

RESEARCH ARTICLE

# Accommodating Nutopia: The nuclear ban treaty and the developmental interests of Global South countries

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## Abstract

This article argues that the Treaty on the Prohibition of Nuclear Weapons (TPNW) would not have been possible without protecting the inalienable rights of states to pursue nuclear energy for peaceful purposes. While some Western states and NGOs have pushed to ban all applications of nuclear technology, this was unacceptable to a large number of disarmament-supporting states from the Global South and the Non-Aligned Movement. Without support from states across the Global South, the TPNW would not have achieved the required number of signatories to be adopted. Thus, we argue that to properly understand the TPNW, an appreciation of states' interests and motivations beyond their more widely discussed frustrations with the pace of nuclear disarmament is essential. We also argue that nuclear weapons scholarship must pay more attention to perspectives from the Global South and the concept of Nutopia – a belief in both the dystopian potential of nuclear weapons and the utopian possibilities of nuclear energy – in its understanding of nuclear politics, past and present. Global South perspectives are often overlooked, and as such, current regimes of nuclear arms control and disarmament remain only partially understood in Western literature.

**Keywords:** Global South; Non-Aligned Movement; Nuclear Ban Treaty; nuclear disarmament; Nutopia

## Introduction: The TPNW and access to nuclear energy

The preamble to the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW – also known as the 'Nuclear Ban Treaty') states unequivocally that 'nothing in this Treaty shall be interpreted as affecting the inalienable right of its States Parties to develop, research, production [*sic*] and use of nuclear energy for peaceful purposes without discrimination'.<sup>1</sup> Given the strong link between civilian and military nuclear technologies, and the fact that a number of states have developed – or could secretly develop – nuclear weapons under the guise of a civilian nuclear programme, the inclusion of this language has baffled many anti-nuclear campaigners. After all, scholars have long held that a nuclear-weapons-free world would be very difficult if not impossible to achieve while nuclear infrastructure, technologies, and expertise continue to exist, given the dual-use nature of key knowledge, components, and processes.

At the First Meeting of States Parties to the TPNW (1MSP) in June 2022, the Manhattan Project for a Nuclear-Free World challenged the retention of the TPNW's preambular language

<sup>1</sup>Treaty on the Prohibition of Nuclear Weapons, (2017), p. 3, available at: [https://treaties.un.org/doc/Treaties/2017/07/20170707%2003-42%20PM/Ch\\_XXVI\\_9.pdf](https://treaties.un.org/doc/Treaties/2017/07/20170707%2003-42%20PM/Ch_XXVI_9.pdf).

that ‘upholds nuclear energy’ and recommended its deletion from the Treaty.<sup>2</sup> This wholly anti-nuclear proposal (i.e. against nuclear weapons *and* nuclear energy) was supported by many civil society groups and several states. The substantive reasoning behind this proposal was that the elimination of nuclear weapons cannot be achieved as long as the commercial production of tritium, enriched uranium, and plutonium were protected by the TPNW’s preambular language.<sup>3</sup>

The primary civil society coalition, the International Campaign to Abolish Nuclear Weapons (ICAN) has more recently maintained a neutral stance on the issue of nuclear power and defers to the TPNW’s preambular language on nuclear energy.<sup>4</sup> Prior to the TPNW’s negotiation, ICAN merely acknowledged the ‘diversity of views on nuclear power’, focusing instead on the immediate goal of nuclear weapons abolition.<sup>5</sup> However, nuclear disarmament advocates, particularly in Europe, have long maintained a wholly anti-nuclear posture. For example, many disarmament advocacy campaigns are tightly partnered with the Green Party, which opposes nuclear power generation.<sup>6</sup> Influential ICAN partners such as the Campaign for Nuclear Disarmament (CND)<sup>7</sup> and the Women’s International League for Peace and Freedom are among those that have taken a clear stance against nuclear energy.<sup>8</sup>

Therefore, the Manhattan Project for a Nuclear Free World reflected the views of many when they opposed nuclear energy in their working paper submitted to the 2022 1MSP:

8. We cannot achieve the fundamental goal of the Treaty, the total elimination of nuclear weapons, as long as we allow commercial production of tritium and commercial use of enriched uranium and plutonium. ...

10. Protections being afforded uranium enterprises run counter to the fundamental goals of the TPNW, which is to eliminate nuclear weapons, assist victims, and remediate environments affected by nuclear weapons use, testing and related activities.<sup>9</sup>

The Manhattan Project for a Nuclear-Free World makes a significant observation that a Treaty explicitly focused on nuclear prohibition should have no business aligning itself to the preservation of some underlying/associated technologies that have also caused significant human and environmental harms.<sup>10</sup> This observation becomes more salient when we consider that the political momentum that brought this Treaty to fruition was based on arguments about the adverse humanitarian and environmental impacts of nuclear weapons.<sup>11</sup> From this perspective, the preservation of inalienable rights to nuclear energy was an unnecessary and artificial distinction between sources of radioactive harm.

Why then, does TPNW uphold states’ inalienable rights to nuclear technology given the obvious problems this causes for disarmament? To answer this question, this article examines how the

<sup>2</sup>Working paper submitted by Manhattan Project for a Nuclear-Free World to the First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons (8 June 2022), available at: {<https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/1msp/documents/NGO.14.pdf>}.

<sup>3</sup>Ibid.

<sup>4</sup>ICAN Submission to Sweden’s Inquiry on the TPNW (2019), available at: {<https://slmk.org/wp-content/uploads/2020/05/ican-submission-to-sweden2019s-inquiry-on-the-tpnw.pdf>}, p. 3.

<sup>5</sup>Letter from Tilman Ruff, Chair, Australian Management Committee, International Campaign to Abolish Nuclear Weapons (15 August 2008), available at: {[https://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jsc/14may2008/subs/sub7\\_1.pdf](https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jsc/14may2008/subs/sub7_1.pdf)}, p. 3.

<sup>6</sup>Olamide Samuel, ‘Far from a done deal: Europe and the nuclear ban treaty’, *Green European Journal* (6 July 2021), available at: {<https://www.greeneuropeanjournal.eu/far-from-a-done-deal-europe-and-the-nuclear-ban-treaty/>}.

<sup>7</sup>CND, ‘No to nuclear power’, available at: {<https://cnduk.org/actions/no-to-nuclear-power-petition/>}.

<sup>8</sup>‘Environment and nuclear energy’, Resolution of the Twenty-Third International Congress of WILPF, *WILPF* (28 July 1986), available at: {<https://www.wilpf.org/wp-content/uploads/2022/08/Environment-and-Nuclear-Energy.pdf>}.

<sup>9</sup>Ibid., pp. 2 and 3.

<sup>10</sup>Gabrielle Hecht, *Being Nuclear: Africans and the Global Uranium Trade* (Cambridge, MA: MIT Press, 2012).

<sup>11</sup>Ray Acheson, Beatrice Fihn, and Katherine Harrison, ‘Report from the Nayarit Conference’, *Reaching Critical Will* (n.d.), available at: {<https://www.reachingcriticalwill.org/disarmament-fora/hinw/nayarit-2014/report>}.

prevalence of 'Nutopian' thinking in the Global South influenced the production of the TPNW. Columba Peoples, the scholar who coined the term 'Nutopia', describes it 'a mode of understanding nuclear power that is imbued with a spirit of technological optimism in relation to "peaceful" nuclear power, but simultaneously qualified by an awareness of the destructive uses and catastrophic potentialities of nuclear weapons'.<sup>12</sup>

Nutopia is the idea that nuclear order is about both the existential threat of nuclear explosions but at the same time the 'perpetual promise' of nuclear energy. But the vast majority of nuclear scholarship focuses on the challenges and implications of weapons, and the respective roles of deterrence, non-proliferation, stability, arms control, and disarmament. Far less attention is paid to the centrality of other interests within the global nuclear order driven by non-military, civilian applications of nuclear technology. This split also appears to map closely to the differences between the developed and largely Western world (where nuclear weapons risks appear most acute) and the developing Global South (where weapons threats are fewer, Nuclear-Weapon-Free Zones are already in existence, and concerns focus more on developmental challenges). Simply assuming that all states within the global nuclear order have homogeneous views and goals is to fall into the trap of the dominant orthodoxy and discourse.

The prevalence of Nutopian thinking is unevenly distributed and persists in less technologically advanced countries with more prominent developmental challenges, particularly in the Global South. Global South perspectives on nuclear issues are often articulated within the Non-Aligned Movement (NAM) grouping of states.<sup>13</sup> As a result, the NAM has consistently and officially articulated Nutopian perspectives in nuclear disarmament forums. As we demonstrate, the TPNW relies on the numerical strength, ideological support, and political momentum of Global South and NAM states. We therefore examine the importance of Nutopia in the production of the TPNW. Our main argument is that the TPNW would not have been possible if it failed to accommodate these Nutopian perspectives, and this accommodation resulted in the TPNW's explicit commitment in its preamble to honour existing rights of states to access nuclear technology.

We do not argue that disarmament is unimportant to NAM and Global South states. In fact, many NAM and Global South states have consistently championed nuclear disarmament. Rather, we argue that a singular focus on disarmament motivations obscures a range of other important considerations that have moderated and shaped their pursuit for nuclear abolition. All TPNW signatories were motivated by normative desires for disarmament. However, a closer look at secondary motivations for state signatories reveals interesting insights about the diversity of interests accommodated by the treaty.

A number of states pursue nuclear disarmament for immediate security interests and self-preservation. Other states pursue nuclear disarmament while also calling for retributive justice for their citizens who suffer the impacts of nuclear testing. These states are wholly anti-nuclear (weapons and energy). However, a majority of TPNW signatories harbour Nutopian understandings of nuclear order, i.e. they express optimism in the peaceful applications of nuclear power. These states were able to sign the Treaty because it did not become an additional obstruction to their Non-Proliferation Treaty (NPT) Article IV right to access nuclear technology for peaceful purposes (despite the wishes of some anti-nuclear states and NGOs). If the TPNW had not included language protecting the right to access nuclear technology or had incorporated more stringent safeguarding and monitoring requirements, many states from the NAM and Global South would not have signed it. Without buy-in from this group, the TPNW would have struggled by find the

<sup>12</sup>Columba Peoples, 'Redemption and Nutopia: The scope of nuclear critique in international studies', *Millennium*, 44:2 (2016), pp. 216–235 (p. 216).

<sup>13</sup>The NAM consists of 120 members, most of whom are from the 'Global South' (Africa, Latin America, Southeast Asia, Oceania). Global South should not be confused with 'Third World'. Notable Global South states Brazil and Argentina are not in the NAM.

fifty signatories needed to come into force. Therefore, Nutopian thought is a particularly important consideration if we wish to understand the complex and dynamic perspectives of Global South states and their interactions with the global nuclear order.

This article proceeds in three sections. First, we track the evolution of Nutopia and its particular importance for the NAM and the determination of many NAM member states to secure access to nuclear technologies. Second, we identify the main political motivations and groupings (beyond nuclear disarmament) that gave rise to the TPNW. These are split between; (i) Positive Neutral States (anti-nuclear states outside Nuclear-Weapon-Free Zones [NWFZs] whose immediate security interests are jeopardised by the presence of nuclear weapons in their regions); (ii) Retributive-Seeking States (anti-nuclear states which suffered from nuclear weapons testing and seek retribution within the humanitarian discourse); and; (iii) Non-Aligned Movement States (anti-nuclear-weapon states, seeking nuclear technologies, who brought the required numbers to the TPNW). Third, we demonstrate how Global South and NAM Nutopian thinking has influenced the TPNW and its subsequent evolution, specifically the debates over the preambular language, anti-nuclearism, the Additional Protocol, and non-proliferation safeguards. Lastly, the conclusion makes the case for the importance of looking at nuclear politics through the lens of both Nutopia and the Global South in order to challenge dominant and accepted Western narratives of nuclear politics.

### Nutopia and the Non-Aligned Movement

Since the invention of nuclear technologies in the 1940s, humanity has grappled with potential outcomes stemming from their spread and possible use. On the one hand, nuclear technologies have been incorporated into contemporary international politics and militarised. If utilised for warfighting, these weapons are capable of rendering much of our planet uninhabitable, irradiated and replete with dystopian wastelands. On the other hand, nuclear technologies have been applied for non-military purposes, ushering in unprecedented scientific advancement and development in certain countries. Put simply, nuclear technological advancements could serve as an avenue either for humanity's emancipation or for its annihilation, ushering in a utopian or dystopian future. This understanding has conditioned the often-competing perceptions on the foundational logics and purposes of nuclear 'order'.

In the wake of the United States' nuclear attacks on Japan, anxieties about the realisation of dystopian futures accompanying the proliferation of nuclear weapons set in motion the construction of a global nuclear order, which, according to William Walker, served the 'highest purposes' of 'world survival, war avoidance and economic development'.<sup>14</sup> Subsequently, the evolution of the proposals, institutions, treaties, and normative frameworks that constitute nuclear order have been premised on the avoidance of dystopian futures or the achievement of utopian ones. Programmes for the regulation of the international nuclear order would be centrally predicated on the promised benefits of nuclear power, inasmuch as they served the purposes of nuclear war avoidance and war survival.<sup>15</sup> This is a dynamic that has been encapsulated by Columba Peoples: 'International nuclear order-building has been marked by the persistent accompaniment of identification of the "perpetual menace" of nuclear weapons (Walker's term) on the one hand with what might be termed as the "perpetual promise" of nuclear power on the other.'<sup>16</sup>

Nutopia then, is the prevalence of a mode of understanding nuclear power in technologically determinist terms that simultaneously evokes optimism concerning peaceful uses in most articulations of its destructive potential.<sup>17</sup> As a discursive mechanism, the deployment of Nutopianism amplifies the 'saving power' of the atom based on the assumption that it is crucial for human

<sup>14</sup>William Walker, *A Perpetual Menace: Nuclear Weapons and International Order* (Abingdon: Routledge, 2011), p. 12.

<sup>15</sup>Peoples, 'Redemption and Nutopia', p. 224.

<sup>16</sup>*Ibid.*

<sup>17</sup>*Ibid.*, p. 218.

progress and economic prosperity – when in the ‘right’ hands. In turn, Nutopianism underscores the belief that the structures of the global nuclear order should be optimised to facilitate the development and spread of peaceful nuclear technologies, while simultaneously constricting the possibility of the technology’s further militarisation beyond the control or influence of the accepted nuclear powers.

As an ordering idea, the Nutopian understanding ‘that nuclear power is a redemptive tool for national development’ initially emanated from hegemonic centres of thought and was promptly accepted and remains influential in the developmental discourses of many Global South states today.<sup>18</sup> Nutopian thought was already evident just months after the Hiroshima and Nagasaki nuclear attacks, when at the 1945 Conference of Foreign Ministers held in Moscow, representatives of the United Kingdom, the Soviet Union, and the United States deliberated the establishment of a United Nations Commission with the purpose of destroying all atomic weaponry while simultaneously promoting atomic energy for peaceful purposes. The resultant United Nations Atomic Energy Commission (UNAEC) would become the forum within which the Baruch plan was presented in 1946. Nutopianism was consequently embedded as a discursive mechanism in the very first United Nations General Assembly (UNGA) Resolution in 1946, which called for the ‘control of atomic energy to the extent necessary to ensure its use only for peaceful purposes’.<sup>19</sup> This inaugural resolution of the United Nations is frequently referred to as foundational to the inclusion of the logic of disarmament in international relations and law. But usually missing from these analyses is a recognition that Nutopianism was equally entrenched at this very foundational period of nuclear order.

Within the decade, US president Dwight Eisenhower launched the Atoms for Peace programme, adapting some key ideas that were contained in the recommendations of the United States’ 1952 Panel of Consultants on Disarmament.<sup>20</sup> The Atoms for Peace programme was perhaps the most ostensible iteration of Nutopianism in the formative period of nuclear order. It was, after all, hegemonic facilitation of the idea that nuclear power was essential for national and international development. Eisenhower’s Atoms for Peace address to the UNGA on 8 December 1953 reflected contemporary beliefs in the expectations that nuclear energy would provide tremendous advancement for all states, and especially developing states. In Nutopianist fashion, Eisenhower declared that:

It is not enough to take this weapon out of the hands of the soldiers. It must be put into the hands of those who will know how to strip its military casing and adapt it to the arts of peace. The United States knows that if the fearful trend of atomic military build-up can be reversed, this greatest of destructive forces can be developed into a great boon, for the benefit of all mankind.<sup>21</sup>

Eisenhower’s core idea was that the fissile materials acquired by nuclear armed states be submitted to a common repository which would then be accessible to all states for peaceful purposes.<sup>22</sup> Eisenhower’s address was widely applauded and accepted by the UNGA, which subsequently

<sup>18</sup>Nick Ritchie, ‘A hegemonic nuclear order: Understanding the ban treaty and the power politics of nuclear weapons,’ *Contemporary Security Policy*, 40:4 (2019), pp. 409–434 (p. 419).

<sup>19</sup>United Nations, General Assembly resolution 1(I), Establishment of a Commission to Deal with the Problems Raised by the Discovery of Atomic Energy, A/RES/1(I) (24 January 1946), available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/032/52/PDF/NR003252.pdf?OpenElement>.

<sup>20</sup>Report by the Panel of Consultants of the Department of State to the Secretary of State (No. 67; Foreign Relations of the United States, National Security Affairs) (1953). United States Department of State, Office of the Historian; Disarmament files. Available at: <https://history.state.gov/historicaldocuments/frus1952-54v02p2/d67>.

<sup>21</sup>Dwight Eisenhower, Atoms for Peace [Speech]. United Nations General Assembly, New York (8 December 1953), available at: <https://www.eisenhowerlibrary.gov/research/online-documents/atoms-peace>.

<sup>22</sup>Henry Sokolski, ‘Atoms for peace: A non-proliferation primer?’, *Arms Control*, 1:2 (1980), pp. 199–231.

approved the establishment of an agency to promote nuclear energy for peaceful purposes – the International Atomic Energy Agency (IAEA).<sup>23</sup>

Two years after the launch of the Atoms for Peace programme, what is now considered to be the founding conference of the Non-Aligned Movement, the 1955 Asian-African Conference (colloquially known as the Bandung conference) was held. The NAM was founded on a principled opposition to great-power politics and was conceived as a developmental forum in which the growing number of states emerging from colonisation could articulate and coordinate their interests. Thus, the NAM was primarily about protecting the independence and socio-economic interests of its members from superpower conflagrations and subjugation.<sup>24</sup> Given the entrenchment of the Atoms for Peace narrative in global politics at the time, the exploration of the peaceful uses of nuclear energy was high on the agenda of the Bandung conference. In fact, the importance of nuclear energy for peaceful purposes was expressed in the final communiqué:

The Asian-African Conference emphasized the particular significance of the development of nuclear energy for peaceful purposes, for the Asian-African countries. The Conference welcomed the initiative of the Powers principally concerned in offering to make available information regarding the use of atomic energy for peaceful purposes.<sup>25</sup>

Within the communiqué, they:

urged the speedy establishment of the International Atomic Energy Agency which should provide for adequate representation of the Asian-African countries on the executive authority of the Agency; and recommended to the Asian and African Governments to take full advantage of the training and other facilities in the peaceful uses of atomic energy offered by the countries sponsoring such programmes.<sup>26</sup>

The NAM's reception and understanding of the Atoms for Peace initiative is significant. Reading into the final communiqué makes it clear that NAM states tapped into the Nutopian idea of 'making the world safe for the development of nuclear power',<sup>27</sup> a notion which viewed the achievement of nuclear disarmament not as an end in itself, but as a prerequisite for achieving a developed world brought about by scientific breakthroughs in the peaceful application of nuclear technologies. The conference considered nuclear disarmament to be of importance principally if it limited the destructiveness of military confrontation between the nuclear-armed states and did not directly affect non-parties to such a conflict. Non-proliferation, in contrast, received no mention in the final communiqué at all. In turn, these understandings influenced the NAM members' approach to the negotiation of the NPT.

The IAEA was established two years after the Bandung conference in 1957, and the NAM understood the IAEA's mission as primarily to promote nuclear energy and offer international assistance, especially to developing countries.<sup>28</sup> Thus, the emerging nuclear order was an opportunity for non-aligned states to further their socio-economic development, *and* for them to shape the very nature of the non-proliferation regime in ways that ensured it did not impede their development. In so doing, the establishment of an inalienable right of states to pursue the peaceful uses of nuclear energy in Article IV of the NPT was necessary. Article IV's inclusion is credited to Nigeria,

<sup>23</sup>David Fischer, *History of the International Atomic Energy Agency: The First Forty Years* (Vienna: IAEA, 1997).

<sup>24</sup>Cedric Grant, 'Equity in international relations: A Third World perspective', *International Affairs*, 71:3 (1995), pp. 567–587 (p. 568).

<sup>25</sup>Final communiqué of the Asian-African conference: Held at Bandung from 18–24 April 1955', *Interventions*, 11:1 (2009), pp. 94–102, available at: {[https://www.cvce.eu/en/obj/final\\_communique\\_of\\_the\\_asian\\_african\\_conference\\_of\\_bandung\\_24\\_april\\_1955-en-676237bd-72f7-471f-949a-88b6ae513585.html](https://www.cvce.eu/en/obj/final_communique_of_the_asian_african_conference_of_bandung_24_april_1955-en-676237bd-72f7-471f-949a-88b6ae513585.html)}.

<sup>26</sup>Ibid.

<sup>27</sup>Peoples, 'Redemption and Nutopia', p. 227.

<sup>28</sup>Russell Leslie, 'The good faith assumption: Different paradigmatic approaches to nonproliferation issues', *The Nonproliferation Review*, 15:3 (2008), pp. 479–97.



Italy, and Mexico's proposals during the later stages of the NPT's negotiations in 1966 – with Nigeria and Mexico being NAM members.<sup>29</sup> This inclusion of Article IV can also be seen as one of the earliest instances where Nutoptianism (at least in part) dictated their perception of what a nuclear order was meant to achieve. A closer reading of Article IV also includes that special reference be given to 'the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world'.<sup>30</sup> Similarly, the USA and USSR's acceptance of Article IV could be explained by the strategic considerations of great-power competition. In light of China's first nuclear test in 1964, the establishment of a global non-proliferation norm before other states acquired nuclear weapons capabilities was a top priority – even if it meant that a universalised NPT had to accommodate some divergent developmental interests as a result.

Thus, the NAM became a powerful group of states that would consistently prioritise development and disarmament over non-proliferation. This is not to say that the NAM stance is or was homogeneous, but rather that the protection of the inalienable right to peaceful uses of nuclear technologies has largely remained cohesive over time.<sup>31</sup>

Given the inclusion of Article IV in the NPT, the NAM can be held responsible for what contemporary nuclear politics scholars have more recently identified as the 'irony' of the non-proliferation regime. Richard Falk and David Kreiger for example, recognise this when they state that:

It is highly ironic that the Non-Proliferation Treaty describes peaceful uses of nuclear energy, which would include power generation, as an 'inalienable right'. This means that in a very real way, the treaty works against one of its principal objectives, that is, preventing nuclear weapons proliferation.<sup>32</sup>

In a similar vein, Nina Tannenwald recognises the implications of this irony when she presents a 'unique problem of order in the international state system' as being the governance challenge of balancing developing countries' demands for access to nuclear technology with the interest of the international community in controlling the spread of nuclear weapons.<sup>33</sup> Were greater consideration given to developing states' perspectives, then perhaps we might have come to a different conclusion today with regards to what we identify as the principal objective of the NPT and what we identify as ironic and somewhat inexplicable.

The consequent evolution of the global nuclear order since the NPT's entry into force has seen the balancing act between developing states' demands for nuclear technologies and the international community's constriction of these technologies, tipped in favour of the latter. The realisation that the spread of nuclear technical know-how for peaceful purposes can be hijacked for weapons proliferation (a lesson learned from the experiences of South Africa, India, Pakistan, Iran, and North Korea) has resulted in the tightening of restrictions around nuclear technologies. As a result, additional non-proliferation mechanisms such as the Nuclear Suppliers Group, the Zaggner Committee, the IAEA safeguards system, the International Convention for the Suppression of Acts of Nuclear Terrorism, the Convention on the Physical Protection of Nuclear Material, and various UN Security Council Resolutions were increasingly introduced as supplementary measures to forestall the continued proliferation of nuclear weapons. In all, this non-proliferation architecture has probably played a role in constricting the acquisition of nuclear weapons by the majority of states in

<sup>29</sup> Mohamed Shaker, *The Nuclear Non-Proliferation Treaty: Origin and Implementation, 1959–1979*, Volumes 1–3 (London: Oceana Publications, 1980).

<sup>30</sup> Treaty on the Non-Proliferation of Nuclear Weapons, London, Moscow, and Washington (1 July 1968), available at: <https://treaties.unoda.org/t/npt>.

<sup>31</sup> William Potter and Gaukhar Mukhatzhanova, *Nuclear Politics and the Non-Aligned Movement* (Abingdon: Routledge for the International Institute for Strategic Studies, 2012), p. 51.

<sup>32</sup> Richard Falk and David Kreiger, *The Path to Zero: Dialogues on Nuclear Dangers* (Boulder: Paradigm Publishers, 2012), p. 104.

<sup>33</sup> Nina Tannenwald, 'Justice and fairness in the nuclear nonproliferation regime', *Ethics & International Affairs*, 27:3 (2013), pp. 299–317.

the international system.<sup>34</sup> However, the opportunity cost of this non-proliferation system can be found in the restriction of the spread of nuclear technologies for peaceful purposes. The experience of non-industrialised/non-Western non-nuclear-armed states has been an increasing narrowing of freedom of actions that they consider necessary for their industrial development as enshrined in NPT Article IV. It is not uncommon for NAM members to repeatedly express their concerns about the impacts or even the necessity of non-proliferation regimes.<sup>35</sup> NAM states frequently state that interests in non-proliferation might be dismissive of the fact that these mechanisms amount to technology denial of the sort that limits economic development in the Global South.<sup>36</sup>

Over time, the NAM's rhetoric on peaceful uses of nuclear energy has become decidedly more reflective of what many of its members perceived to be unfair 'Western' practices. As paragraph 230 of the Final Document and Political Declaration of the 1979 NAM conference put it:

the obstacles which the developed countries place in the way of transfers of technologies related to the peaceful uses of atomic energy by fixing financial and other conditions which are incompatible with the national sovereignty of developing countries and with the criteria of financial viability.<sup>37</sup>

Although the necessity of more stringent non-proliferation mechanisms is not lost on NAM members, there has been steady resistance to the development of additional mechanisms – even mechanisms such as the multilateral nuclear fuel approaches proposed by the IAEA since 2003 have been met with considerable scepticism.<sup>38</sup>

The NAM's sustained rejection of additional non-proliferation burdens continues to be vocally expressed in all multilateral forums where they are represented. For example, in October 2016, Ambassador Hagniningtyas Krisnamurthi of Indonesia delivered a statement on behalf of the NAM at the United Nations which made it clear that '[the NAM] is of the firm belief that non-proliferation policies should not undermine the inalienable right of States to acquire, have access to, import or export nuclear material, equipment and technology for peaceful purposes'.<sup>39</sup> Iterations of the above statement have been issued in the 2017 NPT preparatory committee and in the 2019 NAM summit meeting, and these are just some of the most recent statements.<sup>40</sup>

For many NAM states with historical experiences of subjugation and exploitation, the protection of their developmental interests against forces that have historically acted to suppress these interests in favour of stability, predictability, and security is a dynamic that should be taken into account. As our analysis of NPT politics demonstrates, developmental interests have and will continue to have a pertinent effect on the perceptions of the global nuclear order and the functions of the NPT.

<sup>34</sup>There are many different reasons why states may have decided not to build or acquire nuclear weapons.

<sup>35</sup>J. D. Singer, 'Nuclear proliferation and the geocultural divide: The march of folly', *International Studies Review*, 9:4 (2007), pp. 663–72.

<sup>36</sup>Kuala Lumpur Summit Conference (24–5 February 2003). Final Document, at the Thirteenth Summit Conference of Heads of State or Government of the Non-Aligned Movement, available at: [http://cns.miis.edu/nam/documents/Official\\_Document/13th\\_Summit\\_of\\_the\\_Non-Aligned\\_Movement\\_-\\_Final\\_Document\\_Whole.pdf](http://cns.miis.edu/nam/documents/Official_Document/13th_Summit_of_the_Non-Aligned_Movement_-_Final_Document_Whole.pdf).

<sup>37</sup>Havana Summit Conference (3–9 September 1979). Final Document and Political Declaration, at the Sixth Summit Conference of Heads of State or Government of the Non-Aligned Movement, p. 74, available at: [http://cns.miis.edu/nam/documents/Official\\_Document/6th\\_Summit\\_FD\\_Havana\\_Declaration\\_1979\\_Whole.pdf](http://cns.miis.edu/nam/documents/Official_Document/6th_Summit_FD_Havana_Declaration_1979_Whole.pdf).

<sup>38</sup>Potter and Mukhatzhanova, *Nuclear Politics*, p. 89.

<sup>39</sup>Hagniningtyas Krisnamurthi, 'I. General debate of the first committee session of the 71<sup>st</sup> United Nations General Assembly (New York, 3 October 2016). Statement by the Deputy Permanent Representative of the Republic of Indonesia, on behalf of the Non-Aligned Movement', available at: [https://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/statements/3Oct\\_NAM.pdf](https://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/statements/3Oct_NAM.pdf).

<sup>40</sup>Baku Summit Conference (25–6 October 2019). Final Document, at the Eighteenth Summit Conference of Heads of State or Government of the Non-Aligned Movement, available at: [https://unidir.org/sites/default/files/2020-10/2019\\_NAM%20Summit%20final%20doc.pdf](https://unidir.org/sites/default/files/2020-10/2019_NAM%20Summit%20final%20doc.pdf); Statement by the Delegation of the Bolivarian Republic of Venezuela, on behalf of the Non-Aligned Movement at the First Session of the Preparatory Committee for the 2020 Nuclear Non-Proliferation Treaty Review Conference. General Debate, Vienna (2 May 2017), available at: [https://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom17/statements/2May\\_NAM.pdf](https://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom17/statements/2May_NAM.pdf).



The potential of nuclear energy to accelerate economic and human development still deeply influences debates about the necessity of a nuclear non-proliferation regime and serves as a discursive counterweight to the contemporary subjugation and loss of sovereignty that the non-proliferation regime's effective policing of states territories has necessitated. And, lest we forget, this justification continues to highlight the potential dangers of the militarisation of nuclear technologies by less 'rational' states. Thus, the submission of developing non-nuclear armed states to the global non-proliferation system is made more palatable if acquiescence to non-proliferation restriction is to be accompanied with development through the realisation in return of inalienable rights to the peaceful uses of nuclear energy. From the discussions so far, this seems to be the grand bargain from the perspective of many developing states from the Global South. The bargain more frequently discussed – one in which the submission of developing non-nuclear armed states to the global non-proliferation system is made possible by the five Nuclear Weapons States' persistent promises of disarmament – appears less realistic in comparison. With the benefit of over five decades of demonstrated NAM behaviour, a few scholars have independently concluded that non-proliferation from the NAM perspective is the least important motivating factor for their continued participation in the global nuclear order.<sup>41</sup>

### Gathering political momentum for the TPNW

Nuclear weapons have been perceived as a perpetual menace since the beginning of the nuclear age, and proposals to eliminate these weapons have become a perennial feature of nuclear politics.<sup>42</sup> The 1946 Baruch Plan first introduced the logic of 'general and complete disarmament' and the effective international control of nuclear weapons as necessary for the preservation of international security. The first ever UNGA resolution (also in 1946) introduced disarmament logic into international law/relations.<sup>43</sup> This was followed a decade later by the Einstein–Russell Manifesto, as the fear of nuclear war reached the global public consciousness.<sup>44</sup> Even after ideas of nuclear disarmament and general and complete disarmament vanished from the policy proposals of the US and USSR in the 1960s, the actions of what would be termed Non-Nuclear Weapon States (NNWS) eventually led to the inclusion of a disarmament clause as one of the main 'pillars' of the 1968 NPT.<sup>45</sup> Article VI of the NPT still serves as the first (and so far only) negotiated document with the five Nuclear Weapons States (NWS)<sup>46</sup> where they have agreed to nuclear disarmament. Recalling the numerous undertakings by the NWS at various Non-Proliferation Treaty (NPT) Review Conferences and UN General Assembly (UNGA) First Committee meetings, NNWS have sought to accelerate the process of nuclear disarmament by negotiating a comprehensive prohibition of nuclear weapons possession, testing, and use. Concurrently, a majority of NNWS negotiated various Nuclear-Weapon-Free Zones (NWFZs) in Africa, Antarctica, Central Asia, Latin America, South-East Asia, South America, and the South Pacific as well as Outer Space. These NWFZs created an interlocking series that served to limit the spatial scope of nuclear weapons use by

<sup>41</sup>Togzhan Kassenova, 'Brazil, Argentina, and the politics of global nonproliferation and nuclear safeguards', *Carnegie Endowment for International Peace* (29 November 2016), available at: <https://carnegieendowment.org/2016/11/29/brazil-argentina-and-politics-of-global-nonproliferation-and-nuclear-safeguards-pub-66286>; Leslie, 'Good faith assumption'; Potter and Mukhatzhanova, *Nuclear Politics*, p. 40; Olamide Samuel, 'What role can nuclear energy play in Africa's climate transition?', *Al-Jazeera* (21 November 2021), available at: <https://www.aljazeera.com/opinions/2021/11/21/nuclear-energy-should-be-part-of-africas-climate-strategy>).

<sup>42</sup>Walker, *Perpetual Menace*, p. 180.

<sup>43</sup>United Nations, General Assembly Resolution 1(I), Establishment of a Commission to Deal with the Problems Raised by the Discovery of Atomic Energy, A/RES/1(I) (24 January 1946), available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/032/52/PDF/NR003252.pdf?OpenElement>.

<sup>44</sup>Albert Einstein and Bertrand Russell, *The Russell–Einstein Manifesto* (London, 1955), available at: <https://pugwash.org/1955/07/09/statement-manifesto/>.

<sup>45</sup>Shaker, *Nuclear Non-Proliferation Treaty*.

<sup>46</sup>The US, Russia, UK, France, and China are recognised as NWS under the NPT. India, Pakistan, Israel, and North Korea are nuclear-armed but not part of the treaty.

the five NWS and the four nuclear-armed states not recognised by the NPT. The emergence of the TPNW demonstrates that an overwhelming majority of NNWS still consider the abolition of nuclear weapons as the most sustainable means of eliminating nuclear weapons risk.

The medium-term drivers of the TPNW can be found in the optimism that accompanied the end of the Cold War and the huge reductions in US and Russian nuclear stockpiles, the indefinite extension of the NPT in 1995, and perhaps most importantly in the 1996 International Court of Justice (ICJ) Advisory Opinion on the legality of nuclear weapons. The ICJ ruling is significant in the TPNW's history because it was the first disarmament-focused procedural uprising in the UNGA.<sup>47</sup> The period leading up to the ICJ Advisory Opinion was perhaps the first time that the prospect of nuclear weapons becoming illegal under international law had been seriously considered. The ICJ procedural uprising would eventually serve as the template with which NNWS would again attempt to pursue nuclear disarmament outside the NPT framework.

A decade and half later, the Humanitarian Initiative on Nuclear Weapons (HINW) emerged with the purpose of reorienting discussions about the legality of nuclear weapons to focus on the humanitarian implications of their use.<sup>48</sup> The HINW was significant in the path to the Ban Treaty not only because of its unprecedented recognition of human and environmental damage instantiated by nuclear weapons testing and use, but also because of the further linkages it created by subjecting potential nuclear weapons use to the requirements of International Humanitarian Law (requirements such as the ability to distinguish between combatants and civilians and those of proportionality, military necessity, and undue suffering), requirements that went beyond what was considered in the 1996 ICJ opinion.<sup>49</sup>

The initial champions of a nuclear prohibition treaty in the form of the TPNW were Norway, Austria, Ireland, Switzerland, and Sweden. In a sense, these states roughly map on to a subset of Harald Müller and Carmen Wunderlich's 'common good-driven bridge builders' in their categorisation of actors that shape norm development in the NPT. More specifically, they are described as the 'disarmament-minded, mostly neutral, western countries' outside of established NWFZs.<sup>50</sup> From the perspectives of these states, nuclear disarmament remains a tangible security arrangement that guarantees their right to a continued existence. The understanding of nuclear disarmament in security terms might perhaps explain why these states have been the cheer-leaders for nuclear disarmament since the start of the nuclear age (it was Ireland, for example, that championed the negotiation of the NPT, and Austria has been instrumental in facilitating the emergence of the TPNW).<sup>51</sup>

More specific to our argument in this article is the idea of Positive Neutral States as a distinct category. Unlike a majority of disarmament-minded countries, which enjoy the protections afforded by NWFZs, Positive Neutral States are especially proximal to potentially belligerent nuclear-armed

<sup>47</sup> Michael J. Matheson, 'The opinions of the International Court of Justice on the threat or use of nuclear weapons', *American Journal of International Law*, 91:3 (1997), pp. 417–35.

<sup>48</sup> Federal Ministry, Republic of Austria, European and International Affairs, 2014 Vienna Conference on the Humanitarian Impact of Nuclear Weapons (8–9 December 2014), available at: <https://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons/2014-vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/>.

<sup>49</sup> Mohd Hisham Mohd Kamal, 'Principles of distinction, proportionality and precautions under the Geneva Conventions: The perspective of Islamic law', in Md. Jahid Hossain Bhuiyan and Borhan Uddin Khan (eds), *Revisiting the Geneva Conventions: 1949–2019* (Leiden: Brill, 2020).

<sup>50</sup> Harald Müller and Carmen Wunderlich, 'Not lost in contestation: How norm entrepreneurs frame norm development in the nuclear nonproliferation regime', *Contemporary Security Policy*, 39:3 (2018), pp. 341–366 (p. 348).

<sup>51</sup> An outlier to this grouping is Norway, which continues to benefit from NATO's nuclear umbrella but which has been equally instrumental in championing nuclear disarmament. See Kjolv Egeland, 'Oslo's "new track": Norwegian nuclear disarmament diplomacy, 2005–2013', *Journal for Peace and Nuclear Disarmament*, 2:2 (2019), pp. 468–90. This misnomer becomes less so however, when one considers Norway's historical advocacy for a Nordic NWFZ in the 1980s. See Erik Alfsen, Magne Barth, Ingrid Eide, et al., 'A nuclear weapon-free zone in the Nordic countries: A preliminary study', *Bulletin of Peace Proposals*, 13:3 (1982), pp. 189–99. Sweden applied to join NATO in 2022, although at the time of writing it is not a member of the alliance.

states and their umbrella states.<sup>52</sup> As a result, they perceive the continued possession of nuclear weapons as an *immediate* security threat to their existence on the basis of the cross-boundary and indiscriminate impacts of potential nuclear weapons use.<sup>53</sup> Positive Neutral States highlight their experienced injustice as stemming from their impeded 'right' to abstain from potential nuclear conflict and its impacts regardless of their declarations of neutrality in the event of the outbreak of nuclear conflict. Positive Neutral States of particular importance to this article are those that have consistently voted in favour of the TPNW and/or signed and ratified the Treaty. Those that have ratified the TPNW include Austria, Bangladesh, Ireland, Malta, San Marino, New Zealand, the Maldives, Mongolia, Nepal, Palestine, Palau, Timor-Leste, and the Vatican.<sup>54</sup> Those that have signed the TPNW include Nepal, Sri Lanka, and Liechtenstein.<sup>55</sup>

Positive Neutral States do not benefit from the expected security guarantees of any nuclear umbrellas (and even perceive the existence of nuclear umbrellas in negative terms). Additionally, many Positive Neutral States have unsuccessfully attempted to establish NWFZs to isolate themselves from nuclear conflict. Mongolia's nuclear-weapon-free status is a prime example of positive neutrality in this regard. Mongolia sought an NWFZ, but this designation was watered down to a 'status' 'until the five Nuclear Weapons States accepted the concept of a single-State nuclear-weapon-free zone'.<sup>56</sup> The Rapacki plan for the disarmament of Central Europe, the proposed Nordic NWFZ, the North Asia NWFZ, and the Middle East Weapons-of-Mass-Destruction-Free Zone (WMDFZ), all failed to materialise due to the geopolitical interests of proximal nuclear-armed states.<sup>57</sup> In 1987, New Zealand's Labour government passed an act to establish a Nuclear-Free Zone in New Zealand.<sup>58</sup> In 1999, Austria also passed a Federal Constitutional Act for a Nonnuclear Austria.<sup>59</sup> Bangladesh, a TPNW-supporting country close to three nuclear-armed states – India, Pakistan, and China – also exists outside NWFZs. Bangladesh's foreign minister has been clear about the country's prioritisation of disarmament, as it is bound by a 'constitutional obligation to disarmament'.<sup>60</sup> The Maldives is also a disarmament-seeking state proximal to India that can be categorised as a Positive Neutral state that rejects a militarised understanding of security.<sup>61</sup> However, these individual state declarations would amount to nought if a nuclear conflict were to erupt in their immediate neighbourhoods.

At the 2010 NPT Review Conference, Norway took a decisive lead in pushing for 'humanitarian language' to appear in the final document. This humanitarian language eventually provided the vocabulary with which a much broader coalition of NNWS, especially those who had been subjected to nuclear testing and use, could articulate their grievances concerning the necessity

<sup>52</sup> Kassenova, 'Brazil, Argentina, and the politics of global nonproliferation'.

<sup>53</sup> We use the term 'immediate' to differentiate between the proximal cross-boundary effects of nuclear war, such as blast, heat, radioactive fallout, and fireballs, from the broader effects of nuclear war, such as nuclear winter and famine.

<sup>54</sup> See Appendix 1 (TPNW status spreadsheet).

<sup>55</sup> There are also those which have voted consistently in favour of the treaty. Andorra, Cyprus, Azerbaijan, Bhutan, and the Republic of Moldova. A majority of Middle Eastern States can be considered positive neutral by our criteria – including Afghanistan, Bahrain, Iran, Iraq, Jordan, Kuwait, Lebanon, Oman, Qatar, UAE, and Yemen – who have sought the establishment of a Weapons of Mass Destruction-free zone in the Middle East.

<sup>56</sup> United Nations platform for Nuclear-Weapon-Free Zones, 'Mongolia's Nuclear-Weapon-Free Status', available at: <https://www.un.org/nwzf/content/mongolias-nuclear-weapon-free-status>.

<sup>57</sup> For a more detailed assessment of how NWS geopolitical interests stymied the development of these NWFZs, see Sizwe Mpofu-Walsh, 'Obedient rebellion: Nuclear Weapon Free Zones and global nuclear order 1967–2017', PhD diss., University of Oxford, 2020, pp. 4–8.

<sup>58</sup> 'New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987' (8 June 1987), available at: <https://www.legislation.govt.nz/act/public/1987/0086/latest/DLM115116.html>.

<sup>59</sup> 'Federal constitutional act for a nonnuclear Austria' (1999), available at: <https://www.oecd-neo.org/law/legislation/austria/austria-nonnuclear-act.pdf>.

<sup>60</sup> AK Abdul Momen, 'Disarmament a priority of Bangladesh's foreign policy', *The Daily Star* (20 October 2020), available at: <https://www.thedailystar.net/opinion/news/disarmament-priority-bangladeshs-foreign-policy-1980953>.

<sup>61</sup> General Debate of the First Committee, Intervention by the Republic of Maldives (6 October 2016), available at: <https://www.un.org/disarmament/wp-content/uploads/2016/10/5-Oct-Maldives.pdf>.

of disarmament.<sup>62</sup> The HINW quickly followed the 2010 NPT Review Conference (RevCon) and in March 2013 saw Norway host the very first conference in Oslo, which was attended by 127 states. Interestingly, India and Pakistan were the only nuclear-armed states in attendance.<sup>63</sup> The Oslo conference introduced a discursive shift in the approach to nuclear weapons. It was a shift that indicated that there was potential for the stigmatisation of nuclear weapons based on their indiscriminate impacts, in a similar fashion to cluster munitions, landmines, and other prohibited weapons systems.<sup>64</sup> It is important to note that the absence of most of the nuclear-armed states and their extended deterrence allies at the Oslo conference stimulated the idea that NNWS could collectively take the lead on nuclear disarmament outside the NPT.<sup>65</sup>

Within the ideological framing of the humanitarian initiative, Global South states and Western NNWS were able to cooperate on nuclear disarmament issues through the New Agenda Coalition (NAC).<sup>66</sup> The NAC was explicit in supporting the idea of a comprehensive set of prohibitions of nuclear weapons, a precursory idea of the TPNW.<sup>67</sup> These ideas were ultimately expressed in the joint statement on the humanitarian impact of nuclear weapons delivered by New Zealand's Ambassador Dell Higgie on behalf of 125 states in the UNGA in October 2013. The Oslo conference paved the way for the second and third HINW conferences, which were held in 2014 in Mexico and Austria.

The HINW initiative discursively refocused global attention on the humanitarian impact of nuclear weapons and served as the focal point for the convergence of diverse interests and articulations of experiences of injustice. Within the umbrella of the humanitarian initiative, the most conspicuous articulations of injustice were those of the retributive kind. Given the intertwined history of nuclear weapons testing and colonial subjugation, champions of the Nuclear Ban Treaty were not only able to highlight the great human and environmental damage these states had experienced as a result of nuclear tests, but also the systems of colonial domination and indifference to the populations residing in (or close to) the locations of these tests. As a result, representatives from Algeria, Kazakhstan, and the Pacific Island states were able to articulate their quests for retributive justice, while also appealing to the wider discourse of repatriation for colonial violence.<sup>68</sup> Similarly, the humanitarian initiative provided the space where victims of nuclear detonations resident within nuclear-armed states and their allied partners (e.g. the Hibakusha in Japan) could articulate the horrors and injustices they endured. States were beginning to understand that their interests could be advanced and grievances remediated through collective and sustained support for a nuclear abolition treaty.<sup>69</sup> We can think of these as Retributive-Seeking States.

The Ban Treaty is primarily concerned with prohibiting nuclear weapons and addressing the remediation of human and environmental harm caused by 'the use or testing of nuclear weapons'<sup>70</sup> in areas under the jurisdiction of signatory states. However, the TPNW's negotiators also had aims for the Treaty to attain global relevance, in order to delegitimise nuclear weapons to the same extent

<sup>62</sup> Ibid.

<sup>63</sup> Ray Acheson, *Banning the Bomb, Smashing the Patriarchy* (London: Rowman & Littlefield, 2021), p. 159.

<sup>64</sup> Matthew Bolton, Sarah Njeri, and Taylor Benjamin-Britton (eds), *Global Activism and Humanitarian Disarmament* (Palgrave, 2020).

<sup>65</sup> Muller and Wunderlich, 'Nuclear disarmament without the nuclear-weapon states', *Daedalus*, 149:2 (2020), pp. 171–89.

<sup>66</sup> Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa.

<sup>67</sup> Working Paper Submitted by the Group of the Non-Aligned States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, to the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 'Elements for a plan of action for the elimination of nuclear weapons' (28 April 2010), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/335/08/PDF/N1033508.pdf?OpenElement>.

<sup>68</sup> 'TPNW World Congress Issues Astana Declaration' (2 September 2014), available at: <https://peaceandhealthblog.com/2014/09/02/astana-declaration/>; Acheson, Fihn and Harrison, 'Report from the Nayarit Conference'.

<sup>69</sup> See Acheson, *Banning the Bomb*; Nick Ritchie and Alexander Kmentt, 'Universalising the TPNW: Challenges and opportunities', *Journal for Peace and Nuclear Disarmament*, 4:1 (2021), pp. 70–93.

<sup>70</sup> Treaty on the Prohibition of Nuclear Weapons, New York (7 July 2017), available at: <http://undocs.org/A/CONF.229/2017/8>.

as other Weapons of Mass Destruction. To achieve this, the TPNW required a significant number of state signatories, and treaty universalisation is a game of numbers.<sup>71</sup>

In the first instance, it required fifty signatory states to enter into force. Of these states, we can identify Positive Neutral States (i.e. those that are not members of NWFZs and have supported the negotiation of a nuclear disarmament treaty).<sup>72</sup> We can also identify those with a history of nuclear testing and use (Retributive-Seeking States).<sup>73</sup> However, on the basis of these identified motivations, the number of states required for the TPNW to enter into force and to subsequently propel the Ban Treaty to truly global proportions is much greater than the identified states. To make up for this numerical shortcoming, nuclear disarmament-supporting states that did not directly harbour positive neutrality or retributive justice concerns (i.e. states within NWFZs but without a history of nuclear testing) had to be encouraged to support the TPNW by becoming signatories.

Numerous states would have certainly signed on to the Treaty based on their sustained support for nuclear disarmament, and their expressed frustration about the pace of disarmament within the NPT's framework. We can identify these states by looking at their voting records and expressed support for the TPNW.<sup>74</sup> A cursory look at these states reveals the obvious fact that these are predominantly states from the Global South and from the NAM.

As discussed earlier in this paper, while the NAM has been consistently vocal on the issue of nuclear disarmament, even tabling a time-bound plan of action for the elimination of nuclear weapons at the 2012 NPT RevCon,<sup>75</sup> it has also consistently made allegations of unfairness and injustice within the nuclear order.<sup>76</sup> On the one hand, they allege that qualitative improvements in the nuclear weapons capabilities of NWS demonstrate that these states are unserious about their non-proliferation concerns where vertical proliferation is concerned.<sup>77</sup> This is in stark contrast with the urgency and seriousness with which horizontal proliferation is approached by the NWS in the NPT. On the other hand, the failure of NWS to live up to their NPT Article VI obligations is seen as further dismissal of those specific obligations within the treaty that serve to constrain NWS' own behaviour and interests. In other words, they see it as a violation of the 'grand bargain' of nuclear order that stipulates what the appropriate conduct of states should be on the basis of their differentiated rights and obligations. US president Barack Obama, in his Prague speech of 2009, summarised the 'grand bargain' of nuclear order as 'countries with nuclear weapons will move towards disarmament, countries without nuclear weapons will not acquire them, and all countries can access peaceful nuclear energy'.<sup>78</sup> However, the NAM conceives of the central purposes of nuclear order rather differently from what we classify as Positive Neutral and Retributive-Seeking States. At the heart of this is a shared commitment by members of the NAM to secure the benefits of access to nuclear technology for economic and societal development.

### Unpacking the TPNW: Anti-nuclearism versus Nutopia

Many Western, mostly non-nuclear-armed countries (including those that support nuclear disarmament) have benefited from civilian nuclear technology for domestic energy requirements and

<sup>71</sup> Bakhtiyar Tuzmukhamedov, 'Deficiencies and ambiguities of the treaty on the prohibition of nuclear weapons', Lieber Institute Articles of War (30 September 2022), available at: <https://lieber.westpoint.edu/deficiencies-ambiguities-tpnw/>.

<sup>72</sup> See Appendix.

<sup>73</sup> Ibid.

<sup>74</sup> UN General Assembly, Seventy-First Session, First Committee, Agenda item 98 (kk), General and Complete Disarmament: Taking Forward Multilateral Nuclear Disarmament Negotiations, A/C.1/71/L.41 (14 October 2016), available at: <https://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/resolutions/L41.pdf>. See Appendix.

<sup>75</sup> Working paper submitted by the Group of the Non-Aligned States Parties to the Treaty on the Non-proliferation of Nuclear Weapons, to the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 'Elements for a Plan of Action for the Elimination of Nuclear Weapons'.

<sup>76</sup> Potter and Mukhatzhanova, *Nuclear Politics*, p. 46.

<sup>77</sup> Ibid.

<sup>78</sup> Barack Obama, Remarks by President Barack Obama in Prague as Delivered, Whitehouse Press Office (5 April 2009), available at: <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-barack-obama-prague-delivered>.



scientific research, but have not historically sympathised with the persistence of NAM Nutopian views. This may be partly because they do not share the same historical and contemporary experiences of injustice in the wider international system. States such as Sweden and Finland benefited significantly from highly developed nuclear industries and access to nuclear technologies and expertise. These states also relentlessly push for additional non-proliferation obligations, such as the universalisation of the Additional Protocol, and more stringent export controls. Another example is that Ireland and Austria have categorically rejected rhetoric linking development with the acquisition of peaceful nuclear technologies. Austria is perhaps the strongest example of broad anti-nuclearism and was the only Ban Treaty signatory to take an unambiguous stance against nuclear power in the IAEA General Conference.<sup>79</sup> Austria is significant in the impact that its financial and political support has had on nuclear disarmament movements and advocacy as a whole,<sup>80</sup> particularly facilitating multilateral discussions on humanitarian impacts and, in December 2014, hosting the third international conference on the humanitarian impacts of nuclear weapons.<sup>81</sup> Other states such as New Zealand and Ireland have remained staunchly anti-nuclear. However, they have maintained more neutral messaging due to ongoing domestic policy debates about their nuclear energy options.

Similarly, the nuclear disarmament movement has historically harboured strongly anti-nuclear energy perspectives and advocacy. Nuclear disarmament advocacy in Europe, for example, has been closely intertwined with grassroots movements of the Green Party, which is decidedly anti-nuclear power generation.<sup>82</sup> ICAN Australia, the founding body of ICAN International, is pro-disarmament and anti-nuclear power,<sup>83</sup> and this arguably reflects a broader view in the NGO community that the IAEA's inherent conflict of interest could be resolved by the removal of the promotion nuclear power from its mandate. Even the UK-based Campaign for Nuclear Disarmament has been staunchly anti-nuclear energy, petitioning the UK government to phase out all nuclear power production.<sup>84</sup> That said, there are more widely shared perceptions of injustice on the basis of the failure of the nuclear-armed states to tangibly pursue disarmament, and this serves as a collaborative nexus of advocacy between developing and developed states. The importance of Global South support for the TPNW has at least been recognised by some advocacy organisations.<sup>85</sup>

The TPNW negotiation conference in 2017 began with a high-level segment where heads of state and senior officials presented opening remarks. In these remarks, various officials highlighted what they believed to be the expected goals of the treaty and the issues which should be addressed therein. Not surprisingly, every official called for the negotiation of a nuclear weapons prohibition that would facilitate global nuclear disarmament. However, the influence of Nutopian thinking

<sup>79</sup>Peter Lausky, Statement by General Secretary of the Austrian Federal Ministry for International and European Affairs, General Debate of the Sixty-Fifth General Conference of the International Atomic Energy Agency, Vienna (20–4 September 2021), available at: [https://www.iaea.org/sites/default/files/21/09/austria\\_up.pdf](https://www.iaea.org/sites/default/files/21/09/austria_up.pdf).

<sup>80</sup>CNS and the Austrian Foreign Ministry launch the Vienna Center for Disarmament and Non-Proliferation' (27 October 2010), available at: <https://vcdnp.org/cns-and-the-austrian-foreign-ministry-launch-the-vienna-center-for-disarmament-and-non-proliferation/>.

<sup>81</sup>Pledge presented at the Vienna Conference on the Humanitarian Impact of Nuclear Weapons by Austrian Deputy Foreign Minister Michael Linhart, available at: [https://www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14\\_Austrian\\_Pledge.pdf](https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14_Austrian_Pledge.pdf).

<sup>82</sup>Olamide Samuel, 'Far from a done deal: Europe and the nuclear ban treaty', *Green European Journal*, (6 July 2021), available at: <https://www.greeneuropeanjournal.eu/far-from-a-done-deal-europe-and-the-nuclear-ban-treaty/>.

<sup>83</sup>Letter from Tilman Ruff, Chair, Australian Management Committee, International Campaign to Abolish Nuclear Weapons (15 August 2008), available at: [https://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jsc/14may2008/subs/sub7\\_1.pdf](https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jsc/14may2008/subs/sub7_1.pdf).

<sup>84</sup>CND, 'No to nuclear power', available at: <https://cnduk.org/actions/no-to-nuclear-power-petition/>.

<sup>85</sup>Working Paper Submitted by ICAN on Behalf of Member Organization Netzwerk Friedenskooperative / Network of the German Peace Movement to the First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons (9 June 2022), available at: <https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/1msp/documents/NGO.21.pdf>.



was evident in many of these addresses. Representatives of Tanzania, Vietnam, South Africa, the Philippines, and Algeria all made specific reference to nuclear energy.

Ambassador Modest J. Mero of Tanzania reflected unambiguously that 'whereas, the development of nuclear technology for peaceful purposes ... is an inalienable right and has been the best innovation of the century. However, its use in weapon systems remains the worst nightmare to all of us.'<sup>86</sup> South African ambassador Jerry Matjila went even further to state that 'in our view, a prohibition treaty should not impose new obligations on state parties that go beyond their obligations under the NPT ... In addition, nothing in the new instrument should impose any restrictions on the inalienable right of states to nuclear energy for peaceful purposes.'<sup>87</sup> In his speech, the Algerian ambassador Mr Abdelkarim Ait Abdeslam said that 'my delegation concurs with the majority of the States that the treaty should include as well issues related to dual-use technology, without prejudice to the inalienable rights of all States to the peaceful use of nuclear energy',<sup>88</sup> while the representative of the Philippines, Mr Bayani S. Mercado, echoed this requirement, stating 'the Philippines stresses that the prohibition should not impinge on States' inalienable right to the peaceful use of nuclear energy, which play a major role in their economic and social development'.<sup>89</sup>

The repeated mention of the need to ensure the protection of the inalienable rights of states to pursue nuclear energy did not go unnoticed by participants and observers at the conference. The International Physicians for the Prevention of Nuclear War, for example, expressed their concern that 'during the debates in the first negotiating week, a number of states referred to the contents of NPT Article 4 relating to access for all states to peaceful uses of nuclear energy'.<sup>90</sup> They cited the dangers of 'catastrophic radiation releases comparable or even greater in magnitude to those produced by nuclear explosions'.<sup>91</sup> They recommended that the TPNW 'should in no way encourage or promote nuclear power'.<sup>92</sup>

The inclusion of the inalienable right to pursue nuclear energy in the TPNW's preamble has been a cause of concern for anti-nuclear NGOs. In contrasting the initial and final Nuclear Ban Treaty drafts, we find the inclusion of additional text which reads: 'Nothing in this Treaty shall be interpreted as affecting the inalienable right of its States Parties to develop research, production and use of nuclear energy for peaceful purposes without discrimination'.<sup>93</sup> This is significant because the issue of peaceful uses of nuclear energy was not explicitly within the purview of a Nuclear Ban Treaty, or subject to much discussion. Secondly, without the inclusion of this paragraph, nothing

<sup>86</sup>Statement By H. E. Ambassador Modest J. Mero, Permanent Representative of The United Republic of Tanzania, General Assembly Seventy-First Session, 'During the Opening of the UN Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons Leading towards Their Total Elimination', New York (27 March 2017), available at: [https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/statements/28March\\_Tanzania.pdf](https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/statements/28March_Tanzania.pdf).

<sup>87</sup>Draft Intervention by South Africa on The Core Prohibitions of the Legally-Binding Instrument to Prohibit Nuclear Weapons, Leading towards Their Total Elimination, available at: [https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/statements/29March\\_SouthAfrica-T2.pdf](https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/statements/29March_SouthAfrica-T2.pdf).

<sup>88</sup>United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading towards Their Total Elimination. Statement of ML Abdelkarim Ait Abdeslam on core prohibitions: Effective Legal Measures, Legal Provisions and Norms, New York (29 March 2017), available at: [https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/statements/29March\\_Algeria-T2.pdf](https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/statements/29March_Algeria-T2.pdf).

<sup>89</sup>United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards Their Total Elimination. General Exchange of Views on Topic 2: Core Prohibitions: Effective Legal Measures, Legal Provisions and Norms (29 March 2017), UNHQ New York, Philippine Statement, available at: [https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/statements/29March\\_Philippines-T2.pdf](https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/statements/29March_Philippines-T2.pdf).

<sup>90</sup>Additional Comments after the First Conference Session from a Planetary Health Perspective. Submission by International Physicians for the Prevention of Nuclear War (IPPNW) to the United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading towards Their Total Elimination (20 April 2017), available at: <https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/documents/NGOWP21.pdf>.

<sup>91</sup>Ibid.

<sup>92</sup>Ibid.

<sup>93</sup>Treaty on the Prohibition of Nuclear Weapons, New York (7 July 2017), United Nations Treaty Series, XXVI-9, available at: [https://treaties.un.org/doc/Treaties/2017/07/20170707%2003-42%20PM/Ch\\_XXVI\\_9.pdf](https://treaties.un.org/doc/Treaties/2017/07/20170707%2003-42%20PM/Ch_XXVI_9.pdf).

remains in the treaty that affects the inalienable right of states to pursue nuclear energy. Algeria, Brazil, Cuba, the Philippines, and Argentina all independently requested the inclusion of various draft texts that protected states' NPT Article IV rights.<sup>94</sup>

Algeria and Brazil independently proposed that language reaffirming the peaceful uses of nuclear energy be replicated from the final document of the UN first special session on disarmament (SSOD-I):

Reaffirming that measures of disarmament must be consistent with the inalienable right of all States, without discrimination, to develop, acquire and use nuclear technology, equipment and materials for the peaceful nuclear programmes in accordance with their national priorities, needs and interests, bearing in mind the need to prevent the proliferation of nuclear weapons.<sup>95</sup>

Cuba further proposed the inclusion of 'Emphasizing that nothing in this Convention shall be interpreted as affecting the inalienable right of its States Parties to develop research, production and use of nuclear energy for peaceful purposes without discrimination.'<sup>96</sup> The Philippines stated that they would like to see a reference to peaceful uses, with a particular focus on states' 'economic development and social progress.'<sup>97</sup> The Philippines also wished to see a representation of the NPT's three pillars in the TPNW draft.

Although some (largely Western) NGOs were wary of this development, there was no expressed opposition to its inclusion in the final text by any other states. Against the backdrop of what has been perceived by many developing NNWS to be the continuous erosion of their NPT Article IV rights in favour of Western prioritisation of non-proliferation, the inclusion of Article IV rights in the TPNW text appears to be a reasonable compromise. As we have noted earlier, the NAM has been increasingly vocal about their perception of non-proliferation mechanisms being dismissive of their developmental concerns, and in some cases amounting to technology denial that limits the economic development of Global South states. Given that the TPNW is expected to be dynamic and able to incorporate protocols and other instruments at a later date, it is possible that future protocols might be interpreted as constraining their NPT Article IV rights.<sup>98</sup>

The strongest evidence of this connection can be found in statements of support for nuclear energy at 1MSP in Vienna in 2022. For example:

The Dominican Republic: 'We would like to take this opportunity to support the promotion of international cooperation on the use of nuclear energy for peaceful purposes since this offers multiple benefits for progress and development in our countries.'<sup>99</sup>

Nepal: 'We also respect the inalienable rights of states to research, produce and use nuclear energy for peaceful purposes in conformity with the safeguard mechanism of IAEA. In this regard, international cooperation, and technical assistance for peaceful uses should be promoted with a particular focus on LDCs.'<sup>100</sup>

<sup>94</sup> Compilation of Amendments Received from States on the Preamble, available at: [https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/documents/compilation\\_20June.pdf](https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/documents/compilation_20June.pdf).

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid., p. 18.

<sup>98</sup> Acheson, *Banning the Bomb*, p. 248.

<sup>99</sup> UN Web TV, Treaty on the Prohibition of Nuclear Weapons at the First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons, Vienna (21–3 June 2022), available at: <https://media.un.org/en/asset/k19/k19ddgix64>.

<sup>100</sup> Statement by Ms Sewa Lamsal, Joint Secretary, Ministry of Foreign Affairs and Leader of Nepali Delegation at the First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons, Vienna (21–3 June 2022), available at: <https://documents.unoda.org/wp-content/uploads/2022/07/Nepal-Statement-TPNW.pdf>.

The Philippines: ‘The TPNW reaffirms the inalienable right of States to pursue the peaceful uses of nuclear energy for national progress, a vital need for developing countries in rebuilding their economies, especially after the pandemic.’<sup>101</sup>

Vietnam: ‘On the other hand, Viet Nam stresses the right of all States to research, apply and transfer nuclear science for peaceful purposes.’<sup>102</sup>

Namibia: ‘We believe that the continued existence and possession of nuclear weapons do not guarantee security, but rather substantially increase the risk of their potential use. It is our hope that such resources should be channeled to research, training and advancement of the peaceful uses, including technology transfer to states embarking on nuclear power programmes.’<sup>103</sup>

Indonesia: ‘Indonesia’s commitment to use nuclear technology solely for peaceful uses will only be strengthened by this ratification, as nuclear technology for peaceful uses will bolster efforts by many states to boost their socio-economic development, and support the achievement of the SDGs.’<sup>104</sup>

Botswana: ‘Botswana re-affirms her commitment to disarmament non-proliferation and peaceful uses of nuclear technology. In our view, these three pillars of the non-proliferation treaty regime are equally important and most viable instruments for achieving a world without nuclear weapons for peaceful co-existence. Botswana supports the peaceful research and development of nuclear energy for peaceful purposes in accordance with Nuclear Non-Proliferation Treaty which Botswana has been a State party since 1969.’<sup>105</sup>

The African Commission on Nuclear Energy: ‘The AFCONE calls upon the NPT State Parties to encourage the recent initiatives considering and recommending more international support to peaceful uses of nuclear energy, in particular for the benefit of the Africa Region, to address through nuclear applications, urgent needs including fighting cancer, which is recognised as the more pressing necessity, highly relying on radiation technology with demonstrated cost effective impact.’<sup>106</sup>

These statements clearly show that states feel the need to reemphasise their NPT Article IV rights in the TPNW and see the TPNW ratification as supportive of their nuclear energy goals.

For some context, it is important to note that throughout the duration of the HINW and the TPNW negotiating conferences (and subsequently), many developing NNWS were accelerating their quests for nuclear energy,<sup>107</sup> with about a third of these states successfully concluding

<sup>101</sup>Philippine Statement H. E. Irene Susan B. Natividad at the General Exchange of Views 2022 Treaty on the Prohibition of Nuclear Weapons (TPNW) First Meeting of States Parties (1MSP) (21–3 June 2022), Vienna International Center, Vienna, available at: {<https://documents.unoda.org/wp-content/uploads/2022/06/Philippines.pdf>}.

<sup>102</sup>Statement By H. E. Mr Nguyen Trung Kien, Permanent Representative of the Socialist Republic of Viet Nam to the United Nations and Other International Organizations in Vienna at the First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons (21–3 June 2022), available at: {<https://documents.unoda.org/wp-content/uploads/2022/06/Viet-Nam-Statement-at-the-TPNW-1MSP.pdf>}.

<sup>103</sup>Statement, Delivered by Ambassador Nada Kruger, Permanent Representative of the Republic of Namibia, First Meeting of State Parties to the Treaty on the Prohibition of Nuclear Weapons (TPNW), Vienna (21–3 June 2022), available at: {<https://documents.unoda.org/wp-content/uploads/2022/06/Namibia.pdf>}.

<sup>104</sup>Statement by H. E. Dr iur. Damos Dumoli Agusman, Ambassador/Permanent Representative of the Republic of Indonesia at the First Meeting of State Parties to the UN Treaty on the Prohibition of Nuclear Weapons Agenda Item 10: General Exchange of Views, Vienna (21 June 2022), available at: {<https://documents.unoda.org/wp-content/uploads/2022/06/INDONE1.pdf>}.

<sup>105</sup>Botswana statement to the first (1st) meeting of states parties of the Treaty on the Prohibition of Nuclear Weapons, (22 June 2022), available at: {[https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/1msp/statements/22June\\_Botswana.pdf](https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/1msp/statements/22June_Botswana.pdf)}.

<sup>106</sup>Statement to the First Meeting of the States Parties to the Treaty on the Prohibition of Nuclear Weapons Vienna (21–3 June 2022). Delivered by Messaoud Baaliouamer, Executive Secretary, African Commission on Nuclear Energy (AFCONE), available at: {[https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/1msp/statements/22June\\_AFCONE.pdf](https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/1msp/statements/22June_AFCONE.pdf)}.

<sup>107</sup>Such as Algeria, Bangladesh, Bolivia, Botswana, Brazil, Cambodia, Chile, Cuba, Ghana, Honduras, Indonesia, Jamaica, Kazakhstan, Laos, Malaysia, Namibia, Niger, Nigeria, Paraguay, Peru, Philippines, Sudan, Thailand, Venezuela, and Vietnam.

Integrated Nuclear Infrastructure Reviews with the IAEA from 2016 onwards. The majority of Global South states in the TPNW core group, consisting of Austria, Brazil, Mexico, Nigeria, and South Africa, also meant that these undercurrent interests in nuclear energy were reflected.

Nutopian thinking also influenced the issue of safeguards enshrined in the TPNW, i.e. the standards applied to prevent the diversion of nuclear material for weapons purposes, as warranted by Article III of the NPT. The safeguards standard is of particular importance to the TPNW because of the disarmament pathways it offers for the potential ascension of current NWS to the treaty in the future. These disarmament pathways require mechanisms to reliably verify the irreversible disarmament of an NWS that wishes to be a TPNW party. In this regard, the negotiation of a safeguards agreement with the IAEA is important.<sup>108</sup> The safeguards standard was a crucial issue that brought tensions between industrialised and developing NNWS to light. Interestingly, the Ban Treaty does not require more intrusive safeguards standards than those already negotiated between each state party and the IAEA. Ray Acheson notes that during the negotiating conference, several states refused to accept making the IAEA's Additional Protocol (AP) *the* required standard within the ban treaty.<sup>109</sup> This is a development which would have gone against the principled rejection of the AP by some influential NAM and affiliated states (i.e. Argentina, Algeria, Brazil, Egypt, Syria, and Venezuela), who reject the prioritisation of non-proliferation over disarmament and peaceful uses. On the other hand, Switzerland, Sweden, and the Netherlands (which we identify as Positive Neutral States, with the exception of the Netherlands as a member of NATO) were in favour of making the AP the safeguards standard in the TPNW.<sup>110</sup>

The implications of NAM resistance to non-proliferation mechanisms have gone beyond mere rhetoric. This is because it exposes the inherent tensions between the observance of Article III of the NPT (which requires all NNWS parties to accept safeguards agreements, negotiated with the IAEA on a state-by-state basis) and Article IV. The safeguards system required by Article III has evolved into a set of technical measures applied by the IAEA to verify that nuclear materials and facilities are not misused or diverted from peaceful uses. However, the standard safeguards agreements required by the NPT proved to be inadequate to detect cheating by NPT member states. In light of clandestine nuclear weapons programmes discovered in Iraq and North Korea in the 1990s, a model AP was required to enhance the IAEA's detection capabilities, by granting the agency powers to access not only declared nuclear material and facilities, but also undeclared ones.<sup>111</sup> The AP required that states provide information about their nuclear fuel cycles beyond what had been agreed in their respective Comprehensive Safeguards Agreements. The Additional Protocol was approved in 1997 and is currently in force in 138 states and in the European Atomic Energy Community.<sup>112</sup> However, some NNWS with significant nuclear activities have yet to sign an AP with the IAEA. These are Argentina, Algeria, Brazil, Egypt, Syria, and Venezuela. Of these, Algeria is yet to sign an AP that was approved by the IAEA in 2004, while Argentina, Brazil, Egypt, Syria, and Venezuela have not begun negotiations with the IAEA as a matter of principled rejection until NWS and industrialised NNWS honour their Article IV and VI obligations under the NPT.<sup>113</sup>

The issue of the Additional Protocol is instructive when viewed from the NAM perspective. William Potter and Gaukhar Mukhatzhanova unearth how the NAM's approach to AP issues

<sup>108</sup> Hassan Elbahtimy and Christopher Eldridge, 'Verifying the nuclear ban: Lessons from South Africa', *Bulletin of the Atomic Scientists* (13 September 2017), available at: <https://thebulletin.org/2017/09/verifying-the-nuclear-ban-lessons-from-south-africa/>.

<sup>109</sup> Acheson, *Banning the Bomb*, p. 246.

<sup>110</sup> Compilation of amendments received from States on the preamble, available at: [https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/documents/compilation\\_20June.pdf](https://reachingcriticalwill.org/images/documents/Disarmament-fora/nuclear-weapon-ban/documents/compilation_20June.pdf).

<sup>111</sup> Potter and Mukhatzhanova, *Nuclear Politics*, p. 63.

<sup>112</sup> *Additional Protocol* (8 June 2016). [Text]. IAEA, available at: <https://www.iaea.org/topics/additional-protocol>; Federal Constitutional Act for a Nonnuclear Austria 1999, 1 (1999). available at: <https://www.oecd-nea.org/law/legislation/austria/austria-nonnuclear-act.pdf>.

<sup>113</sup> John Carlson, 'Nuclear weapon prohibition treaty: A safeguards debacle', *Trust & Verify* (Autumn 2018), available at: <https://www.vertic.org/media/assets/TV/TV158.pdf>.

demonstrates the complexities of the group's internal working mechanisms. They find that, on the whole, NAM statements present a unified opposition to the idea that the AP (which is voluntary) becomes a universalised legal requirement (i.e. by linking the AP as a requirement in Article III of the NPT).<sup>114</sup> Therefore, the contrast between NAM statements on one hand, and the fact that a majority of NAM member states have already concluded an Additional Protocol with the IAEA on the other, can be explained in relatively simple terms. The group as a whole expresses solidarity with the decisions of some of its influential members to reject the AP as a matter of principle. This tacit solidarity is evidenced by the fact that overt support for the AP by NAM member states has waned, especially in the face of Western efforts to universalise it. Brazil articulates this resentment most clearly, as it leverages its principled opposition to highlight the fact that Western states' support for the universalisation of the AP continues even as they ignore tangible progress on nuclear disarmament and remain dismissive towards the developmental concerns of Global South NNWS.<sup>115</sup> Similarly (and perhaps more seriously), NAM states have even been reluctant (or suspiciously slow) to react to some NAM member states' violations of the non-proliferation norm, such as those conducted by Iran, India, or Pakistan. This disregard of the non-proliferation norm is especially perceptible when non-proliferation measures developed in response to these violations appear suspiciously close to impeding developing states' ability to pursue their NPT Article IV rights in the future. In many ways, it is reasonable to conclude that a system of passive resistance has emerged, wherein NAM members' subjugation/relegation of their non-proliferation obligations is closely related to their perceptions of the nuclear order's fulfilment of its disarmament and developmental promises.

The rejection of the AP in the TPNW reflects a continuation of NPT and IAEA politics by members of the NAM. Without this solidarity against further perceived restrictions on access to nuclear technologies, there was a considerable risk that many potential NAM TPNW signatories may have begun to perceive the TPNW as yet another non-proliferation tool that was dismissive of their developmental concerns in the name of nuclear disarmament. Even worse, these states might have begun to imagine how the Ban Treaty could potentially limit their access to nuclear technology in the future. Thus, the status quo safeguards standard was accepted. All parties to the negotiations were well aware that a failure to recognise and permit the continuation of the resistance to the AP could have amounted to a deal-breaker situation, where a sizeable portion of support would have been lost. The emphasis was thus to retain the global affront to the status quo nuclear regime – to the mild annoyance of some wholly anti-nuclear actors, such as Austria and the UK Campaign for Nuclear Disarmament.

Throughout the TPNW's negotiation, critics highlighted how the entrenchment of a lower safeguards standard in the TPNW could potentially damage the implementation of the NPT.<sup>116</sup> However, these critics have failed to connect developmental interests, the extent of NAM influence and solidarity, and the intentionality of the lower safeguards standard in the TPNW. In the absence of considered interests of Global South states, the safeguards standard appears to have made a 'mistake' and produced a 'defective treaty'.<sup>117</sup>

We have begun to see the impact of Global South Nutopian thinking on the TPNW process. The first meeting of TPNW states parties in 2022 experienced difficulties regarding how to address the issue of the Russian invasion of Ukraine. Russia has been a significant player in many Global South states, particularly in Africa, and states with economic ties to Russia were unwilling to condemn Russia's nuclear threats. They instead opted for more generic language that condemned all nuclear

<sup>114</sup>Potter and Mukhatzhanova, *Nuclear Politics*, pp. 81–136.

<sup>115</sup>*Ibid.*, p. 64.

<sup>116</sup>Carlson, 'Nuclear weapon prohibition treaty'.

<sup>117</sup>*Ibid.*, p. 6.



threats. Some academics were perplexed at this development.<sup>118</sup> As Rebecca Davis Gibbons and Stephen Herzog explain:

many European observer states wanted the states-parties to strongly condemn the Russian invasion of Ukraine, especially Putin's nuclear threats. TPNW member state Ireland, among others, vociferously agreed, stating, 'We cannot shy away from calling out those who threaten the use of nuclear weapons.' Controversially, the majority of states-parties did not even mention Russian aggression against Ukraine in their remarks. Fierce debate occurred behind the scenes about whether to shame Russia by name in the final document, but in the end, the members' condemnation of 'any and all nuclear threats' did not single out Russia. Many states-parties viewed Russian nuclear threats during the war in Ukraine as continuing a long history of misbehavior by the nuclear-armed states. To these delegations, Russian actions were further evidence of a lack of seriousness about disarmament by the nuclear powers rather than a standalone transgression requiring separate condemnation.<sup>119</sup>

Again, this highlights the significance of seeking to understand the interaction of the Global South with the contemporary nuclear order, and particularly the strong connections that a number of Global South states have with Rosatom (the Russian nuclear energy company).<sup>120</sup>

### Conclusion: The Global South and dominant nuclear narratives

Conventional wisdom holds that the 2017 Treaty on the Prohibition of Nuclear Weapons is principally about reinvigorating the push for nuclear disarmament, sending a strong message to the nuclear-armed states about their lacklustre approach to commitments made under the NPT, and seeking retributive justice for those adversely impacted by nuclear testing. There is undoubtedly some truth to this, but focusing too much on these issues obscures other important factors that have constrained, conditioned, and shaped Global South and NAM interaction with the treaty and with disarmament.

Put simply, the TPNW would not have been possible if it failed to address the frustrations of developing and non-Western states in securing access to nuclear technology for civilian purposes such as scientific research and domestic energy requirements. Had the TPNW contained language prohibiting or restricting access to nuclear technologies (as some states and NGOs wanted) or included stringent conditions around inspections, safeguards, and regulation of nuclear facilities and access to material (such as the IAEA's Additional Protocol), it is highly unlikely that the Treaty would have secured the votes needed to be established, let alone come into force through ratification by fifty States Parties. This is because only a small proportion of states that support the Ban Treaty are motivated solely or even primarily by the direct threat of nuclear weapons use and retributive justice. The rest – largely from the Global South and Non-Aligned Movement – while undoubtedly sympathetic to the disarmament cause, are also motivated by resistance to the perceived injustices in the nuclear order writ large.

The Ban Treaty has been rightly hailed as a normative tool that amplifies the moral and legal pressures on nuclear-armed states to accelerate progress towards disarmament and fills in the legal

<sup>118</sup>Nick Ritchie, 'Nuclear weapons and Putin's war', *Political Reflection Magazine* (16 January 2023), available at: {<https://politicalreflectionmagazine.com/2023/01/16/nuclear-weapons-and-putins-war/>}.

<sup>119</sup>Rebecca Davis Gibbons and Stephen Herzog, 'The First TPNW meeting and the future of the Nuclear Ban Treaty', *Arms Control Today* (September 2022), available at: {<https://www.armscontrol.org/act/2022-09/features/first-tpnw-meeting-future-nuclear-ban-treaty>}.

<sup>120</sup>E.g. Hartmut Winkler, 'Russia's nuclear power exports: Will they strand the strain of the war in Ukraine?', *The Conversation* (6 March 2022), available at: {<https://theconversation.com/russias-nuclear-power-exports-will-they-stand-the-strain-of-the-war-in-ukraine-178250>}.



gap by delegitimising nuclear weapons to the same extent as other Weapons of Mass Destruction. However, it is important to also note that from the perspective of Global South, NAM, and NWFZ member states, the Ban Treaty serves a more concrete, realpolitik function in the maintenance of nuclear order by reiterating the centrality of peaceful uses of nuclear technologies without requiring additional intrusive mechanisms. It is not too difficult to see how a majority of states protesting the inequities of technological diffusion would be very comfortable with signing the Ban Treaty. This may not have been the case if the Ban Treaty was perceived as interfering with states' pursuit of nuclear energy, and the language of the Ban Treaty itself proves this point.

The primacy of nuclear energy and development in the engagement of the Global South in the nuclear order is far from new. Since the 1950s, the NAM has pushed to secure the right to nuclear technology in various forums. NAM states were central in enshrining the right to nuclear technology under Article IV of the NPT, and in this way the preamble of the TPNW is merely the latest iteration of a long-established trend. The challenge of course is matching the desire to secure access to nuclear technology with concerns about how this technology might be used for weapons proliferation. This is why several states and Western NGOs pushed for language in the TPNW including banning all nuclear technology – not just weapons. But, as the public record shows, a number of influential Global South and NAM members made clear statements about the importance of nuclear energy and unrestricted access to nuclear technologies in both the TPNW negotiating conference in 2017 and in the 2022 First Meeting of States Parties. This is also why (at the time of writing) a number of states (particularly those in Africa) have signed but not ratified the Treaty.<sup>121</sup> While interest in nuclear energy appears to be waning in parts of the Western world, as developed societies seek to transition to renewable sources of energy, interest in nuclear technology is growing in the Global South as solutions are sought for 'green', 'clean', and 'sustainable' energy, and this is intrinsically linked with decisions to sign the Ban Treaty.

The canon of work in nuclear politics has for a long time obscured the important role that developing states' pursuit of peaceful nuclear technologies has had in shaping the global nuclear order. Thus, when questions about the nature, purpose, and prospects for the future of the nuclear order are raised, findings tend to closely mimic the priorities of great powers, their allies, and even their respective populations. This is significant because it means we are not analysing the complete picture of the nuclear order and often failing to look through the lens and experience of the Global South. This suggests that nuclear weapons scholarship must pay more attention to perspectives from the Global South and non-orthodox views in understanding nuclear politics, past and present.

Mainstream understandings of non-proliferation without considerations of the politics surrounding the peaceful uses of nuclear energy sustain a fiction of Western popular imagination and scholarship. This is a fiction that in part is discursively enabled by the uneven and privileged concentration of academic and activist thought in the developed world, to such an extent that it often dismisses and excludes the developmental interests that compels Global South participation in the nuclear order. These are often seen as being secondary to 'security' interests, which are assumed to have been best served by the ostensible global public goods of non-proliferation and disarmament. The clarity and abundance of examples where developing non-nuclear-armed states demonstrated the primacy of their developmental interests as dictating their relationships with non-proliferation and disarmament leads us to level this indictment at Western nuclear thought. Perhaps more importantly, the blinkered view of the centrality of non-proliferation and disarmament in the global nuclear order is also encouraged by the acquired ability (the survival

<sup>121</sup>This insight was gleaned from the authors' discussions with numerous African diplomats on the obstacles and challenges to their TPNW ratification.

mechanism) of developing states to advance their own security and developmental interests in terms of non-proliferation and disarmament lexica.

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