

**International legal guarantees of Ukraine's security:  
History and reality**

**Abstract:** Under the conditions of Russia's aggression against Ukraine in the Crimea and the Donbas, Ukraine is compelled to seek help from the international community. At the same time, many outside Ukraine perceive these appeals as 'intrusiveness', they impose the idea of 'fatigue from Ukraine'. At the same time, we should not forget that at one time Ukraine received authoritative international legal guarantees of its security in exchange for abandoning a significant part of the defense potential (the so-called Budapest Memorandum). Therefore, Ukraine's support in protecting its territorial integrity is not the favor of the largest states, but an international legal obligation. This article is devoted to the study of these issues

**Keywords:** Budapest Memorandum; nuclear weapon; Treaty on the Non-Proliferation of Nuclear Weapons (NPT); Treaty on the Reduction and Limitation of Strategic Offensive Arms (START); The Final Act of the Conference on Security and Cooperation in Europe (CSCE), the Lisbon Protocol of 1992.

In the judgment of the European Court of Human Rights of 16.06.2015 on the case "Chiragov and Others v. Armenia" (Application № 13216/05), actually recognized the occupation of part of the territory of Azerbaijan by the neighboring country – Armenia ("Nagorno-Karabakh Republic") [1]. The Parliamentary Assembly of the Council of Europe (PACE) came to a similar conclusion regarding the occupation of part of the territory of Ukraine by a neighboring country – the Russian Federation (RF) in a resolution of 12.10.2016 [2]. Thus, there are significant parallels in solving the problems of national security and

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territorial integrity of Azerbaijan and Ukraine. At the same time, some Azerbaijani authors see ‘the machinations of America’ in the Ukrainian conflict, producing corresponding parallels with Azerbaijan [3]. Therefore, the study and analysis of the situation in Ukraine is relevant for the public of Azerbaijan.

Ukraine's outspoken unpreparedness for the aggressive actions of the neighboring country caused bewilderment in Ukraine and beyond its borders. However, this situation is largely due to the fact that at one time Ukraine received «personal» international legal guarantees from the nuclear club of countries. First of all, it is about the Memorandum (from 05.12.1994, the Budapest Memorandum [4]) on security Assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons. The peculiarity of the Budapest Memorandum is that the nuclear states – the United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland, “welcoming the accession of Ukraine to the Treaty on the Non-Proliferation of Nuclear Weapons as a non-nuclear-weapon State, taking into account the commitment of Ukraine to eliminate all nuclear weapons from its territory within a specified period of time”, provided to Ukraine in particular guarantees of compliance with the principles of the CSCE Final Act regarding respect for the independence, sovereignty and existing borders of Ukraine (par. 1 of the Memorandum).

Here, by the way, it should be noted that the reference in the Budapest Memorandum to the CSCE Act [5] means, inter alia, that the provisions of this act apply directly to Ukraine, although the latter did not directly sign this Act. In this connection, it is necessary to emphasize that the key goal of the Act, named first in the list of goals, the Parties called to promote better relations among themselves and ensuring conditions in which their people can live in true and lasting peace free from any threat to or attempt against their security (*here and further emphasized by the author*). Among the basic principles of safety in the Act are: sovereign equality; respect for the rights inherent in sovereignty; refraining from the threat or use of force; inviolability of frontiers; territorial integrity of States;

some others. In particular, in the context of Refraining from the threat or use of force, the participating States will refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and with the present Declaration. No consideration may be invoked to serve to warrant resort to the threat or use of force in contravention of this principle. Accordingly, the participating States will refrain from any acts constituting a threat of force or direct or indirect use of force against another participating State. Likewise they will refrain from any manifestation of force for the purpose of inducing another participating State to renounce the full exercise of its sovereign rights. Likewise they will also refrain in their mutual relations from any act of reprisal by force.

In the context of territorial integrity of States, the participating States will respect the territorial integrity of each of the participating States. Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State, and in particular from any such action constituting a threat or use of force. The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal.

Thus, from the legal point of view it is obvious that the recognition and support of the territorial integrity of states by other states is not any merit of such states, but is their legal duty in accordance with the principles of international law. Similarly “no consideration may be invoked to serve to warrant resort to the threat or use of force in contravention of this principle”. That is, the fantasy of ‘protecting’ the Russian-speaking population (which, moreover, does not threaten anything), supporting or defending a ‘referendum’ (especially illegal) cannot be an excuse for any violation of the sovereignty and territorial integrity of states, in

particular Ukraine, whatever the Russian propaganda would say about it. Recognition and support of these principles by the United States, like other Member States, is not a favor or merit, but is their direct duty.

In the Budapest Memorandum, these duties are directly enshrined in the form of guarantees specifically for Ukraine. In particular, the Memorandum states separately that none of their weapons (*who signed the Memorandum* – the author's note) will ever be used against Ukraine (par. 2 of the Memorandum). The last paragraph clearly violated the RF, and the guarantee obligations were not actually fulfilled by other guarantors – the United States and Great Britain. That is, to support Ukraine and restore its territorial integrity is not the goodwill of these countries, but is their obligations to Ukraine. In addition, in the Memorandum the nuclear powers – the United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland – confirm to Ukraine their obligations 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 (par. 3 of the Memorandum).

As experts in the field of international law say, this Memorandum is a legal act: it came into force from the moment the text of this document was signed; The text of the 1994 document itself does not provide for ratification; The procedure for ratifying international agreements was established by the Russian Federation in 1995, that is, later than the conclusion of the Memorandum [6].

It should be noted that both from the point of view of fact and from the point of view of law, the Russian Federation committed an act of aggression against Ukraine, or, at least, introduced its armament to Ukraine, in the interests of anti-government forces. So, in the art. 3 Resolutions 3314 (XXIX) of the UN General Assembly of December 14, 1974 [7] the following signs of aggression are defined: (a) the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion

or attack, or any annexation by the use of force of the territory of another State or part thereof; (b) bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; (c) the blockade of the ports or coasts of a State by the armed forces of another State; (d) an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; (e) the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement; (f) the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State; (g) the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

In this case, as stated in Art. 5 Resolutions, no consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

Paragraph 5 of the PACE resolution of 12.10.2016 referred to above confirms the well documented role of the Russian military in taking control of these regions (*in Eastern Ukraine* – the author's note), in spite of resolute resistance to the legitimate authority of Ukraine [2].

Thus, there are all legal and factual circumstances for the practical application of guarantees under the Budapest Memorandum.

At the same time, in practice it turned out that, unfortunately, nobody planned to carry out this Memorandum. As Secretary of the National Security and Defense Council of Ukraine (NSDC) A. Turchynov, “the Budapest Memorandum, which

was supposed to guarantee Ukraine the protection and inviolability of the border, was in fact an ordinary paper, which no one, unfortunately, was going to carry out... the aggressors tried to pacify instead of being rigidly stopped” [6].

American journalist A. Bonenberger points out that Ukraine had to face treachery and cowardice of the West three times. “Once, if you remember how after the First World War Britain, France and America did not defend Ukraine from the Soviet Red Army. Twice, if you remember what ended the Second World War. Three times, if you take into account the Budapest Memorandum - and it needs to be taken into account. It definitely needs to be taken into account” [8].

As the Ukrainian professor of international affairs, Doctor of Law A. Merezhko, about the Budapest Memorandum “so firmly forgotten that this is surprising. It seems that this Memorandum did not exist at all... The bottom line is that under this Memorandum, the guarantor states (permanent members of the UN Security Council, they are also nuclear countries) have made firm commitments to ensure Ukraine's security, sovereignty and territorial integrity. It does not matter even what the nature of this Memorandum is – an international treaty or a political agreement. Another important thing is that the guarantor states are obliged to achieve a concrete result with respect to Ukraine – to ensure as soon as possible its territorial integrity and security. The violation of the Memorandum by Russia means a serious international crime not only against Ukraine, but also against all guarantor states and against the international community as a whole” [9].

At the same time, it is very important to note that the accession of Ukraine not only to the NPT but also to the Treaty between the USSR and the USA on the reduction and limitation of strategic offensive arms (START) is connected with the Budapest Memorandum. Thus, at the moment, it is undeservedly forgotten that on 23.05.1992 Belarus, Kazakhstan, Russia, Ukraine and the United States signed the Protocol to the Treaty between the USSR and the USA on the reduction and limitation of strategic offensive arms (Lisbon Protocol) [10]. Under this protocol, Belarus, Kazakhstan, Russia and Ukraine, as successors to the USSR, agreed with the equal and consistent application of the control provisions provided for in the

Treaty throughout the territory of Belarus, Kazakhstan, Russia and Ukraine; and with the distribution of costs. The 'equal and consistent' application of these norms did not mean at that time any advantages for other parties to the Protocol, for example, the Russian Federation. True, the protocol included article 5, according to which the Republic of Byelarus, the Republic of Kazakhstan, and Ukraine shall adhere to the Treaty on the Non-Proliferation of Nuclear Weapons of July 1, 1968 as non-nuclear weapon states Parties in the shortest possible time, and shall begin immediately to take all necessary action to this end in accordance with their constitutional practices. In addition, the United States obtained the right to control the actions of the respective successor states of the USSR.

Moreover, on 14.01.1994 in Moscow the US-Russia-Ukraine Trilateral Statement was made [11], according to which Presidents Clinton and Yeltsin informed President Kravchuk that the United States and Russia are prepared to provide security assurances to Ukraine. In particular, once the START I Treaty enters into force and Ukraine becomes a non-nuclear-weapon state party to the Nuclear Nonproliferation Treaty (NPT), the United States and Russia 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.

In general, these provisions correspond to the Budapest Memorandum.

Let's say we are used to the fact that Russia's guarantees are not worth the paper on which they are written. But should we also apply to US guarantees?

In particular, the then President of Ukraine, L.M. Kravchuk believes that it was the United States that was most interested in the elimination of nuclear weapons in Ukraine, as it was directed to the United States [12]. At the same time, the subsequent behavior of Western guarantors L.M. Kravchuk believes deception: “Promised? Deceived Ukraine in fact? Deceived, I personally feel cheated. We surrendered nuclear weapons, and today they are discussing, giving Ukraine a rifle” [13].

A similar position is held by A. Turchynov: Ukraine has not received from the Western guarantors “neither the patron, nor the slingshot... and me (*A. Turchynov* – note of the author) the position of our Western partners is incomprehensible. This is an ostrich position. I meet with many, with the military and political leadership of our allies... They nod their heads. But then they say that such help can annoy Russia...” [14].

The former head of the Security Service of Ukraine I. Smeshko said that even before 1999-2000 Ukraine had 12 strategic bombers with cruise missiles and a launch range of 3.500 km [15]. In particular, the People's Deputy of Ukraine, the commander of the regiment of the National Guard of Ukraine ‘Azov’ A. Biletsky reminds: “The USA, who are now greedy and say that we can only give spears, forget how their military attaches and diplomats stood and clapped When the strategic bombers TU-122M were cut in Poltava... These people deprived us of their monstrous defense potential and do not have the right to oppose the return of nuclear weapons by Ukraine” [16]. And now, the deputy is indignant, Ukraine is compelled to engage in pathetic begging of several thousand javelins (*American anti-tank complexes* – note [16]).

In this sense, the author of this article also had to emphasize that, paradoxical as it may seem, it was precisely the provision of precision weapons to Ukraine that would be very useful for establishing peace and protecting civilians, since the accuracy of these weapons would reduce the population losses during response fire and significantly Would have cooled the ardor of lovers hiding behind the backs of civilians, sick in hospitals, schoolchildren – after all, it is almost universally known

that militants of anti-Ukrainian forces are firing from residential areas, from territories that are adjacent to schools, hospitals, other social facilities [17].

It should be noted that when ratifying the Treaty between the USSR and the USA on the reduction and limitation of START and the Lisbon Protocol to it, the Verkhovna Rada of Ukraine in Decree No. 3624-XII of 18.11.1993 [18] made a reservation that it ratified the Lisbon Protocol without Article 5, that is, in this document, the Verkhovna Rada of Ukraine did not recognize the non-nuclear status of Ukraine. Simultaneously, in paragraph 11 of the Resolution, the Verkhovna Rada recommended that the President of Ukraine and the Government of Ukraine hold negotiations with the relevant states and international organizations, in particular, on international guarantees for the national security of Ukraine. It was noted that Ukraine will exchange the instruments of ratification only after meeting the conditions set out in paragraph 11, in particular.

In Decision of the Verkhovna Rada of Ukraine of February 3, 1994 No. 3919-XII [19], “taking into account the specific measures taken by the President and the Government of Ukraine regarding the implementation of the provisions of the Verkhovna Rada of Ukraine Resolution of November 18, 1993, reciprocal steps by the US and Russia” it was decided to withdraw the reservation under art. 5 of the Lisbon Protocol. In Resolution [19], among such measures are indicated: the results of the meeting of the Presidents of Ukraine; the United States and Russia in Moscow on 14.01.1994, the Tripartite Statement signed by them and its Annex; the receipt by Ukraine of confirmation by the Presidents of the United States and the Russian Federation of their readiness to provide Ukraine with national security guarantees after the entry into force of the START I Treaty and Ukraine's accession to the NPT as a non-nuclear-weapon State, as well as commitments by the US, Ukraine to respect independence, sovereignty and existing borders, to refrain from the threat or use of force against territorial integrity or political independence, to refrain from economic pressure and taking into account the obligation not to use any weapons against Ukraine; the receipt by Ukraine of confirmation from the presidents of the United States and Russia that relations

between them will be built on the principles of respect for the independence, sovereignty and territorial integrity of each state, as well as confirmation of their readiness to assist in creating an effective market economy in Ukraine, etc.

Finally, the Law of Ukraine “On Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons of July 1, 1968” [20] contains such important reservations:

1. The provisions of the Treaty do not fully cover the unique situation that has arisen as a result of the disintegration of the nuclear power – the USSR.

4. The threat or use of force against the territorial integrity and inviolability of the borders or political independence of Ukraine by any nuclear state, as well as the use of economic pressure aimed at subordinating to Ukraine's own interests the exercise of the rights inherent in its sovereignty, will Considered by Ukraine as exceptional circumstances that jeopardized its supreme interests.

6. This Law shall enter into force upon the provision of security guarantees to Ukraine by nuclear States, drawn up by signing the relevant international legal instrument.

It is important to note that at the moment there is every reason to believe that the actions of a nuclear power – the Russian Federation – falling under the definition of paragraph 4 are taking place. In such a case, in accordance with Art. 10 NPT, each Party to this Treaty exercising its state sovereignty shall have the right to withdraw from the Treaty if it decides that exceptional circumstances connected with the content of this Treaty have jeopardized the supreme interests of its country.

So, by abandoning the nuclear missiles on its territory, which were sent to the United States, Ukraine made an important contribution to the security, above all, of this country, and in exchange supposedly received guarantees of its own security. However, if, as some believe, the Budapest Memorandum does not actually represent the security guarantees referred to in paragraph 6 of the Law [20], according to this clause this law has not entered into force for Ukraine.

**Conclusions.** The guarantees of the national security and territorial integrity of Ukraine granted to Ukraine by the states of the "nuclear club" on the basis of the CSCE Act served as the basis not only for Ukraine's renunciation of its nuclear status, but also for its rejection of the missile shield. To date, these guarantees have been a fiction, which threatens not only the security of Ukraine, but also the general world order, since the credibility of any treaties and guarantees completely disappears. Under such conditions, Ukraine has all legal grounds to withdraw from the NPT, which finds support from a large part of Ukrainian society.

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