
THE POST–NEW START LEGAL VACUUM: A COMPARATIVE ANALYSIS OF STATE RESPONSES TO THE COLLAPSE OF BILATERAL NUCLEAR ARMS CONTROL

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ABSTRACT

On 5 February 2026 the Treaty on Measures for the Further Reduction and Limitation of Strategic Offensive Arms (New START) expired without a successor instrument, leaving the United States and the Russian Federation without any legally binding numerical limit on their strategic nuclear arsenals for the first time in more than five decades. This paper undertakes a comparative doctrinal analysis of how the principal nuclear-armed states, together with relevant multilateral institutions, have characterised and responded to this legal vacuum. Drawing on official statements issued in the immediate aftermath of the treaty's lapse, the paper situates the Russian Federation's proposal for reciprocal, unverified restraint within the unilateral-declarations doctrine developed in the Nuclear Tests Case, contrasts it with the longer-standing, though similarly non-binding, status of China's no-first-use policy, and examines the United States' stated preference for a broader, trilateral, "modernized" treaty. The paper argues that the shift from a verified bilateral treaty regime to a patchwork of unilateral political commitments illustrates the structural fragility of contemporary nuclear arms control law, and that the residual obligation to negotiate disarmament in good faith under paper VI of the Treaty on the Non-Proliferation of Nuclear Weapons, while doctrinally intact, offers limited practical constraint in the absence of a negotiated instrument. The paper closes with proposals for a verification-capable successor framework.

Keywords: nuclear arms control; New START; NPT paper VI; unilateral declarations; strategic stability; comparative international law.

I. Introduction

For more than half a century, the strategic nuclear relationship between the United States and the Russian Federation has been governed, however imperfectly, by a succession of bilateral arms control treaties beginning with the Strategic Arms Limitation Talks of 1969. That continuous, if uneven, legal tradition ended on 5 February 2026, when New START expired without renewal, extension, or replacement. Because the treaty's governing clause permitted only a single five-year extension, already exhausted in 2021, its expiry had been foreseeable for years; what distinguishes the present moment is that no successor arrangement, formal or informal, verified or unverified, was in place when the deadline arrived. The United Nations Secretary-General described the lapse as marking, for the first time in more than fifty years, a world without any binding limit on the strategic arsenals of the two States holding the overwhelming majority of the planet's nuclear weapons.

The expiration is recent enough that the international legal literature has not yet caught up with it. Existing scholarship on nuclear arms control law overwhelmingly analyses New START and its predecessors as functioning instruments; almost none of it addresses the legal and diplomatic terrain that has opened up since February 2026. This paper addresses that gap through a comparative doctrinal study of how the United States, the Russian Federation, and the People's Republic of China have legally characterised their post-expiration conduct, and of how multilateral institutions have responded. It asks two related questions: first, what is the legal status of the unilateral proposals and declarations that have replaced binding treaty text; and second, what does the divergence between the three States' positions reveal about the capacity of customary and soft-law mechanisms to substitute for a lapsed treaty regime.

The analysis proceeds in four stages. Section II reconstructs the legal architecture that existed prior to the treaty's collapse, including the point at which its verification provisions had already ceased to operate. Section III compares the responses of the United States, Russia, and China, together with the multilateral response coordinated through the United Nations and civil society. Section IV subjects the resulting patchwork of unilateral commitments to doctrinal scrutiny, applying the unilateral-declarations framework established in the Nuclear Tests Case to assess whether any of the post-expiration statements are capable of generating binding obligations. Section V considers pathways toward a successor framework, and Section VI concludes.

II. The Legal Architecture Before Collapse

New START, signed in 2010 and in force from February 2011, capped each party's deployed strategic nuclear warheads at 1,550 and their deployed delivery vehicles at 700, alongside a verification regime of data exchanges and on-site inspections. That verification regime, however, had been substantially inoperative for several years before the treaty's formal expiry. On-site inspections ceased in 2020 during the COVID-19 pandemic and were never resumed; in February 2023 Russia announced the suspension of its participation, citing Western support for Ukraine, while continuing to assert that it would observe the treaty's central numerical limits without submitting to inspection or full data exchange. By the time New START lapsed, commentators had for some years described it as effectively a "zombie" treaty: nominally in force but stripped of the verification machinery that gave its limits practical meaning.

Independently of New START, paper VI of the Treaty on the Non-Proliferation of Nuclear Weapons obliges each party "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race" and to nuclear disarmament. The International Court of Justice, in its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, confirmed that this is a binding obligation of conduct rather than of result, applicable to all nuclear-weapon States party to the NPT. That obligation survives the expiry of any particular bilateral treaty; civil society organisations have explicitly invoked it in response to New START's lapse, arguing that the underlying duty to negotiate disarmament persists regardless of the treaty's fate. The practical weight of that obligation is nonetheless limited: it is framed as a duty to negotiate, not a duty to achieve any particular numerical outcome, and the Court has never specified a remedy for its breach.

III. Comparative State Responses

A. The United States

The United States did not respond formally, prior to expiration, to a Russian proposal for continued reciprocal restraint (discussed below). On the day the treaty lapsed, President Trump stated publicly that his administration would instead pursue a "new, improved and modernized" treaty. Senior officials subsequently articulated two priorities for any successor instrument: first, that it capture the whole of Russia's nuclear stockpile, including non-strategic and reserve warheads not covered by New START; and second, that it address what the administration

characterised as the unconstrained growth of China's nuclear arsenal. Commentators have noted that the structure of New START itself had left the United States comparatively well placed to expand its deployed forces quickly if it chose to, for example by reconverting delivery systems that had been taken out of accountable status or by uploading reserve warheads onto existing platforms. The American position is thus best read as a preference for a broader, trilateral negotiation over a continuation of the bilateral status quo, rather than as a rejection of arms control as such.

B. The Russian Federation

Russia's position has combined a conditional offer of continued restraint with an assertion of unconstrained legal freedom. In September 2025, President Putin proposed that Russia and the United States continue to observe New START's central numerical limits for one year following expiration, without, however, offering to maintain the treaty's verification or notification provisions. Washington did not formally accept or reject the offer before the deadline passed, and Russian officials subsequently stated that the United States had provided no "substantive reaction." On the eve of expiration, the Russian Foreign Ministry issued a statement asserting that, absent agreement, the parties were "no longer bound by any obligations or symmetrical declarations" arising from the treaty and were "fundamentally free to choose their next steps," while adding that Russia would act in a "balanced and responsible manner." That formulation is legally significant: it frames continued restraint, if any, as a matter of unilateral policy discretion rather than of legal obligation, reserving Russia's right to depart from New START's limits at will.

C. The People's Republic of China

China has consistently declined to join any trilateral arms control negotiation, a position it has maintained since it was first invited to participate in discussions on a successor to New START. Following the treaty's expiration, China's Ministry of Foreign Affairs called the lapse "regrettable" and urged Washington to respond constructively to the Russian proposal and resume strategic stability dialogue, while reiterating that Beijing itself would not join disarmament negotiations "at this stage" on the ground that its arsenal remains of a fundamentally different scale to those of the United States and Russia. That position sits alongside a considerably less discretionary unilateral commitment: China's no-first-use pledge, maintained without qualification since 1964, which it has repeatedly urged other nuclear-armed

States to adopt. The juxtaposition is instructive for the comparative analysis developed in Section IV, since it presents two different categories of unilateral nuclear commitment operating side by side in the same State's practice: a policy of studied non-participation in numerical limits, and a decades-old unilateral pledge of comparatively greater doctrinal weight.

D. Multilateral and Institutional Responses

The United Nations Secretary-General's statement of 5 February 2026 situated the expiration within the longer history of strategic arms control since the Strategic Arms Limitation Talks, framing the loss of binding limits as a matter of concern for international peace and security generally rather than for the two treaty parties alone. Several third States registered similar concern through their own diplomatic channels; France, for example, publicly attributed responsibility for the collapse to Russia's earlier suspension of the treaty and its broader conduct. Civil society organisations, including the International Campaign to Abolish Nuclear Weapons, argued that the legal obligation to negotiate disarmament under NPT paper VI persists independently of New START's expiry, and urged the nuclear-weapon States to treat the lapse as an occasion to renew multilateral disarmament efforts rather than to entrench a bilateral or trilateral status quo. It is worth noting, finally, that the New START framework never extended to the United Kingdom, France, India, Pakistan, North Korea, or Israel: the treaty's collapse leaves untouched - and, by drawing attention to arms control generally, arguably highlights - the pre-existing absence of any binding numerical constraint on those States' arsenals.

IV. Legal Analysis: From Treaty Regime to Political Substitute

The comparative picture assembled in Section III reveals a common structural feature across all three States' responses: each has substituted a political or rhetorical position for the binding treaty text that previously governed the field, yet none of these substitutes is equivalent, in legal character, to the instrument it replaces. This section evaluates that substitution against the doctrine of unilateral declarations developed by the International Court of Justice in the Nuclear Tests Case, in which the Court held that a unilateral statement may create binding legal obligations where it is made with a clear intention to be bound, even absent any element of reciprocity or acceptance by other States.

Applying that framework to Russia's proposal for continued restraint suggests it falls short of

a binding unilateral undertaking on at least two grounds. First, the proposal was explicitly conditional on reciprocal action by the United States, whereas the declarations at issue in the Nuclear Tests Case were unconditional and directed to the international community as a whole. Second, and more decisively, Russia's own subsequent characterisation of its post-expiration position - that the parties are "fundamentally free to choose their next steps" - is itself inconsistent with an intention to be legally bound; a State cannot simultaneously assert unconstrained discretion and claim to have undertaken a binding obligation of restraint. The Russian offer is therefore better characterised as a diplomatic signal of intent, capable of being withdrawn without legal consequence, than as a source of obligation under general international law.

China's no-first-use policy presents a more difficult case. Its unconditional character and six-decade duration bring it closer to the profile of a genuine unilateral undertaking, and repeated, consistent State practice of this kind can in principle contribute to the formation of customary international law if accompanied by the requisite *opinio juris*. Even so, no tribunal has yet treated a no-first-use declaration as an independently binding source of obligation, and China has never suggested that it regards the pledge as legally rather than politically binding. The pledge is consequently best understood as occupying an intermediate category: more durable and less conditional than Russia's post-expiration proposal, but still short of a treaty-equivalent legal constraint.

The United States' position, finally, does not purport to be a legal undertaking at all; it is a statement of negotiating preference for a future instrument that does not yet exist. Read together, the three positions illustrate a broader phenomenon visible elsewhere in contemporary international law, where States facing the practical difficulty of concluding or maintaining binding treaties in fast-moving security domains increasingly resort to unilateral statements, political declarations, and assertions of customary practice as functional, if legally weaker, substitutes. What distinguishes the nuclear case from that broader trend is the sheer material stakes involved: unlike, for example, the gradual and contested emergence of customary rules on the application of international humanitarian law to cyber operations, the absence of a verified numerical ceiling on the two largest nuclear arsenals removes a concrete, previously operative legal constraint rather than merely leaving an existing regulatory gap unfilled.

V. Pathways Toward a Successor Framework

Three considerations should inform efforts to close the present vacuum. First, any durable successor to New START will need to accommodate China's stated objection to bilateral or trilateral limits calibrated to arsenals of very different size, most plausibly through asymmetric or phased commitments rather than a single shared numerical ceiling. Second, verification is not a peripheral technical add-on but the feature whose absence has done the most to hollow out New START in its final years; a successor instrument that reproduces the treaty's substantive limits without comparable verification would replicate the weaknesses that preceded formal expiration rather than remedy them. Third, in the likely event that a comprehensive treaty cannot be concluded quickly, given that New START itself took roughly a year to negotiate and was considered fast by historical standards, interim risk-reduction and confidence-building measures - of the kind proposed by the Vienna Center for Disarmament and Non-Proliferation, including notification arrangements and other measures short of a full treaty - offer a more realistic near-term legal vehicle than an attempt to negotiate a full replacement treaty under time pressure.

The forthcoming Review Conference of the NPT offers an institutional forum in which the paper VI obligation to negotiate in good faith can be reasserted multilaterally, even though that forum has no power to compel a bilateral or trilateral settlement between the United States, Russia, and China. Its principal value, on the analysis offered here, would be to prevent the erosion of New START from being treated as evidence that the broader disarmament obligation has lapsed along with it.

VI. Conclusion

The expiration of New START on 5 February 2026 has left the United States and Russia without any binding numerical limit on their strategic nuclear arsenals for the first time since the onset of Cold War arms control, and it has done so without a converging replacement in view. The comparative analysis undertaken in this paper shows that the three principal nuclear-armed States have responded with materially different, and only partially compatible, legal postures: an American preference for a broader trilateral treaty not yet negotiated; a Russian offer of restraint that is conditional, unverified, and expressly framed as revocable; and a longstanding Chinese refusal to accept numerical limits at all, alongside a separate and more durable unilateral no-first-use pledge. None of these positions, considered under the unilateral-

declarations doctrine developed in the Nuclear Tests Case, rises to the level of a binding legal substitute for the treaty they have replaced. The episode illustrates, in acute form, a wider vulnerability of contemporary arms control law: the durability of even the most consequential security regimes ultimately depends on the willingness of a small number of States to renew binding commitments, and the residual force of general obligations such as NPT paper VI, however doctrinally sound, cannot by itself supply that renewal. Further research should track whether the interim proposals discussed here mature into binding instruments, or whether the present vacuum becomes the new baseline against which future nuclear arms control is measured.

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