



Promises, Compromises and a Tie-Breaker: NPT RevCon 2010 was an Otiose Event

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Summary

The RevCon, after abundant manoeuvring and political one-upmanship, finalised quite 'consensually' a much diluted and defeatist document that promises to ensure that disarmament remains a dream and implicitly endorsed the endurance of nuclear weapons in the hands of a powerful few. Needless to say, the Final Document agreed upon by state parties is a disappointment when compared to the promising recommendations of the Main Committees (especially MC-I) during the early days of deliberations. Far from a 21st century version or a restructured NPT, the treaty will maintain a status quo outlook and could continue to be crisis-plagued by the same systemic issue of the past decade. The failure to incorporate punitive action against non-compliance and defection might encourage more states to cross the threshold and seek remedies outside the NPT framework. Counterproliferation mechanisms denoted by their military character, transcending the NPT ethos, will dominate the anti-proliferation landscape thus further eroding the utility of the NPT system. The recommended consultations and engagements among the NWS on disarmament will continue to be only for form, while even the promise of a Middle East NWFZ might remain a pipe-dream if Israel stays away from this reconciliation process.

President Barack Obama's scepticism in his Prague speech of April 2009 that complete nuclear disarmament might not happen in his lifetime was seen by many as a genuine expression of the challenges in the path towards total elimination of nuclear weapons. However, inconspicuous in Obama's pronouncement was the discreet thinking within the American security establishment, and shared by other nuclear weapon states (NWS), that nuclear weapons need to be sustained for a longer period, though ideally only in the hands of a privileged few. Obama failure to invoke credible steps towards reducing the salience of nuclear weapons in US security strategy or propel pro-disarmament measures like no-first-use (NFU) in the 2010 Nuclear Posture Review (NPR), added to the cynicism that nuclear weapon states lack serious purpose on disarmament and only seek to perpetuate a discriminatory nuclear order of nuclear 'haves' and 'have-nots'.

Nothing proves this better than the debate at the 8th Review Conference (RevCon) of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which ended May 28 with shoddy declarations on a roadmap for nuclear disarmament. The RevCon, after abundant manoeuvring and political one-upmanship, finalised quite 'consensually' a much diluted and defeatist document that promises to ensure that disarmament remains a dream and implicitly endorsed the endurance of nuclear weapons in the hands of a powerful few. Needless to say, the Final Document agreed upon by state parties is a disappointment when compared to the promising recommendations of the Main Committees (especially MC-I) during the early days of deliberations.

As is the usual practice at the RevCons, the Main Committee drafts undergo considerable revisions during the debate thereafter leading to the final document which is placed before the RevCon plenary. The 2010 RevCon, however, witnessed unprecedented power-play with the MC I's report of May 14 being subjected to instant revision the day after through a Subsidiary Body I draft, with dramatic turnarounds on many optimistic recommendations made by the Committee. A careful examination of these revisions will highlight the manoeuvring by various groups to secure their interests but in the process weakening the final draft approved by state parties on 28 May.

1. The chairman's draft of Main Committee I, which dealt with disarmament, recommended the need "to make special efforts to establish the *legal framework* required to achieve the *final phase* of nuclear disarmament and maintain a world without nuclear weapons." The Subsidiary Body I's revision to the chairman's draft issued on May 19 removed the reference to a 'legal' framework and named it 'the necessary framework'. The revised draft also deleted the reference to 'final phase of nuclear disarmament' changing it to 'maintaining a world without nuclear weapons'. The changes were per se absorbed in the final draft of May 27, and approved by the plenary the day after.

2. The first draft hogged news headlines for its recommendation to the UN Secretary General "to convene an international conference in 2010 to consider ways and means to agree on a roadmap for the complete elimination of nuclear weapons within a specified

timeframe, including by means of a universal, legal instrument.” The conference was supposed to frame a roadmap based on consultations by the nuclear weapon states ‘not later than 2011’ to accelerate concrete progress on disarmament. These consultations were to be reported to NPT state parties at the 2012 Preparatory Committee (PrepCom). Among other things, the consultations were to facilitate negotiations on reductions of nuclear weapons; diminish their role in military and security doctrines; minimise use or threat of use of nuclear weapons; reducing their operational status and removal from high-alert status, etc.

Under instant pressure from the P-5 states, the Subsidiary Revision removed all timelines recommended by the first draft, thus validating President Obama’s stated affirmation that nuclear disarmament will not happen in the near future. By rejecting the feasibility of such timelines, the weapon states seem to have exposed their lack of intention to follow any particular timeframe and thus continue to maintain nuclear weapons until a revolutionary phase occurs in geo-politics. That the weapon states had the final say is clear from the Final Document of the RevCon, which upheld the deletion of timelines, and confined the language on NWS commitments to “promptly *engage*” to “accelerate concrete progress on steps leading to nuclear disarmament.” Instead of the 2012 reporting to state parties, the NWS have to do so at the 2014 PrepCom. In place of the 2014 conference to be convened by the Secretary General, the Final Document says: “all states agree that the Conference on Disarmament should establish a subsidiary body to deal with nuclear disarmament.” There ended the RevCon’s hope of a grand disarmament conference and a subsequent roadmap under the auspices of the UN.

3. A handful of other revisions in the subsidiary draft and the Final Document exposed the resistance of the weapon states to not just direct disarmament obligations but also to those incremental steps which were supposed to aid the disarmament process.

- a. One such notable omission was in the recommendations on declaratory policies. The Subsidiary Revision had included pledges of mutual non-first use (NFU) as an interim measure pending total elimination in order to minimise the use or threat of use and lessen danger of nuclear war. It is interesting to note that the NFU pledges crept into the Subsidiary Revision when the Main Committee report had not made such a reference in its recommended Actions – amply proving how the non-nuclear-weapon states (NNWS) had put up a collective momentum (thanks to selective backing from China on NFU) and induced some values which they held as paramount in the disarmament sojourn. However, such concerted moves proved futile as the NWS managed to exclude references to NFU in the desired declaratory policies. Instead, the Final Document merely advises discussions on policies to prevent use of nuclear weapons and lessen the danger of nuclear war.
- b. Also evident was the clash of terminologies in the recommendations on nuclear weapons development. The Main Committee Report called upon the NWS to ‘cease’

the development of new nuclear weapons and their qualitative improvement. While the Subsidiary Revision changed the language from 'cease' to 'constrain', the Final Document integrated these nomenclatures in the *Nuclear Testing* section by calling for a "cessation of all nuclear test explosions and constraining the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons." The debates on nuclear testing generated sufficient heat, with the US delegation staunchly opposing a Main Committee recommendation to close and dismantle any remaining sites for nuclear test explosion and their associated infrastructure. Despite US pressure, this provision figured all the way in the first draft of the Final Document released on May 24. However, the NWS positioning prevailed with the Final Document of May 27 totally removing this recommendation to dismantle the testing infrastructure. The NWS refusal to commit on nuclear test site dismantlement could not only hamper the prospects for the CTBT's entry-into-force, but also indicates the US administration's reluctance to fully commit to winding up the nuclear testing infrastructure.

- c. Similar backtracking and double-standards were seen in commitments on ending fissile material production, which is a key incremental step towards disarmament. While all the drafts recommended speedy action for an early conclusion of the Fissile Materials Cut-Off Treaty, including action by the UN Secretary General to push for negotiations, resistance emerged from the NWS on fissile production moratorium and declaration of stocks. The Main Committee draft recommended seeking a global moratorium on production of fissile materials for weapon uses pending the entry into force of the FMCT. In the Subsidiary Revision, the emphasis in the language was toned down to mean that a moratorium could be a contribution to this process and hence could be considered by the NWS. However, the Final Document was agreed upon without any reference to a moratorium. Instead, the NWS were "encouraged to commit to declare" all fissile materials designated as no longer required for military purposes and place them under IAEA for dismantlement or conversion for peaceful purposes. Thereby, in one stroke, the NWS reversed concrete catalysts that could have actually accelerated the FMCT negotiations. While habitual spoilers like Pakistan might still manage to stall the negotiations, the NWS refusal to commit to a moratorium could be a serious setback to prospects of an FMCT.

Compromising for a successful RevCon?

Has the 8th RevCon been a success or failure? There might be varied denominators to measure this. For the state parties, the ability to issue a consensual Final Document could be construed as a successful outcome when compared to the 2005 RevCon which was supposed to have been a failure with the only outcome being a Chair's Summary of the proceedings. In hindsight, it was the overhang of 2005 which seemed to have influenced

both the weapon states and the non-nuclear-weapon states to reconcile their difference and agree on a final document. The stakes were so high this time that a perceptibly successful RevCon was imperative for the sustenance and future of the treaty. However, as illustrated above, in the final bargain, the non-nuclear-weapon states seem to have lost the plot. What we see in the final draft is the ultimate reconciliation of both sides, through skilful and nifty wordings, skewed in favour of nuclear weapon states and their positions, with attempts by non-weapon states to induce stronger disarmament obligations coming a cropper.

The Final Document embodied an ideational bankruptcy when it comes to non-disarmament issues. The Document belied all expectations of a progressive outcome mainly because no concrete measures emerged on ways to deal with problems that hit the very foundation of the treaty. Key challenges including threat of non-state actors accessing nuclear resources, plugging the exit route and punitive actions on non-compliance were relegated to the sidelines of the debate and consequently found nominal reference in the Final Document. Many of these issues formed the meat of the recent debate on the crisis in the treaty and hence their demotion in the agenda tantamount to surrender. In fact, their marginalisation virtually capped the possibilities of sweeping reforms in the treaty structure as these issues could only have been addressed through a restructuring and integration of new provisions or mechanisms. No surprises then that the RevCon has little mention of reforms or the need for overall restructuring to 're-tailor' the treaty for 21st century security requirements.

- (a) **Non-state actors:** The state-centric treaty, which came into existence four decades ago, has been found incapable of dealing with challenges posed by non-state actors. Though the Nuclear Security Summit hosted by Obama in April 2010 supposedly intended to strengthen and institutionalise mechanisms to deal with this challenge, the Summit could not go beyond a symbolic communiqué exhorting states to cooperate against nuclear terrorism. The RevCon too was found short on ideas on how to integrate existing mechanisms within the treaty framework or launch new ones to insulate the treaty from this emergent challenge. But for a reference on the entry into force of the International Convention for the Suppression of Acts of Nuclear Terrorism, and suggestions on dealing with illicit trafficking and strengthening physical security, there was virtually no other reference to challenges posed to the treaty by non-state actors. One wonders whether the host of the festive Nuclear Security Summit was present at all at the RevCon. Even the last PrepCom had more affirmative references to nuclear terrorism and the need to deal with this threat.
- (b) **Non-compliance:** Despite the prominence Iran attained throughout in the RevCon thanks to the incendiary triggered by President Ahmedinijad at the inaugural, the Final Document failed to reflect any sentiments in favour of stern handling of instances of non-compliance. That the new proposals for increasing sanctions against Iran came up at the UN Security Council, despite with deal with Turkey and Brazil, pervaded the RevCon ambience through a discreet silence. The Final Document

was astonishingly pacifist by “underscoring the importance of resolving all cases of non-compliance in full conformity with the IAEA statute and Member States’ respective legal obligations.” The Document, thus, implicitly produced a message that non-compliance by state-parties could fall within tolerable limits and that the scope of punitive action falls outside the purview of the treaty structure.

- (c) **Plugging the exit route:** A great deal of expectations were kept on the RevCon - being the first after North Korea defected from the Treaty - to find credible solutions on plugging the exit route so that such instances do not repeat. Interestingly, despite the sabre rattling in the Korean peninsula, the state-parties did not show the spine to term the defection as illegal (as the resources for its arsenal were accumulated in the guise of accessing nuclear energy resources as a non-nuclear-weapon state). Instead, the last paragraph of the Final Document urges North Korea to fulfil the commitments under the Six-Party Talks, including complete abandonment of all nuclear weapons, and also return to the treaty, with an expected adherence with “its IAEA safeguards agreement”. Earlier in the document, North Korea’s nuclear tests are condemned with the clear message that it cannot have the status of a nuclear weapon state.

However, the key ignored question was in terms of finding permanent solutions to plugging the gaps in Article X and ensuring that countries like Iran do not take the North Korean route. Unfortunately, the RevCon was at a loss on how to deal with this new challenge. And surprisingly, the Final Document endorses the right of states to withdraw but with the rider that they will be liable for all violations committed prior to the withdrawal. This is strange logic since countries could conveniently walk out of the treaty citing supreme national interests without a line of the treaty being violated. There are no tangible provisions to penalise a country which undertakes nuclear weaponisation after exiting from the treaty. That the RevCon failed to come up with any concrete measures or plan to deal with this most palpable vacuum itself is a strong denominator to prove its failed outcome.

What then were the productive outputs of the conference? Besides the ambitious disarmament roadmap proposals of Main Committee I, there were quite a few positive developments and initiatives pertaining to some of the less-consequential issues which were reflected in the debate, and in bits and pieces in the Final Document as well.

- (a) **Assurances on nuclear commerce:** The one theme that reverberated along with disarmament in the 2005 RevCon was the increasing hindrances to nuclear commerce posed by the burgeoning non-proliferation mechanisms. The non-weapon state groupings under the aegis of Non-Alignment Movement (NAM) and New Agenda Coalition (NAC) had fought hard to raise the challenges to Article IV, which secures the inalienable right of all state parties to access peaceful uses of nuclear energy. That the Bush administration was then pushing proliferation-resistant technologies

and multilateral fuel-cycle initiatives added to the concerns of the NNWS. Though President Obama had been less enthusiastic on these initiatives, his promise to construct a new nuclear energy architecture sounded like a repeat of the Bush initiatives. The potential for multilateral fuel cycle initiatives to act as the energy equivalent of a nuclear umbrella with nuclear energy development being restricted to a few as in the case of nuclear weapons sounded a potential derailment of Article IV. Considering these sensitivities, the RevCon took a broad-brush approach on multilateral approaches by suggesting their enlargement, but in a non-discriminatory manner and without affecting the back-end national fuel cycle policies of state-parties and also ensuring sufficient fuel-supply guarantees with such processes. There seems to be an inherent subtle warning to votaries of multilateral fuel cycle initiatives to be cautious and ensure that Article IV remained sacrosanct and inviolable in the rush to upgrade non-proliferation firewalls.

- (b) **Middle East Nuclear-Weapon-Free-Zone:** This subject probably could be the only area where the RevCon came out with a conclusive roadmap. While upholding the sanctity of the Resolution at the 1995 RevCon for a Middle East NWFZ, the Final Document recommends some practical steps including a Conference in 2012 convened by UNSG, backed by the NWS and attended by all states of the Middle East to establish an NWFZ in the region, on the basis of arrangements arrived at by these states. However, along with the optimistic plan, the Final Document refers to the importance of Israel's accession to the NPT and placement of its facilities under the comprehensive safeguards arrangement. This call has been made despite the realisation of its futility. The road block to this ambitious plan, hence, could be Israel's potential boycott of this conference and rejection of the NPT accession proposals. Nonetheless, this remains the only area where a credible roadmap was devised by the RevCon.
- (c) **Nuclear Weapons Convention:** Despite the total rejection of the Main Committee I's ambitious disarmament roadmap proposals, the reference to the need for an early pursuance of the Article VI objective and formulation of legal instruments like the Nuclear Weapons Convention were the only promising elements in the disarmament debate, aptly reflected in the Final Document. While affirming that "the final phase of disarmament should be pursued within an agreed legal framework," the Final Document notes the Five-Point Proposal for Nuclear Disarmament of the UN SG, which proposed consideration of negotiations on a Nuclear Weapons Convention or agreement on a framework of separate mutually reinforcing verifiable instruments. Thanks to the renewed momentum on Global Zero and the disarmament promise generated by President Obama, it was optimistically anticipated that the RevCon will come out with concrete proposals on fructifying the primary theme of Article VI - engage in negotiations for a stand alone treaty or instrument to pursue general and complete nuclear disarmament.

Though the NWS or the state-parties did not specifically agree on a new legal instrument to pursue the final phase of disarmament, the reference to the need for a new instrument or a NWC is in itself a strong push to the disarmament process within the NPT structure. That incremental steps like CTBT and FMCT gained only symbolic commitments from the NWS at the RevCon makes the reference to standalone instruments more relevant and significant.

Obama's elusive disarmament vision

The 8th RevCon was crucial for President Obama and his disarmament agenda. It was widely anticipated that Obama's team could unveil a radical plan to set the momentum for the final phase towards disarmament. The build-up for this crusade was obvious when Washington hosted a Nuclear Security Summit, signed a new START with Russia and released the NPR – all in the previous month – as complementary steps towards setting the stage for the RevCon. However, such expectations were belied with the US delegation striving hard throughout the conference to ensure its success, and in the process wasting opportunities for practical progress towards disarmament. Instead, the US painstakingly joined the other weapon states to resist the many ambitious proposals at the Main Committee I. Though many of the revisions in the Subsidiary Draft were not at the US behest, Americans could not hide the angst of a nuclear weapon state being confronted with many a major disarmament obligation.

First hand reports from the RevCon showed how the US delegation spearheaded the P-5 resistance on many key obligations, the most visible being its opposition to dismantling nuclear testing infrastructure and ceasing development of new nuclear weapons and their qualitative improvement – both in effect contradicting President Obama's stated commitment on nuclear test ban. Americans were seemingly disturbed by the NNWS' attempt to invoke steps to devalue nuclear weapons in security doctrines and operations. Collectively, the constraints on development of new weapon systems and reducing their salience in security doctrines were existing predicaments for the Obama administration which had to contend with internal resistance when similar proposals were considered for the NPR. After all, the Americans approached the RevCon with a much toned down NPR, which, contrary to initial expectations, did not rule out the possibility of warhead modernisation (as intended by the Reliable Replacement Warhead Programme) nor was it ready to invoke principles like NFU despite Obama's stated determination to reduce the salience of nuclear weapons in US security doctrines.

Thereby, the American pushback of MC-I proposals seemed half hearted. Though it ensured the deletion of the proposed timelines in the Final Document, the US delegation, fearing loss of face for the President, agreed to endorse the five-point proposals of the UNSG including the possibility of a Nuclear Weapon Convention, probably among the rarest of instances when Washington endorsed the potential for a stand-alone legal instrument to

pursue the final phase of disarmament. In fact, the reiteration of Article VI, including the need for negotiations for a treaty on disarmament, in UNSC Resolution 1887, which Obama himself mentored in September 2009, gave hope for a new legal instrument on disarmament being proposed by Obama at the RevCon. Far from such a proposal, there was not even a trace of any Obama plan to revive the NPT.

For the whole of last year, Obama's officials espoused carbon-copy declarations and statements on strengthening the NPT and restructuring the treaty into what Hillary Clinton termed could be the 21st century version of the NPT. Leave alone a new version, the US team watered down even nominal commitments on the incremental steps which President Obama declared were top priority in his disarmament agenda. The RevCon's failure to trigger a dramatic turnaround of the embattled treaty or initiate a revolutionary road on disarmament could be counted as a personal failure of President Obama and his foreign policy leadership. Besides his inability to assimilate the security establishment with his projected disarmament vision, the lacklustre US show at the RevCon could cause Obama to be depicted as a flamboyant leader committed more to symbolism and proclamations but with little grit to carry his agenda through. The toned-down NPR with no concrete vows on reducing the salience of nuclear weapons or no-first-use; a symbolic, no-result Nuclear Security Summit; and a spineless Final Document of the NPT could add up to Obama's fruitless nuclear diplomacy. Signs of more such outcomes are expected with the indefinite delay in the CTBT ratification and potential challenges in clearing the new START through the Congress.

Conclusion

With many outstanding issues remaining unresolved and no practical steps towards disarmament being devised, the treaty has very little to look forward to other than as a symbolic cornerstone of the non-proliferation regime. Challenges like non-compliance, defection and non-state actors will be increasingly dealt with outside the NPT framework through political and extra-legal means. The unprecedented disarmament promise which emerged in the last few years will now be replaced by non-proliferation continuing to be the dominant pillar of the NPT system. The outliers like India and Pakistan could sustain their identities and liberty as non-NPT states with the RevCon showing no intention to pragmatically approach the universalisation question. The reference to universalisation in the Final Document, with individual naming of the three non-state parties, will at best remain a platitudinous postulation.

Far from a 21st century version or a restructured NPT, the treaty will maintain a status quo outlook and could continue to be crisis-plagued by the same systemic issue of the past decade. The failure to incorporate punitive action against non-compliance and defection might encourage more states to cross the threshold and seek remedies outside the NPT framework. Counterproliferation mechanisms denoted by their military character, transcending the NPT ethos, will dominate the anti-proliferation landscape thus further

eroding the utility of the NPT system. The recommended consultations and engagements among the NWS on disarmament will continue to be only for form, while even the promise of a Middle East NWFZ might remain a pipe-dream if Israel stays away from this reconciliation process. On the whole, the NPT will serve itself best in deep freeze.