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The Crimean Crisis and the Issue of Security Guarantees for Ukraine

V. Orlov

TWENTY YEARS AGO, the issue of nuclear weapons on the territory of Ukraine and, accordingly, of security assurances to Ukraine in the case of its achieving a non-nuclear status was the focus of attention for policy-makers, diplomats and the international expert community. It was also then that it was seemingly resolved once and for all – first through the Trilateral Statement by the presidents of Russia, the U.S. and Ukraine (Moscow, January 14, 1994), then through a Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (Budapest, December 5, 1994), signed by the Russian Federation, Ukraine, the United Kingdom, and the United States.

But today, in the midst of the Crimean crisis, a question has to be asked: Does the Budapest Memorandum still apply?

Let's try and sort it out. The more so as from 1991 I was closely involved in the discussions on the USSR's nuclear legacy, including, first and foremost, the question of Soviet nuclear weapons in Ukraine. On December 1, 1991, I bitterly watched in Kiev as the final chord for the USSR's breakup was struck during the Ukrainian independence referendum, which, rather than the subsequent Belavezha Accords, marked a coup de grace to the Soviet Union. On September 3, 1993, in Massandra (Crimea), I together with Boris Yeltsin and Russian negotiators witnessed the Ukrainians essentially thwart all bilateral decisions on nuclear weapons in anticipation of Washington's joining the negotiations. In January 1994, I was concerned with the analysis of the Trilateral Statement and discussed it, first of all, in Kiev. And then, right up to the spring of 1995, I participated in the efforts to bring closer the non-nuclear status of Ukraine as a party to the Treaty on the Non-Proliferation of Nuclear Weapons, the culmination of which was the attendance of the

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Ukrainian delegation at the 1995 NPT Review and Extension Conference, to which Ukraine came having finally confirmed its non-nuclear status.

A Nuclear Half-Breakup

ON DECEMBER 25, 1991, Mikhail Gorbachev handed the nuclear briefcase over to Boris Yeltsin. This partly answered the question of who was in control of the Strategic Nuclear Forces (SNF) of the former USSR.

On December 30, 1991, a CIS Agreement on Strategic Forces was signed in Minsk, whereby the states parties recognized the need for joint command of strategic forces and for maintaining unified control of nuclear weapons. Article 4

laid down that "until the complete elimination of nuclear weapons, the decision on the need for their use is taken by the president of the Russian Federation in agreement with the heads of the Republic of Belarus, the Republic of Kazakhstan and the Republic of Ukraine, and in consultation with the heads of the other member states of the Commonwealth."

Since Washington and London have recognized the new government in Kiev as legitimate, in this case the Budapest Memorandum is more dead than alive.

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The agreement provided, in particular, that "until their destruction in full, nuclear weapons located on the territory of the Republic of Ukraine shall be under the control of the Combined Strategic Forces Command, with the aim that they not be used and be dismantled by the end of 1994," and that the destruction of nuclear weapons stationed in Belarus and Ukraine was to be carried out "under the joint control of the Commonwealth states." The agreement would be deemed to "cease to apply to a signatory state from whose territory strategic forces or nuclear weapons are withdrawn."

Then the joint strategic forces did not materialize in reality. The very idea of creating them was rather a compromise, a temporary concession that Russia made at the crucial moment when the USSR had just collapsed and Russia intended to actively launch market reforms and thus needed the understanding of its CIS neighbors. Among other reasons for the attempt to set up joint strategic forces was, first, the striving to reassure the West and, second, the desire, especially on Boris Yeltsin's part, to enlist the well-wishing neutrality of the armed forces in dismantling

the USSR (the leadership of the USSR Armed Forces was particularly insistent on retaining unified command over the nuclear arsenal).

But if one looks closely at the agreement on joint strategic forces, it can be noticed that they required further deciphering, primarily as regards the real mechanism of control over the "nuclear button," the capacity to take prompt decisions in the case of need to authorize use of nuclear weapons, and SNF funding issues. None of the Soviet republics, apart from Russia, were in a position to ensure adequate operational readiness, technical serviceability, security of nuclear weapons, and the high skills of, as well as at least minimally acceptable pay levels for, the personnel maintaining them. Furthermore, the issue of "plural control" (even if "joint") caused considerable anxiety in the other nuclear states. It was noted that this approach increased the unpredictability of the successor states of the Soviet Union. "In whose hands is really the nuclear button?" This question was on the minds of many politicians and media pundits all over the world at the turn of 1991-1992.

On July 6, 1992, nine CIS countries (Armenia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, Ukraine, Moldova, and Turkmenistan) confirmed their support for Russia's participation in the NPT as a nuclear weapon state, and said that they were ready to join the NPT as non-nuclear-weapon states. Thus, the question of succession was legally resolved, and the Russian Federation became a full-fledged successor to the USSR in terms of possession of nuclear weapons. In this case it was about possession of all nuclear weapons of the ex-USSR, including those deployed in Ukraine, Belarus and Kazakhstan.

"The Massandra Effect"

UKRAINE'S LEADERS, while paying lip service to the desire to part with the nuclear weapons on their soil, tried in every way to delay making a decision to liquidate them, thus putting into question the Russian ownership of those nuclear warheads. Ukraine expressed the idea that even though the strategic nuclear arms on its territory were under the operational control of Russia, the ownership of both delivery vehicles and warheads belonged to Ukraine.

On May 23, 1992, the U.S., Russia, Ukraine, Belarus, and Kazakhstan signed the Lisbon Protocol to the START I Treaty (Protocol to the Treaty between the USSR and the USA on the Reduction and Limitation of Strategic Offensive Arms). Under the protocol, Ukraine,

Belarus and Kazakhstan became, along with Russia, parties to START I. They made a commitment after the Treaty's entry into force to liquidate or transfer all their strategic nuclear warheads to Russia.

Belarus and Kazakhstan consistently fulfilled the provisions of the Lisbon Protocol.

Meanwhile the question of nuclear warheads and their delivery vehicles in Ukraine proved to be extremely difficult. Its resolution dragged on for three years.

At the time of the USSR's collapse, the nuclear capabilities in Ukraine were as follows: 130 SS-19 missiles with 780 warheads and 46 SS-24 missiles with 460 warheads, as well as about 600 warheads deployed on Tu-96MS and Tu-160 bombers. Thus, Ukraine had on its territory a nuclear arsenal exceeding those of Britain, France and China combined. The leadership and parliament of Ukraine said repeatedly that the elimination of nuclear weapons on its soil was one of its main foreign policy priorities. But in practice Ukraine behaved differently, consistently bringing its status closer to that of full-fledged possessor of strategic nuclear arms. When Russia, Ukraine, Belarus, and Kazakhstan signed in Lisbon the instruments of succession under the START I Treaty, at the same time the heads of state, including President Leonid Kravchuk of Ukraine, sent a letter to the U.S. President promising to eliminate nuclear weapons on their territories and join the NPT. Soon, however, Ukrainian officials said that the letter was nothing more than "a personal message with no legal force."

On September 3, 1993, in Massandra (Crimea), Prime Ministers Viktor Chernomyrdin of Russia and Leonid Kuchma of Ukraine agreed to sign three protocols: on guarantees of oversight of missile launchers, on disposition of nuclear charges and on basic principles of nuclear warheads disposition. As per these agreements, the nuclear arsenal in Ukraine was to be entirely taken to Russia and dismantled by manufacturers. The protocols envisioned that some of the low-enriched uranium (LEU) converted from highly-enriched uranium (HEU) extracted from the warheads would be sent back to Ukraine for its NPP fuel.

But later there occurred something far removed from diplomatic practice, of which I was a witness. The Ukrainian side inserted handwritten changes to the already signed documents that radically altered the meaning of the agreement: Ukraine was agreeing to dismantle and transfer to Russia only the warheads from the SS-19 missiles. According to the handwritten amendment, the SS-24 missiles could continue to remain on

Ukrainian soil. A member of the Russian delegation at the talks with Ukraine appraised the demarche as "an unprecedented occurrence in diplomatic practice," and the agreement was denounced by Russia.

The external reason for such behavior of Ukraine was explained to me by a well-known Ukrainian political figure, Serhiy Holovaty (a Member of Parliament, then Minister of Justice of Ukraine): "We should have a powerful factor of deterrence against the aggressive policy of Russia. Otherwise, Ukraine would suffer the fate of Georgia, Moldova and Tajikistan, where Russia is re-securing its vital interests by imperial methods."

It seems, however, that the true motive was different. In actual fact, the security interests of Ukraine as such proved secondary to economic ones, more specifically the desire – under conditions of a severe economic crisis – to "haggle" as much money as possible from the United States. This was directly indicated, in particular, by James Goodby, U.S. ambassador for special assignments who led the negotiations with Ukraine in 1992-1994. It also has to be acknowledged that Ukraine likewise tried to extract as large amounts of money as possible or financial concessions from Russia, especially when it talked about compensation for HEU.

In 1992-1993, Ukraine could not independently and effectively establish operational control over all the warheads on its soil (i.e., to launch them, as well as to prevent launch); however, it was able to establish partial control over nuclear warheads within a period of several months to one and a half years. In fact, this meant the possibility of a negative control, i.e., the possibility to prevent the launching of missiles from its territory unless agreed with the leadership of Ukraine. As for the positive control, expert opinions diverged. The assumption dominated that Ukraine was not completely bereft of the ability to have positive control of the missiles on its territory. First, electronic permissive action links were manufactured on the territory of Ukraine – in Kharkov. Secondly, the command post of the 46th Missile Army, through which all the communications between control centers and launchers passed, was located at Vinnitsa. Third, the Ukrainian military were in principle able to calculate missile flight trajectories and, accordingly, to program flight missions.

Yet the lack of satellite information necessary for precisely identifying new targets reduced the real capacity for positive control to a mini-

imum if not zero. Finally, the financial and economic situation in Ukraine in the years 1992-1993 would have nullified all attempts to redeploy missiles (which in itself was unlikely to be contemplated by the Ukrainian military-political leadership), let alone attempts to establish positive control over the nuclear arsenal.

Returning to the events of those years, you unwittingly come to the conclusion that in the period from 1992 to 1993 Ukraine's credibility as a party to a treaty remained in doubt.

Masters of "Nuclear Bluff"

IN 1992-1993, the true purpose of the "nuclear policy" of Ukraine was by means of "nuclear bluff" to (first) to increase its prestige as an independent state in the international arena and (second) get substantial economic aid from the West in exchange for the subsequent transfer to Russia of the warheads stationed on its soil. This was, in particular, the aim of the Supreme Rada's decision in November 1993, which effectively proclaimed Ukraine a nuclear-weapon state.

It should be noted that although Russian diplomats and military officials conducted tense negotiations with their Ukrainian counterparts, the "Massandra effect" was characteristic for most such opinion exchanges: the positions would seem close, but there never was any final resolution. For Kiev knew perfectly well that the key to the safe deposit box with hard currency was not in Moscow but in Washington. In addition, Ukrainian representatives thought that it was Washington, not Moscow, who was primarily concerned about the smoothest possible conduct of the 1995 NPT Review and Extension Conference. The non-participation in this forum by Ukraine as a non-nuclear-weapon state, as Kiev rightly believed, would cast a shadow on the conference proceedings, complicate the achievement of planned results, and, in addition, could become an example for a number of states to ignore the NPT.

Therefore, without the participation of the United States, the elaboration of an effective agreement on the fate of the Russian nuclear arsenal in Ukraine could have proved impossible. Russia, which had initially been convinced that this question would somehow be resolved in a "brotherly" fashion and without outside participation, in the end was forced to essentially acknowledge its inability to resolve it without the participation of the United States, and not only as a symbolical mediator but an equal, if not to say leading, participant.

The Trilateral Statement

IT MUST BE ADMITTED that this objective of Ukrainian policy was in the main achieved with the signing of the Trilateral Statement of the Presidents of Russia, Ukraine and the United States in London on January 14, 1994, under which Ukraine committed itself to removal of all nuclear warheads from Ukrainian soil within seven years from the date of the entry into force of the START I Treaty.

Just as insisted by Ukrainian leaders, the Trilateral Statement was directly linked to providing \$125 million in U.S. aid to Kiev, as well as compensation with low-enriched uranium (LEU); more aid came later.

In the negotiations, Ukraine raised, above all, the question of economic privileges in exchange for the nuclear weapons which it did not control, but which were on its territory.

However, from today's perspective, the most significant appears to be the decision of Presidents Yeltsin and Clinton that Russia and the United States were prepared to provide security assurances to Ukraine. In particular, both presidents informed Kravchuk that once the START I Treaty enters into force and Ukraine becomes a non-nuclear-weapon state party to the Nuclear Non-Proliferation Treaty (NPT), Russia and the United States will:

- Reaffirm their commitment to Ukraine, in accordance with the principles of the CSCE Final Act, to respect the independence and sovereignty and the existing borders of the CSCE member states and recognize that border changes can be made only by peaceful and consensual means; and reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of any state, and that none of their weapons will ever be used except in self-defense or otherwise in accordance with the Charter of the United Nations;

- Reaffirm their commitment to Ukraine, in accordance with the principles of the CSCE Final Act, to refrain from economic coercion designed to subordinate to their own interest the exercise by another CSCE participating state of the rights inherent in its sovereignty and thus to secure advantages of any kind;

- Reaffirm their commitment to seek immediate UN Security Council action to provide assistance to Ukraine, as a non-nuclear-weapon state party to the NPT, 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; and

- Reaffirm, in the case of Ukraine, their commitment not to use nuclear weapons against any non-nuclear-weapon state party to the NPT, except in the case of an attack on themselves, their territories or dependent territories, their armed forces, or their allies, by such a state in association or alliance with a nuclear-weapon state.

The Budapest Memorandum

IT WOULD SEEM that Ukraine received what it desired most. However, even after the signing of the document, the Ukrainian parliament was in no hurry to ratify the NPT. In the run-up to the 1995 NPT Conference, such procrastination was especially worrisome to American diplomacy, which considered it essential for Ukraine to participate as a full-fledged member in the upcoming conference, largely as an example of the success of the nuclear powers (primarily the U.S.) in overcoming potential threats associated with the dissolution of the USSR. Furthermore, U.S. pressure on Ukraine made significant transformation from the stick in 1992 to a bundle of carrots in late 1993 and 1994. And this American approach in matters of nuclear arms contrasted sharply with the Russian position in the same period. Russia, although it conducted exhausting negotiations with Ukrainian delegations, was at times sluggish and uninventive and did not insist on implementing the agreements reached.

By the fall of 1994, the Ukrainian parliament felt the increased pressure from abroad (mainly from the U.S.). By then, the leaders of Ukraine had also come to a conclusion that it was impossible to maintain a nuclear arsenal and that it was preferable to implement the Trilateral Statement. Further delay in the ratification of the NPT by Ukraine as a non-nuclear-weapon state, especially before the final, decisive session of the preparatory committee (PrepCom) for the NPT conference, was fraught with the likelihood that Ukraine would find itself internationally isolated. On November 16, 1994, realizing that the possibilities of "nuclear bluff" and "nuclear bargaining" had been exhausted, the Supreme Rada ratified (301 in favor, eight against) the NPT, accompanying ratification with a demand that Ukraine receive security guarantees of nuclear powers. The three NPT depositary states (the U.S., Russia and the United Kingdom) provided these guarantees in a joint memorandum at the Conference on Security and Cooperation in Europe (Budapest, December 5, 1994). France and China also provided security guarantees to Ukraine in separate documents.

The first five points of the Budapest Memorandum basically repeat the Trilateral Statement. And yet I will reproduce them literally below because there are divergences:

1. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America reaffirm their commitment to Ukraine, in accordance with the principles of the Final Act of the Conference on Security and Cooperation in Europe, to respect the independence and sovereignty and the existing borders of Ukraine;

2. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons will ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations;

3. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America reaffirm their commitment to Ukraine, in accordance with the principles of the Final Act of the Conference on Security and Cooperation in Europe, to refrain from economic coercion designed to subordinate to their own interest the exercise by Ukraine of the rights inherent in its sovereignty and thus to secure advantages of any kind;

4. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America reaffirm their commitment 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;

5. The Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America reaffirm, in the case of Ukraine, their commitment not to use nuclear weapons against any non-nuclear-weapon State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, except in the case of an attack on themselves, their territories or dependent territories, their armed forces, or their allies, by such a state in association or alliance with a nuclear-weapon state.

As can be seen from the first paragraph of the Budapest Memorandum, as compared with the Trilateral Statement, the phrase "and recognize that border changes can be made only by peaceful and consensual means" has disappeared. That is, the Budapest Memorandum

excludes, as it were, the very possibility of a revision of borders, as well as excludes the term "consensual."

On December 5, 1994, Ukraine – after many delays – acceded to the NPT. A major center of tension and a potential source of nuclear proliferation on former Soviet territory were liquidated from the legal point of view. It is also important that Ukraine's accession to the NPT as a non-nuclear-weapon state allowed the enactment of the START I Treaty, originally signed between the USSR and the USA and then extended to Russia, Ukraine, Belarus, and Kazakhstan under the Lisbon Protocol. As is known, the Russian parliament ratified START I with the condition that the treaty could not enter into force until Ukraine acceded to the NPT.

Later, Ukraine meticulously complied with its obligations under the Trilateral Statement and under START I with the Lisbon Protocol. In June 1996, the last nuclear weapon left its territory in the direction of Russia.

The Budapest Memorandum Today

THE WHOLE STORY with the formalization of Ukraine's non-nuclear-weapon status during 1991-1994 testified to the extremely limited capacity of Russia in that period to influence even its CIS neighbors. Indeed, prior to the United States joining the Russian-Ukrainian agreements in January 1994, these agreements had not been observed.

It has to be stated that without the U.S. joining in, Ukraine would have hardly agreed to an ultimate complete liquidation of nuclear weapons on its soil or would have delayed this process for an unacceptably long period of time. It was then that the United States proved in practice that it held the keys to the Kiev offices where major political decisions were being taken.

Another conclusion from the events of 20 years ago is that Ukraine was always inconsistent and sometimes even dishonest in negotiations with Russia. That is to say, those are mistaken who consider this an effect of exclusively recent years or exclusively particular Ukrainian politicians with anti-Russian views. Ukraine more than once "fraternally" set Russia up in major international issues.

Both the Trilateral Statement and the Budapest Memorandum were adopted in a different, bygone era. Take the Trilateral Statement. There is a prominent reference to the START II Treaty in it: "Presidents Yeltsin and Clinton noted that entry into force of START I will allow them to seek early ratification of START II. The Presidents discussed, in this

regard, steps their countries would take to resolve certain nuclear weapons questions." But START II, as is known, was never ratified by the American side, even though it was ratified by the Russian parliament.

As a result, the new Russian ruling elite, as they acquaint themselves with the Trilateral Statement and the Budapest Memorandum of 20 years ago, are now getting a consistent impression that Washington used to choose from the Statement what it itself was interested in, and used to "forget" those elements that were more interesting to Russia. That's difficult to argue with.

That these documents were concluded in a different, bygone era is also evidenced by the fact that the U.S. commitment in the Trilateral Statement "to respect the independence and sovereignty and the existing borders of the CSCE member states" (please note: not just of Ukraine!) did not prevent it from helping tear Kosovo away from Serbia and legally recognizing Kosovo as an independent state.

President Putin, at his news conference on March 4 this year, left the question of the status of the Budapest Memorandum open and largely dependent on the position of the United States and United Kingdom on the (non)recognition of the new leadership in Kiev. If the United States and United Kingdom recognize that a coup d'état took place in Kiev in February, then the Budapest Memorandum remains in force and the three parties (Russia, the U.S. and UK) should work together on how to restore the legitimacy of power in Kiev. This is clearly stated in the Memorandum itself: "6. Ukraine, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, and the United States of America will consult in the event a situation arises that raises a question concerning these commitments."

It is understandable that in this case, forces not involved in the coup should participate in consultations on behalf of Ukraine.

But if the United States and United Kingdom believe that what has happened in Kiev is a revolution, the question arises, says President Putin: "What does that mean? Then it's hard for me not to agree with some of our experts who hold that a new government is appearing in that territory, much like after the collapse of the Russian Empire, after the revolution of 1917, a new government appeared. We didn't sign any binding documents with and in respect of that government."

Ipsa facto, since Washington and London recognized the new government in Kiev as legitimate, in this case the Budapest Memorandum is more dead than alive.

Development of the Crimean Crisis

INTERNATIONAL LAWYERS may continue to concern themselves with the details of the question: in which cases "treaties must be respected," and in which they lose force.

Political geographers may remind us that the world has witnessed many precedents of secession, which tends to gain imminence especially in "revolutionary," or troubled, times. Just recall, for example, the restoration of Eritrea's independence from Ethiopia. Political geographers may likewise remind us that instances of the transfer of a significant part of one state to another, even by referendum, have been extremely rare in recent decades and that the "possess what you possess" principle has prevailed.

At the same time, Britain and France have traditionally been the "trendsetters" for such "transfers," usually leveraging their indisputable military superiority. This, however, always involved territories modest in size but large in strategic significance.

Thus, France in fact tore the Island of Mayotte away from the Federal Republic of the Comoros and governs it directly from Paris. Britain retained control of the Chagos Archipelago, naming it the British Indian Ocean Territory after Mauritius gained independence. No wonder that the U.S. Diego Garcia military base remains the key to control over the Indian Ocean. The deprivation of the sovereignty of Mauritius over the Chagos Archipelago is not recognized by a majority of states, including Russia. This, however, does not prevent the UK from de facto owning the archipelago, and the United States from using it for military purposes, ignoring the position of Mauritius.

For such instances, the United States (in particular, in Micronesia and the Caribbean) uses the term "freely associated states or territories of the United States," whereas, in fact, they are parts of the U.S. – albeit without the right to vote and without the duty to pay taxes.

Events are moving fast requiring us to be proactive, not reactive.

Looking ahead, we can assume that in the currently envisioned scenarios, the establishment of a zone free of nuclear weapons in the Black Sea region may become relevant in the foreseeable future, since this could help reduce the level of confrontation, including weapons placed on ships. Regardless of the future status of Crimea, de jure and de facto, such a move would be in the interests of both Russia and the United States, as

well as in the interests of the other Black Sea stakeholders, eager for more tourism and trade rather than a nuclear standoff. Under no circumstances should the Crimean crisis slide to anything like the Cuban missile crisis. But it will require new statements and memorandums to minimize such risks.

Key words: Crimean crisis, Budapest Memorandum, Trilateral Statement.