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Security assurances: Current challenges and implications for the future

Policy paper

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Summary

Security guarantees by nuclear-weapon states (NWS) are a tool used by non-nuclear weapons states (NNWS) to control nuclear proliferation. NNWS require security guarantees in cases where they have strong concerns about threats to national security from other states, mainly NWS. Ukraine is one such example. The Budapest Memorandum, which was signed in exchange for the denuclearization of Ukraine, provided positive and negative guarantees on Ukraine's security. However, it failed to prevent Russia from exerting political and economic pressure, drawing 'red lines' and making unilateral changes to its land and sea borders with Ukraine. Following the annexation of the Crimean Peninsula in 2014, Russia's aggressive policy towards Ukraine was compounded by a large-scale military invasion in February 2022 and threats of the use of nuclear weapons. Experts and politicians are discussing the long-term consequences of President of Russia Vladimir Putin's threat of use of nuclear weapons in the modern world, which include an enhanced *raison d'être* for North Korea's and Iran's nuclear options as well as reducing the incentives for nuclear disarmament. In a broader sense, further disarmament and non-proliferation efforts will require alternative approaches, as well as increased credibility of the major powers' security assurances.

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Ukraine's Path to Security Assurances

Ukraine became a nuclear weapon state in December 1991 when it inherited part of the Soviet nuclear arsenal after the break-up of the Soviet Union. In the light of all the technical and political complications surrounding the storage of nuclear weapons on its territory, the Declaration of State Sovereignty of Ukraine issued in July 1990 proclaimed Ukraine's intention to become a non-nuclear state.

At the time, the Russian Federation was attempting to secure its status as the sole nuclear weapon successor state to the Soviet Union. Russia was looking to achieve long-term control over the parts of the Soviet nuclear arsenal located beyond its territory, including in Ukraine. In parallel, Russia did not define its relation with Ukraine on an equal basis, refusing to treat Ukraine as an independent state and a successor to the Soviet Republic, and disputing Ukraine's right to part of the Soviet Black Sea Fleet. Third, Kremlin was also unwilling to recognize the administrative borders between the two former Soviet republics as the borders of the two independent states. Finally, two resolutions of the State Council of the Russian Federation in 1992 and 1993 on the 'illegal cession of the Crimean Peninsula and Sevastopol city' to Ukraine in 1954 posed a direct threat to the territorial integrity of Ukraine.

According to opinion polls conducted in 1992–1993, a majority of Ukrainians considered Russia's policy towards Ukraine aggressive. As S. W. Garnett noted, Russia was 'the key external factor at the heart of the Ukrainian nuclear debate'.² Ukraine therefore, looked to obtain security guarantees before any denuclearization. Ukraine requested that elimination of nuclear arms on Ukrainian territory should be conditional on *reliable international security guarantees* being incorporated into a robust high-level document issued by the nuclear weapon states, first and foremost the USA and Russia.

Throughout 1992, Ukraine sought commitments to respect its sovereignty and independence, and the inviolability of its borders; not to use force or threats of the use of force against the territorial integrity or political independence of Ukraine; and to abstain from economic coercion. It also sought the extension of positive and negative security assurances by the NWS to Ukraine. These conditions were reasonable and moderate, in line with the UN Charter and the Helsinki Final Act, but found support in neither Washington nor Moscow. Moreover, the USA interpreted Ukraine's position as a bargaining position while the European Union (EU) called it a 'non-proliferation crisis in Ukraine'.³

The administration of US President Bill Clinton showed more understanding of Ukraine's security concerns and supported further negotiations on Ukraine's propositions. The Trilateral Statement signed by the USA, Russia and Ukraine in January 1994 contained non-legally binding security assurances. Continuing discussions on the security assurance options available to Ukraine, as well as the USA, led to the transmission of most of the statement into written security assurances formally entitled the Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT), which became widely known as the Budapest Memorandum, in December 1994.

The Budapest Memorandum was signed by Ukraine, the USA, the United Kingdom and Russia. It did not provide the security guarantees Ukraine desired (an ally-style commitment by the USA, similar to South Korea or Japan's commitments), but repeated and extended the negative and positive security assurances familiar to all non-nuclear state parties to the NPT. In addition, the signatories pledged to respect Ukraine's

² Garnett, S. W., 'The "model" of Ukrainian denuclearization', ed. J. W. Knopf, *Security Assurances and Nuclear Nonproliferation* (Stanford University Press: Stanford, 2012), pp. 246–72.

³ Sinovets, P. (ed.), *Ukraine's Nuclear History: A Nonproliferation Perspective* (Springer, 2022), p. 159; and Portela, C., 'The EU's evolving responses to nuclear proliferation crises: From incentives to sanctions', *Non-Proliferation Papers* no. 46 (July 2015), <https://www.sipri.org/sites/default/files/EUNPC_no-46.pdf>.

independence and sovereignty, which guaranteed its existing borders, and to refrain from economic coercion. The most significant achievements of the Memorandum were the assurances provided not only on Ukraine's security but also to the NPT regime, as listed in articles 4, 5 and 6. Article 4 obliges the signatories 'to seek immediate United Nations Security Council action to provide assistance to Ukraine, as a non-nuclear-weapon State party to the Treaty on the Non-Proliferation of Nuclear Weapons, if Ukraine should become a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used'.⁴ Article 6 calls on the Memorandum's signatories to hold consultations 'in the event a situation arises that raises a question concerning these commitments'. Articles 4 and 6 of the Memorandum extend 'positive' security assurances, while article 5 on the commitment of assuring 'not to use nuclear weapons against' any NNWS provides 'negative security guarantees'.

However, the Budapest Memorandum contains flaws that have blurred and led to misperceptions of the document's reading. First, even though it was registered as a legal UN document, it was not legally binding. Second, the document did not include any enforcement tools to ensure the sovereignty and territorial integrity of Ukraine. Finally, the association of the Budapest Memorandum with the UN Charter, the Helsinki Final Act and the NPT made security assurances for Ukraine declaratory and dependent on the goodwill and self-restraint of the Memorandum's signatories.

From the Budapest Memorandum to the annexation of Crimea

However, Russia was never going to honour its obligations under the Budapest Memorandum. Despite numerous bilateral and international agreements enshrining mutual recognition and the inviolability of the Ukraine-Russia border,⁵ the official rhetoric of Russian politicians repeatedly referenced the return of the Crimean Peninsula to Russia and restoration of Russia's strategic dominance in the Black Sea.

Construction of a dam from the Taman Peninsula in Russia to the island of Tuzla in Ukraine in September 2003 was covered in the Russian mass media as legitimate restoration work to return 'part of Russian territory'. According to Andrei Illarionov, the conflict over the ownership of the island of Tuzla in the Kerch Strait could be considered a 'trial war' of Russia and as preparation for the annexation of the Crimean Peninsula in 2014.⁶ Ukraine's attempts to apply article 6 of the Budapest Memorandum failed because the nuclear guarantor states refused to hold consultations. Further examples of violations of the Budapest Memorandum by Russia include the various gas and trade wars, which escalated as Ukraine took active steps to deepen cooperation with the EU and NATO. Thus, in addition to economic pressure and blackmail, Russia openly interfered in the

⁴ United Nations General Assembly and Security Council, Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons, A/49/765 and S/1994/1399, 19 Dec. 1994, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/507/64/PDF/N9450764.pdf?OpenElement>>.

⁵ Mutual recognition of the inviolability of borders and territorial integrity by Russia and Ukraine in accordance with the UN Charter and the CSCE Final Act is enshrined in the following documents: Agreement between the Russian Soviet Federal Socialist Republic and the Ukrainian Soviet Socialist Republic of 19 November 1990; Agreement on the Establishment of the Commonwealth of Independent States of 8 December 1991; Declaration on Compliance with the Sovereignty, Territorial Integrity and Inviolability of the Borders of the Member States of the Commonwealth of Independent States of 15 April 1994; Treaty of Friendship, Cooperation and Partnership between the Russian Federation and Ukraine of 31 May 1997; and Agreement between the Russian Federation and Ukraine on the Russian-Ukrainian state border of 28 January 2003.

⁶ Семенова И. *Пробная война. 15 лет назад Россия попыталась захватить украинский остров Тузла* [Trial war: 15 years ago, Russia tried to seize the Ukrainian island of Tuzla], 29 Sep. 2018, <<https://nv.ua/ukraine/events/probnaja-vojna-15-let-nazad-rossija-popytalas-zakhvatit-ukrainskij-ostrov-tuzla-2496372.html>>.

internal affairs of the Ukrainian state, violating its sovereign rights and freedom of choice of foreign policy priorities.

In February–March 2014, the Russian Federation used military force to annex Crimea, violating not only bilateral agreements with Ukraine but also many of Russia's international obligations. The Kremlin's attitude to the provisions of the Budapest Memorandum had the greatest resonance. Moscow's violation of this document was extremely important because it was signed jointly by Russia, the USA and the UK, and reaffirmed a number of basic obligations under international law, including the provisions of the UN Charter. The international political and expert community, however, was most outraged by the arguments used by senior Russian officials to legitimize its actions against a sovereign, friendly neighbouring state. Former President of Russia Dmitry Medvedev, for example, noted that Crimea's inclusion in the Russian Federation did not violate Russia's international obligations in any way, especially the Budapest Memorandum. Russia's assurances under the Memorandum extended to situations where Ukraine's sovereignty is threatened and, according to Medvedev, Russia was no threat to Ukraine's sovereignty. In emphasizing that 'only the state, its people and authority can guarantee territorial integrity',⁷ Medvedev demonstrated Russia's genuine attitude to its international obligations to Ukraine and the fundamental principles of international law.

Another striking example of Russian rhetoric and manipulation was Putin's assertion that Russia 'respects Ukraine's territorial integrity and will respect it in the future'.⁸ The statement was supplemented by the claim that Russia no longer had to respect its existing obligations in respect of a new Ukrainian state following Ukraine's 2014 revolution and change of government.⁹

A significant factor in this context is the dichotomy in the interpretation of the history of Ukraine and the Ukrainian people. In both 2014 and 2015, Putin stated that there was no difference between Russians and Ukrainians, as they were 'two countries: one people'.¹⁰ However, he later changed his mind, and repeatedly claimed that the existence of Ukraine was a historical mistake made by the Bolsheviks, led by Vladimir Lenin.

Thus, by declaring a 'special military operation' in Ukraine to 'de-Nazify' and demilitarize Ukraine, Putin is in effect seeking finally to resolve the issue of regaining full control over Ukraine and ending its European future. That he is ready to achieve this at any cost can be shown by his order to transfer strategic forces and to put nuclear deterrence forces 'on high alert', while also threatening other states that would try to help Ukraine with instant retaliation and 'consequences...such as you have never seen in your entire history'.¹¹

Russia's War Against Ukraine and the Implications for Security Assurances

Thus, Putin has expressed his readiness to resort to nuclear weapons should the USA or NATO 'interfere' in Russia's military operations in Ukraine. According to the Lawyers Committee on Nuclear Policy, this is a legally

⁷ Медведев уверен, что Россия не нарушала Будапештский меморандум [Medvedev is sure that Russia did not violate the Budapest Memorandum], 24 May 2014, <<https://ria.ru/politics/20140524/1009139461.html>>.

⁸ Yost, D. S., 'The Budapest Memorandum and Russia's Intervention in Ukraine', *International Affairs*, vol. 93, no 3 (2015), pp. 505–38 (p. 537).

⁹ Путин: Если это революция, то Будапештские соглашения не действуют [Vladimir Putin: If this is a revolution, then the Budapest Agreement is no longer valid], 4 Mar. 2014, <<https://vz.ru/news/2014/3/4/675516.html>>.

¹⁰ Максименко І. Безпекове співробітництво в трикутнику «Польща–Україна–Румунія»: реалії та перспективи. [Maksymenko I: Security cooperation in the 'Poland–Ukraine–Romania' triangle: Realities and prospects]. *Вісник ОНУ. Серія Політичні науки*. vol. 22 no. 2 (2017), pp. 100–12.

¹¹ Обращение Президента Российской Федерации [Address by the President of the Russian Federation], 24 Feb. 2022, <<http://www.kremlin.ru/events/president/news/67843>>.

cognizable threat, both credible and specific in form.¹² Given the consequences for the Putin regime of losing the war in Ukraine, the possibility of a tactical nuclear strike on Ukraine is being actively debated. The Kremlin officially rejects the use of nuclear weapons in the war against Ukraine, but the possibility of a large-scale military invasion was also ruled out until the moment it took place. Only in April, Foreign Minister Sergey Lavrov spoke of both the impossibility of a nuclear war and the fact that 'the risks of nuclear war are now quite significant', avoiding a direct answer about the possible use of tactical nuclear weapons against Ukraine. Under what circumstances might Russia use nuclear weapons?

The threat of a nuclear strike is not new in the modern policy of the Russian Federation. The Kremlin discussed the possibility of a preventive nuclear strike on Ukraine for the first time in October 1991, to force Kyiv to give up its nuclear weapons. At the official level, the possibility of using nuclear weapons in conventional conflicts and regional wars 'in critical circumstances' in response to a conventional attack 'if other means demonstrate their inefficiency' appeared in the 2000 Military Doctrine.¹³ The possibility of using limited nuclear strikes was developed in 2003, and transformed into a strategy of nuclear escalation as the means of ending conflicts 'on terms favourable to Russia'.¹⁴ On the one hand, this can be interpreted as an assumption that the threat of military escalation could promote the Kremlin's goals, for instance, it would bring Ukraine back to the Russian sphere of influence. On the other hand, the 2014 Military Doctrine allows for the possibility of using nuclear weapons as a retaliatory action, as well as if 'the very existence of the state is under threat'.

In his address to the Russian people on 24 February 2022, Putin stressed that 'the expansion of the NATO bloc to the east, bringing its military infrastructure closer to Russia's borders', and 'the ongoing military development of Ukraine' pose fundamental threats to Russia. Thus, 'our actions are self-defence against the threats we face and against even greater calamities than what is happening today'.¹⁵ Thus, Putin portrays the use of threats to use nuclear weapons as an effective tool for guaranteeing Russia's sovereignty and territorial integrity, as a deterrent to aggression against Russia and, in the face of an escalating military conflict, as a way to prevent further escalation of hostilities.¹⁶ In reality, however, the threats to use nuclear weapons are to project military force, to deflect from a mass invasion of a non-nuclear-weapon state, to force it to end the conflict with Russia 'on terms favourable to Russia', and to consolidate the outcome of the conflict. To this end, Putin is conducting a large-scale military exercise, 'Zapad', on the territory of Belarus involving numerous dual-use capabilities, and plans to deploy Russian nuclear weapons on Belarusian territory. No less important in psychological terms is Russia's military operations to take control of Chornobyl and other Ukrainian nuclear power plants, which have sharpened fears of new nuclear disasters in Europe.

Ukraine's two-month stand-off against Russia's military aggression and the large-scale sanctions against the Russian state increase the probability of a Russian defeat in its war against Ukraine. Putin may see this as a threat to Russia's existence and statehood, and thus use nuclear weapons to neutralize it.

¹² Lawyers Committee on Nuclear Policy, Statement on the Russian Invasion of Ukraine, 'End the War, Stop the War Crimes', 21 Apr. 2022,

<<https://static1.squarespace.com/static/603410a4be1db058065ce8d4/t/6261ce36c855e159aec4c89c/1650576950717/4-21-22+ru-ukraine+lcnpstatement2.pdf>>.

¹³ Военная доктрина Российской Федерации [Military Doctrine of the Russian Federation, 2000], Official website of the President of the Russian Federation, <<http://www.kremlin.ru/acts/bank/15386>>.

¹⁴ Военная доктрина Российской Федерации [Military Doctrine of the Russian Federation, 2014], Official website of the President of the Russian Federation, <<http://static.kremlin.ru/media/events/files/41d527556bec8deb3530.pdf>>.

¹⁵ Address by the President of the Russian Federation (note 11).

¹⁶ Основы государственной политики Российской Федерации в области ядерного сдерживания [On the fundamentals of Russia's nuclear deterrence policy], 2 June 2020, <<http://www.kremlin.ru/acts/bank/45562>>.

Discussions continue on the feasibility of a demonstrative nuclear strike on Ukraine. Experts agree on the idea that the use of nuclear weapons as a tool for waging new colonial wars and fighting for a state's status in the world is unacceptable. Such ideas are extremely destructive for the NPT regime and for arms control in general, as well as for the international nuclear consensus. As Daryl Kimball noted at an Arms Control Association webinar on 3 May 2022, Putin's nuclear rhetoric is more significant as it is more explicit and directed against both NWS and NNWS. As a result, the consequences are much greater. Among the global repercussions of Russia's aggressive policy against Ukraine in 2014 and 2022 has been the impression formed that NWS can intimidate NNWS without any immediate costs for their aggression.

It has also weakened the credibility of the security assurances provided by NWS. Ukraine being attacked by its guarantor provides a case in point for the question of whether security assurances are sufficiently reliable to ensure long-term security. The perception that the nuclear option is an insurance policy for self-defence against both nuclear and conventional military threats may come to be seen as more legitimate. The Ukraine case will also have spill over effects on Iran, Saudi Arabia, South Korea and Japan.

Evidence of such effects has already begun to emerge. North Korea strongly believes that both Libya and Ukraine would never have been attacked if they had not renounced their nuclear weapons. As the Korean Central News Agency commented following a 2016 nuclear test, 'History proves that powerful nuclear deterrence serves as the strongest treasured sword for frustrating outsiders' aggression'.¹⁷ Thus, Ukraine's situation in 2022 solidifies North Korea's nuclear weapon choices and strengthens the reasoning of North Korea in moving towards an offensive military and nuclear posture to avoid Ukraine's fate.

Both South Korea and Japan have discussed the possibility of nuclear options from time to time. Shinzo Abe, a former prime minister of Japan, raised the question of the need to 'break a longstanding taboo and hold an active debate on nuclear weapons' in the wake of Russia's invasion of Ukraine and an 'increasingly severe security environment' in Asia.¹⁸ South Korea expressed its deep concerns regarding the rapid pace at which conflict can escalate, as well as the recent missile test-launches and statements by North Korean officials about how and when it might use nuclear weapons. Thus, continued violations of Russia's security assurances to Ukraine could reduce the incentives for nuclear disarmament and derail progress on nuclear proliferation talks for many years.

Conclusions

Ukraine renounced nuclear weapons in exchange for guarantees on sovereignty, territorial integrity and to refrain from threats of economic coercion or the use of force against it. Kyiv's concerns about Russian threats were not taken seriously to the extent that Ukraine was provided with legally binding security assurances. Following resumption of Russia's geopolitical confrontation with other democracies, the political assurances contained in the Budapest Memorandum proved unable to prevent Russian aggression against Ukraine in 2014 or to avoid a repeat of Russia's war on Ukraine in 2022. The Kremlin's nuclear rhetoric against a non-nuclear state that has voluntarily renounced a major instrument of national security has already affected key components of the nuclear non-proliferation regime and of arms control.

¹⁷ Specia, M. and Sanger, D. E., 'How the "Libya model" became a sticking point in North Korean nuclear talks', *New York Times*, 16 May 2018, <<https://www.nytimes.com/2018/05/16/world/asia/north-korea-libya-model.html>>.

¹⁸ Johnson, J., 'Japan should consider hosting US nuclear weapons, Abe says', *Japan Times*, 27 Feb. 2022, <<https://www.japantimes.co.jp/news/2022/02/27/national/politics-diplomacy/shinzo-abe-japan-nuclear-weapons-taiwan/>>.

The long-term consequences of Russia's war against Ukraine are difficult to predict. Nonetheless, one lesson of Putin's invasion of Ukraine accompanied by a threat to use nuclear weapons is that reliable security assurances can only be achieved through firm defensive alliances with clear commitments. On the other hand, the threat of an uncontrolled nuclear proliferation cascade can only be avoided by not allowing Putin to win the war in Ukraine and forcing him to pay a high price for starting it. Thus, more binding security guarantees to partner nations and stronger political decisions on both reducing the risks of nuclear war and condemning threats of nuclear weapon use, especially those designed to intimidate, coerce or shield naked aggression against non-nuclear states, will be essential.



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