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## UKRAINE AND THE MISUNDERSTOOD BUDAPEST MEMORANDUM

By John R. Haines



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A friend and Ukrainian patriot who blogs at <http://ukrainerevolution.wordpress.com> suggests that future efforts at nuclear nonproliferation will be compromised by the reluctance of the West (here, read "the United States") to act on what he argues are security guarantees under the 1994 Budapest Memorandum.

To answer that claim, it is first necessary to understand what the Budapest Memorandum did, and as important, did not provide. Its context was Ukraine's inheritance of a sizeable nuclear arsenal upon the dissolution of the former Soviet Union. Ukraine did not so much surrender a useable asset in the interest of the principle of de-nuclearization as rid itself of a troublesome legacy plagued with technical and safety problems, and of dubious utility. It also gained valuable international assistance with the problem of "loose nukes," significant given the reality that nuclear weapons and weapon-usable fissile material within Russia and the former Soviet republics was at risk of diversion to illicit uses.

Is it fair to claim that Ukraine was given "security guarantees" under the Budapest Memorandum? If so, they were security guarantees of a very particular sort, subject as they were to the restrictive condition (in paragraph 4) "*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.*" A clear appreciation of what the argued "security guarantees" constituted— "*to seek immediate United Nations Security Council action to provide assistance to Ukraine*"— is important as well. Russian menacing today has not, so far, extended to nuclear weapons, so it cannot be claimed that the restrictive condition in paragraph 4 is met.

It is worth noting at this point John Mearsheimer's 1993 argument— made several months prior to the signing of the Budapest Memorandum— that it was unwise for Ukraine to transfer nuclear weapons to Russia and to join the NNPT as a non-nuclear state.<sup>1</sup> He inveighed against assertions Ukraine would be able to defend itself from Russian aggression with conventional arms only; and further, that other signatories, specifically, the United States, would extend a meaningful security guarantee. Mearsheimer was notably prescient on the likelihood of conflict between Russia and Ukraine, especially as regards Crimea.

The qualifying clause in paragraph 4 of the Budapest Memorandum— "*in which nuclear weapons are used*"— is

<sup>1</sup> John T. Mearsheimer (1993). "The Case for a Ukrainian Nuclear Deterrent." *Foreign Affairs*. 72:3, pp. 50-66.  
<http://mearsheimer.uchicago.edu/pdfs/Mearsheimer.%20Case%20for%20Ukrainian%20Nuclear%20Deterrent.pdf> Last accessed 6 March 2014.

precisely the sort of language Mearsheimer admonishes as rendering any associated “security guarantees” meaningless. Given that Russia has neither used nuclear weapons nor so far threatened to do so, there is no referral to the United National Security Council<sup>2</sup>, at least not under the Budapest Memorandum. All that document does is provide (see paragraph 6) for the signatories to “*consult in the event a situation arises that raises a question concerning these commitments.*” If that constitutes a “security guarantee,” it is a singularly flaccid one.

It is worthwhile to question whether the United States could realistically project and maintain force into the region under some notional security guarantee against the threat (or reality) of Russian territorial aggression, and do so without escalating and/or widening the conflict regionally? The answer seems self-evident given those conditions, as well as limits in international law, for example, to projecting seapower in the Black Sea under the terms of the 1936 Montreux Convention.

Mearsheimer’s argument seems, then, at least half right so far as any argued security guarantees under the Budapest Memorandum. To the other half of his argument, however, can anyone reasonably claim a nuclear Ukraine would be better positioned to resist Russian territorial aggression? If so, the case is at best a very weak one. First, nuclear weapons have no meaningful deterrent effect if the state possessing them is, in fact or perception, unwilling to use them. In the current circumstance, could Ukraine afford to threaten the first-use of nuclear weapons to counter Russian conventional force aggression, let alone Russian belligerence? It is difficult to see how anything short of an abject, existential threat to Ukraine would permit this, and that threshold, one suggests, is several orders of magnitude above the current circumstance, serious as it is. Further, speculate for a moment whether the presence of nuclear weapons within Ukraine would not in fact serve as a pretense for Russian intervention? Would the international community rush to condemn Russia for intervening to “secure” Ukrainian nuclear weapons, say, in the face of widespread civil unrest? Yanukovich himself proposed an Eastern Europe nuclear weapon-free zone as recently as 2011, so it is not at all clear such an intervention might not enjoy at least tacit consent from other states. Nor, finally, is there a good argument that Ukraine’s nuclear arsenal would have acted as an effective balancing force for regional stability of the sort Waltz<sup>3</sup> describes. In fact, had Ukraine retained its nuclear arsenal, it might well have had the opposite effect since other states with legacy nuclear arsenals (in the case of the former Soviets SSRs) or weapons-usable fissile material (for example, the many HEU-fueled research reactors in the former Warsaw Pact states) might well have resisted relinquishing them.

Back to the original question, will the reluctance of the United States and its allies to extend a meaningful security guarantee— *meaningful* in the sense of military force— hinder future efforts at nuclear nonproliferation? Perhaps it is worthwhile first to ask and answer another question: what was the composition of the nuclear arsenal that Ukraine inherited upon the dissolution of the Soviet Union? It is estimated that Ukraine came into possession of some 1,900 strategic warheads and 2,275 tactical warheads.<sup>4</sup> The legacy-targets programmed into Soviet strategic warheads rendered them of little or no use against Russian cross-border aggression. While tactical warheads might present a different case, these weapons were returned to Russia two years before the Budapest Memorandum was signed, diminishing any argued quid pro quo. And in any case, does anyone argue that Russia would meet Ukraine’s use of tactical nuclear weapons with anything short of a debilitating counterstrike?

The size alone of the Ukraine arsenal circa 1990s makes it a poor analogue to nonproliferation efforts vis-à-vis pre-nuclear or tipping point states, e.g., Iran, even at breakout. One might argue a more likely scenario— where the intent is to mount a battlefield defense of sovereign territory— would involve chemical or biological weapons, which serve much the same role as tactical nuclear weapons and are much easier to acquire. Here, the perception that Western security guarantees (whether or not one in fact existed under the Budapest Memorandum) are hollow might undercut counter-proliferation efforts, or more cynically, provide a pretext to resist entreaties to relinquish these weapons, as in Syria. In the limited case where a sizeable nuclear arsenal exists today— for example, Indian and Pakistani counterforce arsenals— the analogue of Ukraine circa the early 1990s is a relatively poor fit.

<sup>2</sup> Any given Russia’s (and China’s) veto, would it matter at the end of the day?

<sup>3</sup> Kenneth N. Waltz (2012). “Why Iran Should Get the Bomb.” *Foreign Affairs*. 91:4. <http://www.foreignaffairs.com/articles/137731/kenneth-n-waltz/why-iran-should-get-the-bomb> Last accessed 6 March 2014.

<sup>4</sup> Robert S. Norris (1992). “The Soviet Nuclear Archipelago.” *Arms Control Today*. 22:1, p. 24. Joseph Cirincione, et al., (2005). *Deadly Arsenals*. Washington, D.C.: Carnegie Endowment for International Peace, p. 366. Cited in “The Lisbon Protocol” (2008). <http://www.armscontrol.org/node/3289> Last accessed 6 March 2014.

Whether Western, and specifically, American, responses to the current situation in Ukraine will be seen as feckless remains to be seen. But the case for arguing that the Budapest Memorandum contemplated a security guarantee that might apply in the current circumstance is, at best, a weak one. The case for Western obeisance to Russian territorial aggression, if there is one to make, was made in South Ossetia and Abkhazia, with their troubling implications for the Crimea. Nor does Ukraine relinquishing its legacy nuclear arsenal seem likely to have much bearing on future non-proliferation efforts. It is no small irony that other, more commonplace tools of *dissuasion*—freezing foreign bank accounts— may, in the end, exert greater salience than a threat to use force. Further, Putin’s seeming intent on self-vilification will, surely and thankfully, dissipate whatever political capital he amassed in some corners of Western public opinion through sheltering Snowden, itself a good thing, though one paid for dearly by the Ukrainian people.

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