences, and it would allow the parties to highlight what they consider important. Reducing the length could be done in a variety of ways, including by putting the section reviewing implementation in an annex; resisting the tendency to incorporate often-redundant language from previous final documents when it adds little of substance to the text; not covering the entire waterfront of NPT-related issues; and expressing conference findings and recommendations more concisely than in the past.

Of course, shortening the document will not be easy. Delegations may be uncomfortable not repeating past language, fearing this might call into question its continuing validity. They might be reluctant to put the article-by-article review in an annex, maintaining that this would downplay the importance of a Treaty-mandated responsibility of the RevCon. They may believe that not covering all NPT-related issues would signal a loss of interest in those not included. Or they may simply be wedded to formulations they have initiated or supported in the past and want them to be retained. RevCon leaders will have to weigh the trade-off between producing a report of more useful length and satisfying the concerns of delegations that prefer the traditional, lengthier approach. In the end, while brevity would have significant benefits, it may be a lower priority than ensuring buy-in by the parties.

Although a Plan B final document could include non-consensus elements, it can only be adopted by the RevCon if none of the parties decide to block its adoption. The parties will have to conclude that the overall package is balanced and that their strongly held views are adequately represented in the final document, even if some of those views cannot gain a consensus and are only recorded as non-consensus findings or recommendations. If one or more parties cannot agree that the elements contained in a Plan B package are balanced—or if they feel that their strongly held views are not given suitable attention—they have the right to stop any document from being adopted, as was the case in several previous Review Conferences.

Persuading the parties that they can go along with a Plan B final document—and averting another ‘failed’ Review Conference without any final product—will require great skill by the RevCon’s leaders. They will have to operate transparently and inclusively, consulting widely and avoiding the closed-door negotiating sessions involving only a handful of delegations that have caused such resentment at previous RevCons.

7. PROMOTING A SUCCESSFUL OUTCOME IN 2020

For close to half a century, NPT Review Conferences have been seen as successes if they produced comprehensive consensus final documents and failures if they did not. But the ‘successes’ were not necessarily successes. They did not guarantee follow-on actions that advanced the goals of the Treaty. And the ‘failures’ were not necessarily failures. They were often followed by significant steps to strengthen the NPT regime even though those steps had not been endorsed in a RevCon final document.

Participants at the upcoming 2020 RevCon will again seek a comprehensive, consensus final document—as they should. But the likelihood of achieving such an outcome is low, and the costs of not achieving it are higher than usual, given the challenges currently facing the global non-proliferation regime and the symbolic importance attached to this 50th anniversary of the NPT’s entry into force.

Therefore, if a consensus document does not prove possible, NPT parties should quickly pivot to Plan B—an outcome document that expresses strong support for the Treaty and gives prominence to consensus recommendations for advancing its goals, but at the same time acknowledges in some fashion recommendations that fall short of gaining a consensus.

NPT article VIII.3 requires that Conferences be held “to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized”. That is all the guidance the Treaty provides. It does not mandate how the review should be carried out or specify what, if any, written outcome the participants should produce. So even though every RevCon to date has insisted on producing a comprehensive, consensus final document—or no document at all—the parties are free to pursue a different approach. For the sake of avoiding an outcome that could be widely perceived as weakening the NPT, the parties should begin giving serious consideration to Plan B.



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