Strategic non-nuclear weapons and the NPT

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Revisiting the binary distinction of Article IX(3)

The emergence of strategic non-nuclear weapons (SNNW) has blurred the line between conventional and nuclear warfare, necessitating a re-evaluation of how states are classified in global arms control regimes. The binary distinction in Article IX(3) of the Treaty on the Non-proliferation of Nuclear Weapons (NPT) between nuclear-weapons states and non-nuclear-armed states is challenged by these developing technologies, which are increasingly able to approximate deterrent functions once exclusive to nuclear weapons. This paper seeks to revisit the binary distinction of the NPT regime and how it can adapt its classification of strategic actors to account for the functional equivalence of SNNW without undermining the treaty's foundational legal stability.

The technology-enabled shift in the global nuclear order towards a 'third nuclear age', characterised by a chaotic and multipolar nuclear landscape, challenges the binary distinction of the NPT (Naylor, 2019). The third nuclear age sees revolutionary weapons as a challenge to the existing deterrence paradigm, with nuclear and non-nuclear force becoming entangled. According to this framework, SNNW have as much of an impact on nuclear deterrence postures as nuclear weapons themselves (Futter & Zala, 2021). A significant portion of global SNNWs are held by countries classified as non-nuclear-armed states under the NPT, including NATO members such as Poland, whose HIMARS systems can threaten high-value targets (Ministerstwo Obrony Narodowej, n.d.; Pollack, 2020). Proliferation of SNNW allows non-nuclear NATO allies to gain recognition as strategic stakeholders, but risks entangling them in nuclear escalation. Chevreuil and Burchell's (2026) commentary on the Northwood Declaration highlights that nuclear-armed states increasingly recognise the influential role of SNNW in NATO deterrence and defence. In light of the strategic potential

of SNNW, traditional arms control arrangements require re-assessment of a relatively unregulated strategic environment.

This paper argues that whilst a formal legal amendment to NPT Article IX(3) is too destabilising for the NPT regime, maintaining the regime's functionality in the third nuclear age requires an approach that accounts for the role of SNNW. This paper begins by outlining the functional equivalence of SNNW and traditional nuclear deterrence. Then the NPT binary assumption will be contrasted with the strategic reality of the third nuclear age. Finally, critiques of formal legal change will be discussed and adaptations to existing arms control arrangements proposed.

SNNW are weapon systems with a strategic function below the nuclear threshold that can achieve decisive strategic outcomes (Hoffmann & Alberque, 2022). A weapon is strategic to the extent that it can achieve counterforce or countervalue. Counterforce is the 'ability to credibly threaten an adversary's nuclear forces', whereas countervalue concerns 'population and economic centres'(Hoffmann, 2021). States acquire SNNW to meet tactical requirements, with strategic potential serving as an additional benefit. Hoffmann's counterforce coefficient equation serves as a useful tool to determine the strategic counterforce utility of conventional weapons (2021). The application of this coefficient illustrates that improvements in accuracy, payload, and kinetic energy allow conventional missiles to destroy hardened silos once only vulnerable to nuclear strikes. Thus, the acquisition of SNNW by non-nuclear-armed states means that they too become strategic actors in the security landscape (Pollack, 2020). According to Pollack, Non-nuclear states have become 'independent centres of decision' with a legitimate ability to threaten an adversary's nuclear forces (2020). Therefore, a state's strategic role is no longer defined strictly by its nuclear status (Futter & Zala, 2021).

The 2019 Dutch advisory committee highlights the risks of nuclear overreaction associated with technology-driven entanglement between conventional and nuclear domains (Advisory Council on International Affairs, 2019). Stability is threatened because SNNW often share the same Command and Control and Intelligence systems as nuclear forces. This strategic indistinguishability creates a high risk of inadvertent escalation, as attacks on these shared systems could be misinterpreted as a nuclear first strike (Hoffmann & Alberque, 2022; Maurer, 2023). The trust deficit created by the lack of distinction between a nuclear-tipped missile and a conventional weapon incentivises high nuclear responsiveness (Naylor, 2019). Furthermore, authorisation processes of SNNW occur at lower levels of command, increasing the risk of 'tactical escalation' through miscalculation (Hoffmann & Alberque, 2022).

Nuclear equivalence between SNNW and traditional nuclear weapons, central to the third nuclear age thesis, implies that conventional strategic weapons can have a comparable deterrent effect on adversaries. This is especially the case where radiological or nuclear facilities are the target of

a strike. Targeting these facilities allows conventional weapons to generate functionally equivalent deterrent effects by weaponising the hazardous materials (Dolzikova, 2025). Under the Geneva Convention and Article 56 of Additional Protocol 1, there is a general prohibition on the targeting of nuclear facilities where these may cause severe civilian losses (*Geneva Conventions, 1949; Additional Protocol 1, 1977; International Committee of the Red Cross, 2005, Rule 42*). Despite these prohibitions, states have attacked nuclear facilities, revealing the fragility of nuclear safety arrangements and the need to revisit the regulation of strategic weapons. A contemporary example is Russia's attack on the Zaporizhzhia nuclear power plant, where the disregard for the principles of nuclear safety and security raises the risk of a nuclear emergency (*U.S. Department of Energy*, 2023). Threatening to target nuclear sites using SNNW allows states to effectuate deterrent effects once exclusive to nuclear weapons, without the associated taboos (Dolzikova, 2025). Thus, depending on the context of their employment, SNNW allow non-nuclear-armed states to potentially commit disarming strikes (Pollack, 2020).

Balancing competing perspectives, it must be emphasised that the functional equivalence of SNNW has limits. From a traditionalist perspective, deterrence postures are solely determined by nuclear weapons as these create a distinct strategic domain (Brodie, 1959). From this perspective, nuclear weapons are unique in their catastrophic destructive powers, which cannot be deemed functionally equivalent to any kind of conventional weapon (Brodie, 1946; Bull, 1961). Reformists on the other hand, emphasise strategic capabilities and deterrence outcomes over formal classifications. Nuclear weapons and SNNW are treated as part of a single strategic system (Acton, 2013). Thus, whilst SNNW cannot independently produce mass destruction to the scale of nuclear weapons, they increasingly occupy a central position in nuclear deterrence postures and escalation risks. This perspective aligns more with the third nuclear age thesis.

In sum, the functional strategic equivalence between SNNW and traditional nuclear weapons means non-nuclear-armed states also become strategic actors. Non-nuclear-armed states acting as independent decision makers in the nuclear deterrence arena illustrate the limitations of the NPT's regulatory binary.

There is currently no regulatory framework specific to SNNW, regulation being mostly indirect via international humanitarian law (IHL) and related legal regimes. The NPT binary underscores that SNNW fall outside existing structures governing nuclear deterrence. The NPT seeks to prevent proliferation, promote peaceful use of nuclear technology and disarmament obligations. Article IX(3) is relevant as it defines a nuclear-weapon state as one which manufactured and exploded a nuclear explosive device prior to January 1st 1967 (United Nations, 1968). This rigid legal distinction between nuclear and non-nuclear weapon states does not capture the strategic potential of actors formally classified as non-nuclear but in possession of

advanced non-nuclear capabilities. The International Court of Justice (ICJ) advisory opinion in *Legality of the Threat or Use of Nuclear Weapons* (1996) highlights the binary distinction of the NPT, illustrating how formal treaty categories lag behind functional capabilities like SNNW.

The danger of the strict binary of Article IX(3) concerning SNNW is that it does not account for strategic actors legally classified as non-nuclear states. Actors without warheads, actively contribute to deterrence postures in the third nuclear. Strategic stability is a necessary condition for the effective functioning of the NPT. Considering the escalatory potential of SNNW, the binary framework's lack of recognition of a multitude of strategic actors therefore challenges the normative purpose of the NPT, particularly its aim to reduce proliferation of nuclear warfare. Furthermore, the NPT binary assumes a clear threshold between conventional and nuclear war. This distinction is blurred by SNNW which can effectuate counterforce missions which may be misinterpreted as strategic disarming strikes (Pollack, 2020).

Proponents of formal re-classification of states under the NPT to account for the increased number of strategic actors follow the logic of Albert Wohlstetter, according to whom deterrence depends on the opponent's perception of a state's capabilities (Wohlstetter, 1958). According to the logic, changes in technology can shift capability perceptions, which means states that have the capability to rapidly assemble a bomb are seen in the deterrence arena as possessing nuclear weapons (Hymans, 2010). Applying Wohlstetter's logic to SNNW suggests that if a state is formally a non-nuclear-weapon state, but is capable of creating strategic effects, there is no practical difference in terms of effective deterrence.

Hymans criticises formal legal reclassification, arguing it is too politically dangerous and destabilising (Hymans, 2010). Although Hymans does not address SNNW directly, his critique of capability-based nuclear classification provides a useful framework for thinking about how emerging strategic technology influences existing legal frameworks. According to him, whilst the binary created by Article IX(3) NPT is problematic, total legal reclassification is not the aim. Reclassification based on capabilities, like fissile materials or the strategic capabilities of SNNW, would destabilise the NPT and jeopardise the non-proliferation objectives. Without clear delineation, the rights and responsibilities of states under the treaty become dangerously ambiguous. Furthermore, equating strategic capability with nuclear status risks encouraging nuclear proliferation. Hymans (2006) argues that non-proliferation is a consequence of the NPT interacting with other elements, such as leaders' perceptions of adopting nuclear weapons being a revolutionary choice leading to uncertain consequences for the state's security. If the criteria to be considered a nuclear-weapon state widens based on strategic ability, the obstacle of choice and the subsequent international scrutiny is reduced.

Instead of a formal legal reclassification, Hymans proposes a 'neo-traditional approach' to supplement the NPT binary to maintain both the

normative purpose and stability of the non-proliferation regime (2010). This supplementary approach must focus on institutional and political dynamics instead of technical thresholds only (Hymans, 2013). Hymans proposes making analytical distinctions within the broad legal categories of the NPT which should not change the legal status of these states under the NPT.

Whilst a formal legal amendment to NPT Article IX(3) to reclassify SNNW possessing states would risk undermining the stability of the non-proliferation regime, the deterrence role of SNNW in the third nuclear age must be addressed (Futter & Zala, 2021). To address the strategic implications of SNNW, a multi-dimensional approach should be employed, which modernises existing regulatory mechanisms, utilises soft-law commitments and implements review mechanisms of SNNW.

Firstly, modernising existing regulatory mechanisms may prove to be a useful tool in light of the functional equivalence of SNNW. Though no longer in force, the Intermediate-Range Nuclear Forces (INF) Treaty (1987-2019) between the US and Russia serves as a precedent for range-based regulation of conventional missiles that may have a strategic effect (United States of America & Union of Soviet Socialist Republics, 1987). This treaty banned missiles with ranges of 500-5500km regardless of warhead type. A treaty which aimed to limit nuclear risks can therefore also serve as a constraint on strategic strike capabilities. Other existing measures include the Hague Code of Conduct against Ballistic Missile Proliferation (2002) and the Missile Technology Control Regime (1987) (Hoffmann & Alberque, 2022). These are politically binding codes of conduct which seek to curb the proliferation of ballistic and cruise missiles. A round table discussion conducted by IISS-Europea highlighted that these regulatory mechanisms are currently inadequate concerning challenges posed by SNNW but may prove useful if modernised.

Secondly, states can create binding limits on SNNW through soft-law commitments. One such norm is the prohibition on attacks against nuclear facilities. Through state practice and repeated affirmation, norms concerning the use of SNNW by non-nuclear weapon states and nuclear weapon states may become customary law. This reduces the escalatory risk associated with the strategic equivalence of these conventional weapons and introduces the idea of non-nuclear states as strategic decision makers into the regulatory landscape.

Third, states with strategic capabilities require further analysis and scrutiny. Drawing on Hymans' (2010) critique of capability-based classification, this paper suggests that the Article IX(3) NPT binary distinction should be supplemented with further analysis in light of developing technologies. For example, Hoffmann (2021) proposes the UN Security Council's P5 to establish an expert panel on SNNWs to provide an objective analysis of the effect of these weapons on nuclear planning. This allows states to adapt their deterrence postures if necessary based on facts. One way of conducting this analysis is using Hoffmann's Counterforce coefficient,

which measures a weapon's qualitative ability to destroy strategic targets. This analysis serves to create a more nuanced arms control discussion to prevent overstating the destabilising impact of SNNW and avoid sweeping deterrence postures.

Finally, the NATO Nuclear Planning Group (NPG) should continue to address the influence of SNNW on non-proliferation and ensure these weapons complement existing deterrence postures (North Atlantic Treaty Organisation, 2026). Equally, the UN First Committee must assess the strategic potential and position of SNNW in existing regulatory mechanisms.

In conclusion, SNNW enable non-nuclear states to become strategic actors and independent decision makers in the nuclear deterrence landscape of the third nuclear age. The binary of Article IX(3) NPT between nuclear and non-nuclear states inadequately reflects contemporary strategic realities. Entanglement between conventional and nuclear domains created by this strategic equivalence may lead to overreaction, creating a risk of inadvertent escalation. Escalation risks are reinforced by states' disregard of the prohibition of targeting nuclear facilities, which allows non-nuclear states to effectuate deterrent effects using SNNW.

Formal legal amendment of the NPT binary is undesirable due to its destabilising consequences for the entire non-proliferation regime. Instead, the binary of Article IX(3) NPT should be supplemented with governance mechanisms which account for all strategic actors in the third nuclear age. Firstly, existing regulatory mechanisms must be modernised in light of the functional equivalence of SNNW. Second, soft norms concerning the use of SNNW must be strengthened to reduce the risk of escalation. Finally, states with strategic capabilities require further analysis to create a more nuanced arms control discussion.

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