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HELSINKI

PRINCIPLES

INTEREST MEMORANDUM OSCE UKRAINE SOVEREIGNTY BUDAPEST AGREEMENT EXPECTATIONS TREATIES

- INTERNATIONAL LAW
- HELSINKI PRINCIPLES
- STATE SOVEREIGNTY

Helsinki Principles

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RUSSIA'S AGGRESSION AGAINST UKRAINE AS A DESTABILIZING FACTOR FOR NON-PROLIFERATION REGIMES

Dr. Ihor Lossovskiy

Representation of Ukraine to the International Organizations in Vienna

The article presents a study of legal aspects of the Budapest Memorandum, the only document that Ukraine at the outset of its independence was able to win in exchange for the voluntary abandonment of the nuclear arsenal. While Russia violated its obligations by annexing Crimea and unleashing military aggression, Western "guarantors" fail to counter Russia. An analysis of the BM gives proves that it is a full-fledged legally binding international treaty. Failure of international guarantees of territorial integrity of Ukraine is a destabilizing factor resulting in NP regimes' erosion because of formation of profound distrust of international guarantees, which in the face of aggression and disregard for international norms demonstrate their helplessness.

Introduction

On 05 December 1994, the leaders of the United States, the United Kingdom, Russia, and Ukraine (B. Clinton, J. Major, B. Yeltsin, and L. Kuchma respectively) concluded the Budapest Memorandum "On Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons"¹ (BM). Two other nuclear states and the UN Security Council permanent members – China and France – formally expressed similar assurances to Ukraine in the form of relevant statements (Statement of the Government of China of 04 December 1994 and the Declaration of France with

the accompanying letter of President F. Mitterrand of 05 December 1994), although formally they did not sign the Memorandum. The main difference between these two statements and the content of the Memorandum is the absence of the paragraph on compulsory consultation "in the event a situation arises that raises a question concerning these commitments". Ukraine, for its part, undertook to withdraw all nuclear weapons from the territory of the country, at that time the third largest nuclear arsenal in the world. Tactical nuclear weapons were withdrawn in 1992, and the entire nuclear disarmament process was completed in 1996. The last stationary silo launcher of intercontinental ballistic

¹ *Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons*, UN, 19 December 1994 [<http://undocs.org/S/1994/1399>].

missiles RS-22 (SS-24) was destroyed in Ukraine in 2001.²

The year 2014 – the 20th anniversary year for the Memorandum – was the year when the Russian aggression against Ukraine started³, leading to the collapse and the destruction of the international guarantees/ assurances enshrined in this international legal instrument. In recent years, we have been able to find in the international media some statements and comments from high-ranking politicians and academics from the countries that signed the Budapest Memorandum, and not only Russians, who unreasonably tried to disprove the validity of the Budapest “guarantees” and the obligation to implement them for all parties. But, the initiators of these rebuttals and falsifications were the Russian politicians and the Kremlin “lawyers”.

In this paper, we present a series of irrefutable proofs of the opposite. Namely, the Budapest Memorandum is an international legally binding treaty, valid for its signatories – guarantors of the independence, territorial integrity, and inviolability of the borders of Ukraine. First of all, it concerns the Russian Federation – the main violator of the Budapest assurances.

These commitments are as follows: to respect the independence and sovereignty and the existing borders of Ukraine; to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and a statement that none of their weapons will ever be used against Ukraine except in self-defence or otherwise in accordance with the Charter of

the United Nations; to refrain from economic coercion, and so on. Nonetheless, these were destroyed by Russia’s 2014 illegal military annexation of Crimea and the subsequent aggression in the Donbas region of Ukraine, which continues to this day. As for the other Budapest signatory states, they are formally not violating their obligations but were unable to resist or prevent the Russian aggression.

Russian Logic

The fact that Russia was not going to comply with its obligations to respect the territorial integrity and inviolability of the borders of Ukraine became clear at the end of 2003 in connection with events around the Ukrainian sea spit Tuzla in the Kerch Strait between the Sea of Azov and the Black Sea. After those events, the proposals of some politicians about the expediency of renewal of Ukraine’s nuclear status began to sound in full, although Russia violated the Budapest Memorandum even before, when it exerted economic pressure on Ukraine, in particular, on the supply of energy to Ukraine and the introduction of unjustified restrictions on Ukrainian exports of certain types of agricultural and other products.

In 2009, on the eve of the 15th anniversary of the Memorandum, a discussion was held in the Ukrainian Parliament and the expert community on the need for its ratification, granting it the status of a “political-legal document”, or the adoption of another “binding document on guaranteeing Ukraine’s security”. In the opinion of some politicians, such a document could have removed the urgency

² І. Лоссовський, *Міжнародно-правовий статус Будапештського Меморандуму*, УАЗП: Київ (Legal Status of the Budapest Memorandum, UPPA: Kyiv) 2015, p. 124.

³ І. Лоссовський, *Зовнішньополітична стратегія Росії щодо України як реалізація «нової доктрини обмеженого суверенітету» («доктрини Путіна»), “Зовнішні справи” (Russia’s Foreign Policy on Ukraine as Realization of “New Doctrine of Limited Sovereignty” [“Putin’s Doctrine”], “UA-Foreign Affairs”)*, May 2015, pp. 12-15.

of the necessity of Ukraine's integration to NATO.⁴ Some leading security experts insisted on the need to transform the Budapest Memorandum into a multilateral legally binding international treaty, while then President V. Yushchenko considered the need for Ukraine to conclude bilateral treaties with guarantor countries, similar to the Ukraine-US Charter on Strategic Partnership of 19 December 2008, to replace the Budapest Memorandum.⁵

In July 2010, the appeal of the Verkhovna Rada to the nuclear states⁶ was adopted calling to strengthen security guarantees to Ukraine, which had voluntarily abandoned nuclear weapons. In connection with the 15th anniversary of the Memorandum, official diplomatic correspondence of Ukraine with the guarantor countries took place at the top level. The guarantor countries for Ukraine, primarily Russia and the United States, expressed at that time the readiness to confirm and strengthen the assurances provided to Ukraine. However, such commitments and obligations were not implemented in practical terms and did not go further than general political statements, intentions, and theoretical discussions.

According to the Ukrainian delegates participating in the negotiations on preparation of the text of the Memorandum,



the strategy of the Ukrainian delegation had been that the final text would be legally binding. At the same time, the strategy of Ukraine's partners was to emphasize the political nature of the guarantees

the strategy of the Ukrainian delegation had been that the final text would be legally binding. At the same time, the strategy of Ukraine's partners was to emphasize the political nature of the guarantees. As a result, a compromise was reached – an international legal treaty that stipulates real political and legal assurances of Ukraine's independence, sovereignty, and territorial integrity and establishes a special mechanism for their diplomatic protection in case of their violation.

A certain weakness of the guarantees given to Ukraine by the nuclear states may be evidenced by the fact that the English text of the Memorandum (in its title) used the term “security assurances”, which is weaker than the term “security guarantees”.⁷ It is noteworthy that in the Russian-language text of the Memorandum⁸, as well as in the Ukrainian-language text, the term “security guarantees” is used but not “assurances”.

⁴ Про «Документ із «шафи». Олександр ЧАЛИЙ: Будапештський меморандум може стати першою шаблonoю у побудові якісно нової зовнішньої політики України (About the “Document from the cabinet”. Oleksandr CHALY: The Budapest Memorandum Can Become the First Step in Building a Qualitatively New Foreign Policy of Ukraine), “Day” newspaper, 04 December 2009 [https://day.kyiv.ua/uk/article/nota-bene/pro-dokument-iz-shafii].

⁵ Ющенко вимагає переглянути угоду про без'ядерний статус України (Yushchenko Demands Revision of Ukraine's Nuclear-free Status Agreement), “Pogliad.ua”, 01 September 2009 [https://pogliad.ua/news/chernivtsi/yuschenko-vimagae-pereglyanuti-ugodu-pro-bez-yaderniy-status-ukrayini-268716].

⁶ Постанова Верховної Ради України “Про Заяву Верховної Ради України про надання Україні реальних гарантій безпеки” (Resolution of the Verkhovna Rada of Ukraine “On the Statement of the Verkhovna Rada of Ukraine on the Provision of Real Security Guarantees to Ukraine”), Parliament of Ukraine, 06 July 2010 [http://zakon3.rada.gov.ua/laws/show/2431-17].

⁷ І. Лоссовський, Міжнародно-правовий статус Будапештського Меморандуму, УАЗП: Київ (Legal Status of the Budapest Memorandum, UFPA: Kyiv) 2015, p. 124.

⁸ Меморандум про гарантії безпеки у зв'язку з приєднанням України до Договору про нерозповсюдження ядерної зброї (Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons) Parliament of Ukraine, 05 December 1994, [http://zakon3.rada.gov.ua/laws/show/998_158].

According to one of the American participants in those negotiations, former US Ambassador to Ukraine and now Senior Fellow at the Brookings Institution S. Pifer, during the talks, the discussion was about what term to use: “guarantees” or “assurances”, since the first term was used for provision of guarantees to NATO member-states, which includes military commitments. But at that time, the US administration was not ready to provide Ukraine with any military commitments; moreover, it was clear that the Senate would not provide the opportunity to ratify a treaty with such tight commitments. According to S. Pifer, the Memorandum was planned as a political agreement and provided for “specifically unspecified assurances, but not military guarantees”.⁹ At the same time, the parties to the Memorandum have a clear commitment to respond, even if they are not required to use military force. Therefore, the lack of a rigid Western response to the Russian aggression, according to the American diplomat, discredits Western security guarantees and negatively affects the stability of non-proliferation regimes.

Starting from the spring of 2014 (the beginning of the Russian aggression¹⁰ and attempted annexation of Crimea), from the Russian side, “arguments” of politicians and even some scholars have been voiced in order to “justify” Putin’s aggressive actions, in particular, to discredit the legal value of the Budapest Memorandum. In order to prove the failure of such “arguments”, we turn to provisions of the Russian

domestic law, as well as to the documents of international law.

Legal Aspects of Memorandum Ratification

There is a view that since the Budapest Memorandum has not been ratified by any of its signatories, the document has not passed the process of giving it legal force through appropriate parliamentary procedures, which gives Russia a “real legal excuse”.¹¹ It allegedly does not have the appropriate obligations, and the Memorandum itself allegedly can be considered legally null and void.

Such “argumentation” does not withstand serious professional criticism, because, firstly, in the final provisions of the Memorandum it is stated: “This Memorandum will become applicable upon signature” and therefore does not require ratification. In accordance with part 4 of Article 15 of the Constitution of the Russian Federation of 12 December 1993¹², if an international treaty, in which Russia is a party, establishes rules other than those provided by the legislation of the country, then the rules of the international treaty apply. Even more, in accordance with part 4 of Article 15 of the constitution, the generally accepted principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system.

As it is known, the procedure for the conclusion, implementation, and termination of international treaties of

⁹ *The Role of 1994 Nuclear Agreement in Ukraine's Current State: National Public Radio Transcript of the Interview with S. Pifer*, “NPR”, 09 March 2014 [https://www.npr.org/2014/03/09/288298641/the-role-of-1994-nuclear-agreement-in-ukraines-current-state].

¹⁰ І. Лоссовський, *Зовнішньополітична стратегія Росії щодо України як реалізація «нової доктрини обмеженого суверенітету» («доктрини Путіна»), “Зовнішні справи” (Russia's Foreign Policy on Ukraine as Realization of “New Doctrine of Limited Sovereignty” [“Putin's doctrine”], “UA-Foreign Affairs”), May 2015, pp. 12-15.*

¹¹ «Ни Крым, ни Россия не нарушали Будапештский меморандум» (*Neither Crimea, Nor Russia Violated the Budapest Memorandum*), “Gazeta.ru”, 25 October 2017, [https://www.gazeta.ru/politics/2017/10/25_a_10957754.shtml].

¹² *Конституция Российской Федерации (The Constitution of the Russian Federation)*, 12 December 1993, [http://www.constitution.ru/].

Russia is determined by the Federal Law on International Treaties of the Russian Federation dated 15 July 1995.¹³ This law applies to all international treaties of the Russian Federation, regardless of their type and name: contract, agreement, convention, protocol, other types and titles of treaties (paragraph 2, Article 1). It also applies to international treaties in which Russia is a party as a country-successor of the Soviet Union (paragraph 3, Article 1). In accordance with Article 6 of the law, the consent of a state to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval, or accession, or by any other means if so agreed. Such a rule of the said law fully complies with the provisions of the Vienna Convention on the Law of Treaties (signed in Vienna in 1969 and entered into force in 1980). The Russian Federation is a state party to this convention as the successor of the USSR. Thus, ratification is only one of many ways to give consent to the obligation to implement an international treaty, and if the document states that it comes into force upon signature, then obviously it does not require any other agreement on its entry into force. Moreover, in accordance with paragraph 1 of Article 24 of the said law: "International treaties enter into force for the Russian Federation ... in order and terms envisaged in the treaty or agreed upon between the parties". A similar rule is defined in the Vienna Convention on the Law of Treaties. The principles upon which the relations regarding conclusion of international treaties are regulated in the said law are generally accepted and are applicable to the Budapest Memorandum.

Despite the fact that, in accordance with Article 15, subparagraph (g) of the aforementioned law, Russia's international treaties concerning disarmament or international arms control, the maintenance of international peace and security (so can be considered the Budapest Memorandum) are subject to ratification, since the latter was signed before the Federal Law on International Treaties of Russia entered into force, the said rule on the mandatory ratification has no retroactive effect in time (the general legal principle of irreversibility of the law in time is fixed, in particular, in the first part of Article 54 of the Constitution of the Russian Federation) and does not apply to the Memorandum. In addition, this law does not specifically provide for the application of its norms to relations that arose before the date of its entry into force.

In accordance with Article 2, paragraph 1 (a) of the Vienna Convention, the term "international treaty" is defined as "an international agreement concluded between States in written form and governed by international law,... and whatever its particular designation".¹⁴ Thus, the Budapest Memorandum is an international treaty, and the Russian Federation is bound to its implementation.

It should also be noted that in the official electronic search systems on the legislative framework and acts of international law of Russia, the Budapest Memorandum appears as an "international treaty". Its text is contained in the official collection of documents of the Ministry of Foreign Affairs of Russia¹⁵, as well as in the manual

¹³ *Федеральный Закон "О международных договорах Российской Федерации"*, (Federal Law on International Agreements of the Russian Federation), The Russian Federation Government, 16 July 1995, [<http://pravo.gov.ru/proxy/ips/?docbody=&nd=102036504&rdk=&backlink=1>].

¹⁴ *Vienna Convention on the Law of Treaties (with Annex)*, Concluded at Vienna on 23 May 1969, UN, [<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>].

¹⁵ *Российско-украинские отношения. 1990-1997 гг. Сборник документов, МИД РФ: Москва (Russian-Ukrainian Relations. 1990-1997, Collection of Documents, MFA of the RF: Moscow) 1998, pp. 210-211.*



Statements regarding the allegedly useless legal liability of the Budapest Memorandum, if they were fair, would automatically make it absurd and discredit all the actions of the leaders at the level of the heads of states related to the conclusion of this international treaty

on “Nuclear Non-proliferation”, officially recommended for Russia’s universities and graduate students, diplomats, as well as experts in the field.¹⁶

In addition to the above, an important international legal confirmation/proof of the binding force for the parties (including for Russia) of the Memorandum are the following two official UN documents: (1) GA and UN Security Council document A/49/765* S/1994/1399* dated 19 December 1994, in the form of a letter from the Permanent Representatives to the UN of Ukraine, the United Kingdom, the Russian Federation, and the US (A. Zlenko, D. Hannay, S. Lavrov, and M. Albright) to the 59th GA session with a request to distribute the text of the BM as an official document of the General Assembly and the UN Security Council¹⁷; (2) document of the United Nations Conference on Disarmament CD/1285 of 21 December 1994¹⁸ in the form of a letter from the Permanent Representatives of the four

states to this conference requesting the registration of the Budapest Memorandum and the cover letter “as official documents of the Conference on Disarmament and their distribution to all participating States of the Conference”. By presenting the Memorandum as an official document of the most influential international organization in the world, which is the UN, the state parties to this international legal document thus confirm its validity and binding nature.

It is also important to note that, in accordance with Article 6 of the Law of Ukraine “On Ukraine’s Accession to the Treaty on the Non-Proliferation of Nuclear Weapons of 01 July 1968”, adopted on 16 November 1994, “This Law enters into force after the providing the security guarantees by the nuclear states to Ukraine by signing of the relevant international legal document”.¹⁹ Thus, if the Budapest Memorandum is not a document that provides Ukraine with security guarantees and is “legally null and void”, as some Russian politicians and experts claimed, it would mean that Ukraine is not a party to the NPT as a non-nuclear country and has the legal right to possess nuclear weapons.

Statements regarding the allegedly useless legal liability of the Budapest Memorandum, if they were fair, would automatically make it absurd and discredit all the actions of the leaders at the level of the heads of states related to the conclusion of this international

¹⁶ *Ядерное нераспространение*. Т.2. (под ред. В.Орлова), ПИР-Центр: Москва (V. Orlova (ed.), Nuclear Non-proliferation, Vol. 2, PIR-Centre: Moscow) 2002, pp. 406-408.

¹⁷ *Letter Dated 07 December 1994 from the Permanent Representatives of the Russian Federation, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations Addressed to the Secretary-General*, The United Nations, 19 December 1994, [<http://undocs.org/S/1994/1399>].

¹⁸ *Letter Dated 94/12/19 from the Representative of the United States of America to the Conference, the Permanent Representative of the United Kingdom and Northern Ireland to the Conference, the Permanent Representative of the Russian Federation to the Conference and the Permanent Representative of Ukraine Addressed to the Secretary-General of the Conference*, CD/1285, Dag Hammarskjöld Library, 1994 [<http://dag.un.org/handle/11176/195890>].

¹⁹ Закон України “Про приєднання України до Договору про нерозповсюдження ядерної зброї від 1 липня 1968 року” (Law of Ukraine “On Ukraine’s Accession to the Treaty on the Non-Proliferation of Nuclear Weapons from 01 July 1968”), Parliament of Ukraine, 16 November 1994 [<http://zakon2.rada.gov.ua/laws/show/248/94-вр>].

treaty, since this would mean that the contracting parties conclude at the highest level a legally “insignificant” document, which would be contrary to the logic of those events and also would not be consistent with the fundamental and universally accepted principle of international law – the principle of conscientious fulfilment of international obligations based on the international legal practice of *pacta sunt servanda* (“agreements must be kept”).

At the official level, the Russian side nevertheless recognizes the binding nature of the Memorandum for its implementation, although partly and indirectly. In the statement of the MFA of Russia dated 01 April 2014 in connection with allegations of violation of its commitments under the Memorandum, it states, in particular, that “the Russian Federation strictly adhered to and observes the obligations stipulated in the Budapest Memorandum to respect the sovereignty of Ukraine ... which cannot be said about the policy of Western countries, which during the events on Maidan have clearly despised this sovereignty”.²⁰ It also emphasized that according to “the general element of the Budapest Memorandum and the concept of ‘negative guarantees’ in its classical sense, the only obligation is not to use and not to threaten the use of nuclear weapons against non-nuclear states. Such Russia’s commitment to Ukraine in no way was violated”. However, these statements contradict each other, because if the obligations of the signatories of the Memorandum concerned only “an obligation not to use and not to threaten the use of nuclear weapons”, this would contradict with the above-mentioned maxim in the same statement (“...what we

cannot say about the policy of Western countries, which during the events on Maidan clearly ignored this sovereignty”), since the Russian side, by claiming this, did not mean the use or threat of use by Western countries of nuclear weapons against Ukraine.

Some comments from critics, which, based on the provisions of part two of Article 7 of the Law of Ukraine “On International Treaties of Ukraine” of 22 December 1993, No. 3767-XII (which was in force on the date of signing of the Memorandum and until 03 August 2004)²¹, tend to consider that this international treaty is allegedly subject to ratification, may also be unequivocally and reasonably rejected, since the Memorandum by its nature does not apply to any of the types of treaties (and does not relate to relations regulated by them) that are specified in the exhaustive list in part two of Article 7 of this law as subject to ratification. In clause (g) of paragraph 2 of Article 7 of the law it is determined that only those international treaties are subject to ratification whose ratification is provided for by the law or the international treaty itself. As you know, neither by the Budapest Memorandum nor by the Ukrainian legislation in force on the date of its conclusion the ratification procedure was envisaged.

In this regard, Ukraine, considering the Budapest Memorandum as an international treaty, in full compliance with the law of Ukraine “On International Treaties of Ukraine” in force on the date of the Memorandum’s conclusion, agreed to the Memorandum’s entry into force from the moment of its signing, without specifying the conditions for the exchange of instruments of

²⁰ Website of the MFA of the Russian Federation [http://www.mid.ru].

²¹ Закон України “Про міжнародні договори України” (Law of Ukraine “On International Agreements of Ukraine”), Parliament of Ukraine, 22 December 1993 [http://zakon2.rada.gov.ua/laws/show/3767-12].

ratification. Working out its draft, Ukraine did not insist on ratification by other participants, in particular, by the Russian Federation. The specified condition for the Memorandum's entry into force from the moment of signing ("become applicable upon signature") fully complies with both Russian law and the Vienna Convention on the Law of Treaties.

Consequences of 2014

The aggressive actions of Russia against Ukraine in Crimea and Donbas have become a violation of not only the Budapest Memorandum, but also a number of other fundamentally important international legal acts, including: the UN Charter; Helsinki Final Act and a dozen other OSCE core documents; Agreement on the Establishment of the CIS of 08 December 1991; Declaration on the Observance of the Sovereignty, Territorial Integrity and Inviolability of the Borders of the CIS Participating States of 15 April 1994; Trilateral Statement on Security Assurances of Ukraine by the Presidents of the USA, Russia and Ukraine dated 14 January 1994; the Framework Treaty on Friendship, Cooperation and Partnership between Ukraine and the RF of 1997; other bilateral agreements; NPT, as well as other international legal instruments.

Serious guarantees are also contained in the United States-Ukraine Charter on Strategic Partnership of 19 December 2008.²² On 04 December 2009, in the Joint Statement of the Presidents of Russia and the US,²³ the commitments were also confirmed regarding the unchanged assurances/guarantees set forth in the BM.

The flagrant mockery of international law principles and the world democratic community were the "explanations" by official Russia of its aggressive actions in Ukraine. First, on 04 March 2014, President V. Putin, in his peculiar style, said that if you agree that in February 2014 there was a revolution in Ukraine, then it should be considered that a new state arose on its territory, with which Russia did not sign any binding documents.²⁴ According to similar logic, it should be assumed that since Russia is a different state compared to the USSR (formed as a result of a no less revolutionary process of the collapse of the Soviet Union), Russia cannot in any way claim either the territory of Eastern Prussia (Kaliningrad Oblast), nor the Northern Territories of Japan (the South Kuril islands of Iturup, Kunashir, Shikotan, Habomai), nor the territory of the part of the Leningrad region and Karelia that retreated to the USSR as a result of the Soviet-Finnish Winter War of 1939-1940.

It is noteworthy that in December 1939 the General Assembly of the League of Nations, identifying acts of aggression by the Soviet Union against Finland, excluded the USSR from the League of Nations. Today we can regrettably state that due to its organizational structure and modalities as well as political will, the UN is not able to take similar actions with respect to the Russian aggression against Ukraine.

On 19 March 2014, Russia's MFA, in the same provocative and mockery form, denied its involvement in violations of the Budapest Memorandum and accused the US,

²² *United States-Ukraine Charter on Strategic Partnership*, US State Department, 19 December 2008 [<https://www.state.gov/p/eur/rls/or/142231.htm>].

²³ *Joint Statement by the President of the United States of America and the President of the Russian Federation on the Expiration of the Strategic Arms Reduction Treaty (START)*, The White House, 04 December 2009

²⁴ Путин: если на Украине революция, то там формируется новое государство (*Putin: If There Is a Revolution in Ukraine, Then a New State Is Being Formed There*), "Ria News", 04 March 2014 [<https://ria.ru/world/20140304/998107833.html>].

the EU, and the new Ukrainian authorities, which allegedly acted “against the political independence and sovereignty of Ukraine in violation of the obligations under the Budapest Memorandum”.²⁵ In early April 2014, it was cynically declared that “Russia has not made an obligation to force part of Ukraine to remain in its composition against the will of the local population, and the provisions of the Budapest Memorandum do not apply to circumstances that have become the result of actions of domestic political or socio-economic factors”. The Russian Foreign Ministry’s statement that “Ukraine’s loss of territorial integrity has been the result of complex internal processes, to which Russia and its obligations under the Budapest Memorandum have no relation”²⁶ is absolutely hypocritical.

Some American analysts, in connection with violations of the Budapest assurances/guarantees, spoke in favour of sending NATO forces to Ukraine²⁷, as well as of the application of Article 4 of the North Atlantic Treaty, which provides for consultations of member-states in case of a threat to their security and territorial integrity. In recent years, Ukraine at least three times, in the person of its Foreign Minister P. Klimkin, has raised the issue on the convening of such consultations, which, of course, did not find support from Russia as an aggressor country.



Failure of the Budapest and other international guarantees for Ukraine should strengthen the confidence of the totalitarian regime of the DPRK in the faithfulness of the chosen strategy for the further development of nuclear weapons

Important mechanisms for ensuring global international security are international legal regimes for the non-proliferation of weapons of mass destruction (nuclear, chemical, and bacteriological). The cornerstone of the international legal system for the non-proliferation of nuclear weapons is the NPT, to which most countries of the world are parties, with the exception of Israel, India, North Korea (DPRK), and Pakistan – the states that actually possess nuclear weapons, although they are not officially recognized as “nuclear states”.²⁸ The guarantees provided by the Budapest Memorandum were a prerequisite for Ukraine’s joining the NPT as a “non-nuclear” country. The failure of these safeguards has a negative impact today on negotiation processes for addressing non-proliferation issues in the world, among which, first of all, the Korean and Iranian nuclear problems are most resonant.²⁹

The failure of the Budapest guarantees is a signal to the world that the only reliable way

²⁵ *Комментарий Департамента информации и печати МИД России по вопросу о Будапештском меморандуме 1994 года (Commentary of the Department of Information and Press of MFA of Russia on the Question of the Budapest Memorandum of 1994)*, MFA of the Russian Federation, 19 March 2014 [http://www.mid.ru/ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/69938].

²⁶ Website of the MFA of the Russian Federation [<http://www.mid.ru>].

²⁷ J. Jeffrey, *U.S. Should Send Troops to Quell Ukraine Crisis*, “Washington Post”, 15 April 2014 [https://www.washingtonpost.com/opinions/us-should-send-ground-troops-to-ukraine/2014/04/15/aa40b238-c408-11e3-bcec-b71ee10e9bc3_story.html?noredirect=on&utm_term=.065ec38e5aac].

²⁸ *Безопасность Европы* (под ред. В.Журкина), Институт Европы РАН, (V. Zhurkin (ed.), *Security of Europe*, Institute of Europe RAS), Весь Мир: Москва 2011, p. 752.

²⁹ І. Лоссовський, *Історія, сучасний стан і перспективи корейського врегулювання, “Зовнішні справи” (History, Current State and Perspectives of Korean Settlement, “UA Foreign Affairs”)*, April 2014, pp. 44-49.

to ensure the security of states is to develop their own nuclear weapons. Now a dozen “threshold” countries and those who had intentions and technological capabilities to create such weapons are deeply in thought on this issue, and the situation around Ukraine is a clear example for them of the fuzziness of hopes for “guarantees” from nuclear states.

North Korea was the first country to draw the appropriate conclusions, especially since among the participants in the Six-Party Talks mechanism for the Korean nuclear issue settlement are the three “nuclear” states (the US, Russia, and China) that had declared the Budapest “guarantees” to Ukraine. Thus, it is unlikely that in the medium term we should expect fundamental changes in the negotiation process to resolve the Korean nuclear issue. Without having the ability to counteract the US and its allies in the region by conventional military means and fearing US actions aimed at overthrowing the ruling regime, the DPRK will continue to develop a nuclear program as a guarantee of regime survival. Failure of the Budapest and other international guarantees for Ukraine should strengthen the confidence of the totalitarian regime of the DPRK in the faithfulness of the chosen strategy for the further development of nuclear weapons and means of its delivery as a deterrence weapon. According to some experts’ assessments, North Korea possesses between 25 and 70 nuclear weapons/warheads, but there is a debate over whether it has the reliable technology to successfully launch one toward the mainland US. The affirmative answer to this question seems to be only a matter of fairly short time. One should not be particularly flattered by some progress in improving the rhetoric and continuing the dialogue regarding the denuclearization of the Korean peninsula, which occurred in April-May 2018. Hopes for a positive continuation, again, are based on the guarantees vital to the North Korean

regime and willingness to provide them by the USA.

Another acute problem of nuclear non-proliferation, negotiated within a multilateral format (involving the US, the UK, France, Germany, Russia, the EU, and China) were the talks on halting the Iranian uranium enrichment program. Official Tehran, in exchange for stopping the enrichment of uranium and production of plutonium, seeks to obtain US guarantees as to the absence of military plans to eliminate the Iranian regime, offering instead a commitment to mitigate and further cancel US sanctions that negatively affect the economy of the country as well as an uninterrupted supply of reactor fuel for facilities of peaceful nuclear energy. It can be predicted that, in this case, the failure of the Budapest guarantees for Ukraine will also affect the further formation of Iran’s position on nuclear non-proliferation and credibility of Western partners’ guarantees, despite some progress, which has been reached since 2015.

The logic of the leaderships of North Korea and Iran can be as follows: If the “guarantees” of the “nuclear” states do not work for Ukraine, a democratic European country and a responsible member of the world community, then they will hardly work for countries that are called the “axis of evil”, “rogue”, or “pariah” countries in the Western rhetoric. It is noteworthy that our opinion was actually supported by the main ideologist and architect of today’s Russian foreign policy, S. Karaganov, in his recent publication: “The wave of nuclear weapons proliferation is widening. After Israel, India, Pakistan, who received it with impunity and, especially after ... Iraq, Libya abandoned nuclear programs, it is senseless to expect North Korea to abandon it. The same logic fits the joining of Crimea to Russia. ... [I]t violated the promise to respect the territorial integrity of Ukraine, contained in the Budapest Memorandum. The moral

justification for the non-proliferation regime has been undermined³⁰

The complex set of problems regarding the non-proliferation of nuclear weapons, as well as the obvious failure of seemingly reliable international guarantees of the territorial integrity and inviolability of the borders of Ukraine in exchange for voluntary abandonment of nuclear weapons, is a serious destabilizing factor leading to erosion, if not destruction, of international legal systems for the non-proliferation of weapons of mass destruction. The main factor that triggers such tendencies is the formation of a firm distrust of the “international guarantees”, which, in the face of aggression and flagrant violation, as well as neglect of international norms and principles, show inefficiency, impotence, and helplessness.

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³⁰ С. Караганов, Мир на вырост. *Политика на пути в будущее*, “Россия в глобальной политике” (*World at the Outset: Politics on the Way to the Future*, “Russia in Global Politics”), Moscow, January 2018.