Opinion - Signed, Sealed and Irrelevant: The Impact of the Budapest Memorandum

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CRAIG R. MYERS, APR 19 2022

Over the past decade two consensuses have formed regarding the 1994 Budapest Memorandum that facilitated Ukraine's de-nuclearization after the Cold War. One rejects Kyiv's claims that it is a binding legal basis for deterring or defeating Russia. Nonetheless, another warns that the document's irrelevancy holds long-term negative implications for nuclear disarmament in relation to security commitments. In March 2022, Fedir Venislavsky of Ukraine's Constitutional Court, summarized his nation's position: 'They signed their obligation to protect Ukraine, to provide the security and safety. Which means when Ukraine gave up its nuclear potential … Ukraine was confident the other countries who have signed all of those agreements were going to guarantee its territorial integrity, it's independence and its sovereignty.' Central to this debate is the theory that if Kyiv kept some of that inherited Soviet arsenal it would not be fighting the Russian Army now. This article analyzes that claim based on the geopolitical context of the agreement, responses by its signatories in the current crisis, the example of a similar dyad of nuclear-armed regional rivals, and the long-term impact of the Memorandum on disarmament through security assurances.

As the USSR disintegrated, Russia, the United Kingdom and United States extended security assurances through the Budapest Memorandum and Kyiv transferred ex-Soviet nuclear weaponry in its territory to Russia, then acceded to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The Memorandum reads in part:

The Russian Federation, the United Kingdom of Great Britain … 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-defence …(and) 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… (and) will consult in the event a situation arises that raises a question concerning these commitments.

Ukraine's de-nuclearization did not just involve a few missiles either. Indeed, Andreas Umland estimates Ukraine temporarily held 15% of the total Soviet nuclear capability, handing Ukraine the third-largest nuclear arsenal on earth. There would have been challenges to making such an arsenal operational for Ukraine, for instance as launch codes remained under Moscow's control and Ukraine had no guidance technology. Nonetheless, as Umlandstates, Kyiv could have made such nuclear weaponry 'at least partially operational', going on to claim:

At this point, in other words, Ukraine had far more atomic weapons than the United Kingdom, France, and China combined. If Ukraine had retained and made operational only a fraction of these weapons, today it would be a much-feared nuclear power.

Hopes that the Memorandum would act as a deterrent were soon dashed however. Umland and Mariana Budjeryn summarize the consensus amongst International Relations thinkers that the memorandum was 'not a ratified, legally binding treaty, but a set of high-level political commitments.' Some contend the U.S. and UK have upheld its requirement to hold consultations regarding Ukraine's territorial integrity. Washington has repeatedly condemned the Russian invasion and the Trump administration sold anti-tank launchers to Ukraine that have proved effective in the

war. Military aid, amongst other assistance, has continued under President Biden, whose administration quickly organized extensive economic sanctions multilaterally alongside other states. This being said, Biden has drawn a hard line against sending U.S. troops, aircraft, or larger missiles, and establishing a NATO no-fly zone.

Meanwhile, Russia has cynically focused on alleged loopholes in its Budapest Memorandum commitments. For example, the Russian Foreign Ministry stated that 'the security assurances were given to the legitimate government of Ukraine but not to the forces that came to power following the coup d'etat.' Equally, A 2016 Tweet from the Russian Embassy in London echoed such a sentiment, claiming that: 'Russia never violated Budapest memorandum. It contained only 1 obligation, not to attack Ukraine with nukes.' Steven Pifer, longtime State Department official in Eastern Europe, calls Russia's excuses 'patently and absurdly false,' pointing out that through the memorandum Moscow had committed itself 'to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine.'

In 1993, John Mearsheimer made the 'Case for a Ukrainian Nuclear Deterrent', criticizing conventional wisdom calling for Kyiv to return the Russian arsenal. Instead, he wrote 'as soon as it declared independence, Ukraine should have been quietly encouraged to fashion its own nuclear deterrent.'Mearsheimer went on to argue that: 'Ukraine cannot defend itself against a nuclear-armed Russia with conventional weapons" and predicted that "no state, including the United States, is going to extend it a meaningful security guarantee." Mearsheimer insisted that this wasn't a call for unrestrained proliferation in Europe, but rather that 'Ukraine's military is likely to be pointed overwhelmingly in one direction: eastward at the Russians. The event most likely to scare the Poles and Germans enough to acquire nuclear weapons would be Russian reconquest of Ukraine. That possibility is much less likely if Russia is facing a nuclear-armed Ukraine.'

The pushback was that a nuclear Ukraine would have quickly created a destabilizing security dilemma in the region as the post-soviet period was beginning. In 2014 Gareth Evans, former co-chair of the International Commission on Nuclear Non-Proliferation and Disarmament, argued Ukrainian nuclear weapons would not have changed the calculation in Russia's 2014 annexation of Crimea given that: '[Putin] knows that Ukraine would be no more likely than the U.S. to nuke Moscow for sending tanks into Crimea.' Writing in 1994, Scott Sagan said Ukraine's 'instant nuclear status' was of great concern because Russia wouldn't accept a nuclear rival so close by; commenting also that:

If future Russian-Ukrainian relations ever deteriorate to the point where armed conflict is seriously considered, military pressure on the Russian government to attack any nuclear weapons remaining in Ukraine, before they could be readied for possible use by the Kiev government, could be significant.

Ultimately, Ukraine's deterrence claim is speculation. However, another dyad of nuclear-armed neighbours offers context: Pakistan now has 165 nuclear weapons while India has 160. Like Ukraine and Russia, they were formerly part of the same nation and share many cultural, religious, and historical ties along with deep enmity. Echoes can be found in Christoph Bluth's 2010 summary of the Indo-Pakistan situation:

Ever since decolonization and the partition … there has been an enduring conflict between them, which has resulted in various crises. It has continued despite dramatic changes in the geopolitical environment. The conflict is over national identity, territory, and the power position in the region. The Pakistani elite have been unable to accept the division … and seek equal status with India, while India sees itself as a great power in the region.

Indeed, nuclearization has not prevented clashes between the two states. In 1999 they fought the Kargil War, raising fear of nuclear escalation. But that border clash pales in comparison, resulting in an estimated 500 Indian and 700 Pakistani casualties but no permanent territorial changes. Bluth says 'the majority of scholars claim that the strategic relationship is stable.' Here, Bluth expresses concern that the nuclear situation between India and Pakistan isn't stable, but writes: 'that the acquisition of nuclear weapons and the employment of nuclear deterrence created a strategic space for Pakistan to engage in conflict with India at a lower level.' Therefore, while there are significant differences between this situation and that of Russia-Ukraine, the uneasy peace between these states despite India's much-larger conventional military lends support to Kyiv's claims that keeping some Soviet nuclear weapons could

have had a deterrent effect on Russia.

David Yost says the Budapest Memorandum experience undermines the 'reliability of major-power security assurances' and may give other nations 'incentives to initiate, retain or accelerate national nuclear weapons programs.' Similarly, Robert Einhorn in 2015 claimed that the seeming irrelevancy of the Memorandum 'will undermine the future value of security assurances in persuading countries to give up nuclear weapons capabilities or to continue refraining from acquiring them.' Budjeryn and Umland wrote in March 2021 that "the world faces the formidable task of mitigating the damage the violation of the Budapest Memorandum has inflicted on the NPT and credibility of nuclear powers."

The legacy of the Budapest Memorandum is mixed. It worked in the short-term by de-nuclearizing a former Soviet state, but proved worthless in deterring Russian aggression 20 years later. Despite the understandable pleas of Ukrainian officials for more help, the U.S. and its allies are correct that they met the letter of the Memorandum by providing ongoing diplomatic and military support. However, Russia's petty excuses for violating its clear commitments are craven violations of international law and norms. Claims that Kyiv could have deterred Putin if it had nuclear capability are speculative, but the example of nuclear-armed enemies India and Pakistan provides support. What's clear moving forward is that all of this will be considered the next time a state is asked to entrust its security to a piece of paper.

About the author:

Craig R. Myers was a reporter and editor for newspapers in Alabama and Florida for more than 25 years. A graduate of Troy University, he earned a master's in International Affairs in 2022 from Middle Tennessee State University, where he writes full time and teaches journalism classes part-time. Myers holds a degree in Russian language and over the past 20 years has regularly travelled to Moldova and Ukraine with Christian NGOs.