



Calhoun: The NPS Institutional Archive
DSpace Repository

Faculty and Researchers

Faculty and Researchers' Publications

2015-05

The Budapest memorandum and Russia's Intervention in Ukraine

Yost, David

"The Budapest memorandum and Russia's Intervention in Ukraine," International Affairs, vol. 91, no. 3 (May 2015), pp. 505-538
<https://hdl.handle.net/10945/57105>

This publication is a work of the U.S. Government as defined in Title 17, United States Code, Section 101. Copyright protection is not available for this work in the United States.

Downloaded from NPS Archive: Calhoun



Calhoun is the Naval Postgraduate School's public access digital repository for research materials and institutional publications created by the NPS community. Calhoun is named for Professor of Mathematics Guy K. Calhoun, NPS's first appointed -- and published -- scholarly author.

Dudley Knox Library / Naval Postgraduate School
411 Dyer Road / 1 University Circle
Monterey, California USA 93943

<http://www.nps.edu/library>

The Budapest Memorandum and Russia's intervention in Ukraine

DAVID S. YOST*

The Budapest Memorandum won attention in 2014 as an early casualty of the Ukraine crisis. The memorandum concerning Ukraine was one of three almost identically worded statements issued in December 1994, alongside similar documents for Belarus and Kazakhstan. Meeting in the margins of the Budapest summit of the Conference on Security and Cooperation in Europe (CSCE),¹ Russia, the United Kingdom and the United States extended security assurances to Belarus, Kazakhstan and Ukraine in return for their acceding to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) as non-nuclear weapon states (NNWS) and transferring all the Soviet-made nuclear warheads on their territory to Russia.² China and France issued separate and distinct statements regarding their security assurances in this connection.

Russia's violations of its Budapest Memorandum commitments to Ukraine since 2014—notably with its annexation of Crimea—have provoked considerable discussion about the implications for international order and security. This article reviews the origins and content of the Budapest Memorandum for Ukraine before turning to Russia's breaches of its commitments and their consequences. Although the Budapest Memorandum is little known outside official and expert circles, Russia's violations of its commitments in this agreement could have far-reaching implications for security and nuclear non-proliferation throughout the world.

The origins of the Budapest Memorandum lie in the protracted Russian and US bargaining with the newly independent Ukraine to persuade Kiev to transfer to Russia the Soviet-made nuclear weapons that it had inherited from the USSR. Russia violated its Budapest Memorandum commitments to respect Ukraine's

* The views expressed in this article are the author's alone and do not represent those of the Department of the Navy or any US government agency. Thanks are owed to those who commented on drafts of this article, including William Alberque, Paul Amato, Nigel Basing, Frank Dellermann, Jacek Durkalec, Jean Klein, Peter Pavilionis, Joseph Pilat, Brad Roberts, Michael Rühle, Diego Ruiz Palmer, Paul Schulte, Bruno Tertrais, Mikhail Tsypkin, Joseph Wolfsheimer, Roberto Zadra and Aldo Zammit Borda.

¹ The Organization for Security and Cooperation in Europe (OSCE) was known as the CSCE from its initiation on 3 July 1973 until 1 January 1995. In this article, the terms used are those employed at the time under discussion, in order to avoid anachronistic wording.

² The Budapest Memorandum for Ukraine is formally entitled the Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons. The Budapest Memorandum for Ukraine may be found in United Nations documentation as A/49/765 and S/1994/1399, 19 Dec. 1994, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_1994_1399.pdf, accessed 17 March 2015.

‘territorial integrity’ and ‘existing borders’ in March 2014 when it annexed Crimea. Moreover, Russia continues to intervene elsewhere in eastern Ukraine.

The consequences of Russia’s actions extend far beyond the undermining of Ukraine’s security. They include a weakening of the credibility of major-power security assurances, a stimulus to nuclear proliferation, and a deeper dampening of prospects for nuclear force reductions and disarmament. Moreover, Russia has asserted a revisionist approach to international law distinct from that which has generally reigned since the formulation of the UN Charter. Russia’s actions have damaged confidence in longstanding principles of international order and crushed the western vision of cooperative security in the Euro-Atlantic region—a vision institutionalized in NATO’s Partnership for Peace and the NATO–Russia Council, among other bodies.

The NATO and EU countries have formulated short-term responses, including the alliance’s Readiness Action Plan, practical assistance to the Ukrainian government, and economic sanctions against Russia. Averting a further breakdown in the principles of international order spelled out in the UN Charter and the Helsinki Final Act—and reaffirmed in the Budapest Memorandum—will, however, depend on re-establishing consensus with Moscow on the requirements of international law. This will remain a remote prospect as long as Russia pursues a revisionist course regarding its international legal obligations.

Origins of the Budapest Memorandum

The Budapest Memorandum was the culmination of a series of behind-the-scenes negotiations aimed at managing the consequences of the collapse of the Soviet Union and the subsequent division of its military assets, especially the various facets of the extensive Soviet nuclear weapons establishment. In the course of a lengthy and complicated bargaining process, the United States discovered that it would have to offer various security assurances to Ukraine to persuade it to transfer the Soviet-made nuclear weapons on its soil to Russia, hand over or destroy the associated delivery systems and infrastructure, and accede to the NPT as an NNWS. As Sherman Garnett, a participant in the negotiations, has observed: ‘Ukraine sought to change the American perception of the problem from one of nuclear disarmament and non-proliferation to one of the stability of the emerging geopolitical environment in Eurasia.’³

The top US priorities included (a) addressing the ‘loose nukes’ problem by working with Soviet successor states under the auspices of the Nunn–Lugar Cooperative Threat Reduction programme, which began in 1991; (b) persuading Belarus, Kazakhstan and Ukraine to accede to the NPT as NNWS before the 1995 NPT Review Conference; and (c) transferring Soviet-made nuclear weapons from

³ Sherman W. Garnett, ‘The sources and conduct of Ukrainian security policy: November 1992 to January 1994’, in George Quester, ed., *The nuclear challenge in Russia and the new states of Eurasia* (Armonk, NY, and London: M. E. Sharpe, 1995), p. 146. See also Sherman W. Garnett, *Keystone in the arch: Ukraine in the emerging security environment of Central and Eastern Europe* (Washington DC: Carnegie Endowment for International Peace, 1997).

these three countries to Russia in order to carry forward the bilateral Moscow–Washington nuclear arms reduction process. In the words of Strobe Talbott, who was then serving as a special adviser to the US secretary of state, ‘before we could move ahead to START [Strategic Arms Reduction Treaty] III, START I (which Bush and Gorbachev had signed in 1991) had to go into force, and that required the removal of Soviet-era nuclear weaponry from Ukraine, Belarus and Kazakhstan—one of the Clinton administration’s highest priorities in 1993 and 1994’.⁴ Leonid Kravchuk, then president of Ukraine, told Talbott in May 1993 that Ukraine should receive ‘billions of dollars’ as ‘compensation’ for transferring the weapons to Russia. Talbott has reported that Kravchuk also sought

an American promise that we would treat an attack on Ukraine as though it were an attack on the US—virtually the same security guarantee that we gave our closest allies; it would have obligated us to take Ukraine’s side if it found itself in a crisis with Russia over the nuclear weapons or any other issue. I told Kravchuk that the best we could do was help finance the return of the warheads to Russia, where they would be dismantled with American economic and technical assistance, in exchange for Moscow’s assurance, underwritten by the US, that Russia would respect Ukraine’s independence.⁵

It is not clear what Talbott meant by ‘underwritten by the US’ but he plainly did not mean ‘virtually the same security guarantee that we gave our closest allies.’ Indeed, according to Steven Pifer, a former US diplomat who participated in the deliberations, the Americans carefully assembled a package of assurances that restated the promises extended to all members of the United Nations, all NNWS parties to the NPT, and all states participating in what was then known as the Conference on Security and Cooperation in Europe. As a further precaution against providing a security commitment that might imply an obligation to take military action to defend Ukraine against aggression, Pifer noted,

State Department lawyers ... took careful interest in the actual language, in order to keep the commitments of a political nature. US officials also continually used the term ‘assurances’ instead of ‘guarantees’, as the latter implied a deeper, even legally-binding commitment of the kind that the United States extended to its NATO allies.⁶

In the January 1994 Trilateral Statement, the Presidents of Russia and the United States informed the President of Ukraine that, with the entry into force of START I and Ukraine’s accession to the NPT as an NNWS,⁷ Russia and the United States would reaffirm their UN Charter and CSCE Helsinki Final Act commitments to Ukraine, as well as the positive and negative security assurances to NNWS parties to the NPT. The Russian and US Presidents also informed the

⁴ Strobe Talbott, *The Russia hand: a memoir of presidential diplomacy* (New York: Random House, 2002), p. 375. Talbott served in the Clinton administration as Ambassador-at-Large and Special Adviser to the Secretary of State on the New Independent States until 23 Feb. 1994, when he became Deputy Secretary of State.

⁵ Talbott, *The Russia hand*, p. 79.

⁶ Steven Pifer, *The trilateral process*, Arms Control Series Paper 6 (Washington DC: Brookings Institution, 2011), p. 17.

⁷ As noted by Vladimir Orlov, ‘the Russian parliament ratified START I with the condition that the treaty could not enter into force until Ukraine acceded to the NPT’: Vladimir Orlov, ‘The Crimean crisis and the issue of security guarantees for Ukraine’, *International Affairs* (Moscow), 60: 2, 2014, p. 31.

Ukrainian President that the United Kingdom, the third of the three depositary states of the NPT, was 'prepared to offer the same security assurances to Ukraine once it becomes a non-nuclear-weapon state party to the NPT'.⁸

The British Prime Minister and the Presidents of Russia, Ukraine and the United States signed the December 1994 Budapest Memorandum on Security Assurances in connection with Ukraine's accession to the NPT as an NNWS. France and China—the other NPT-recognized nuclear weapon states, which are also permanent members of the UN Security Council—extended assurances to Ukraine on a unilateral basis.⁹ The Budapest Memorandum confirmed commitments to respect Ukraine's independence, sovereignty and existing borders, in accordance with the principles of the 1975 Final Act of the CSCE; to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and from any use of weapons against Ukraine, except in self-defence or otherwise in conformity with the UN Charter; and to refrain from economic coercion designed to subordinate the exercise by Ukraine of the rights inherent in its sovereignty, in accordance with the principles of the CSCE Final Act. The Budapest Memorandum also restated the positive and negative security assurances accorded to all NNWS parties to the NPT.

In other words, as promised in the Trilateral Statement, in the Budapest Memorandum Ukraine obtained reaffirmations of the commitments made to all members of the UN, all the participating states of the CSCE, and all NNWS parties of the NPT.¹⁰ The fact that these reaffirmations were so carefully worded shows that the Budapest Memorandum was more than a 'pro forma' declaration intended to pacify the Ukrainians at a time when Russia and the United States were focused on getting the Soviet-made nuclear weapons out of Ukraine and persuading the country to accede to the NPT as an NNWS.

⁸ See the Trilateral Statement, 14 Jan. 1994, reproduced in Pifer, *The trilateral process*, pp. 34–6.

⁹ France's statement regarding Ukraine's accession to the NPT as an NNWS was transmitted to the Ukrainian Foreign Minister at the CSCE meeting in Budapest on 5 Dec. 1994. It reaffirmed UN Charter obligations and CSCE pledges and the positive and negative security assurances extended to all NNWS parties to the NPT. France's statement can be found in a compilation entitled 'Security assurances', p. K-8, http://www.export-lawblog.com/docs/security_assurances.pdf. See also the statement by Alain Juppé, then France's Foreign Minister, at his press conference in Budapest, 5 Dec. 1994, <http://basedoc.diplomatie.gouv.fr/exl-doc/e027014.pdf>. An official spokesman indicated that France made a separate statement because (unlike Russia, the UK and the US) it is not a depositary state of the NPT ('Point de presse du 6 décembre 1994, déclarations du porte-parole', <http://basedoc.diplomatie.gouv.fr/exl-doc/e027006.pdf>). Some observers have speculated, however, that France extended its assurances unilaterally because it did not want to be bound by multilateral arrangements that might be seen as incompatible with its independence in nuclear matters; furthermore, some observers hold that France did not want to make it a P5 matter lest Moscow and Washington try to draw Paris into nuclear arms control negotiations. In contrast with the Budapest Memorandum, France's statement includes no pledge to consult in the event of a question arising about the assurances. The text of the 'Statement of the Chinese government on the security assurance to Ukraine issued on 4 December 1994' may be found in an annex of a letter to the UN Secretary General for the General Assembly from China's permanent representative, Ref. A/49/783, 14 Dec. 1994, [https://disarmament-library.un.org/UNODA/Library.nsf/939721e5b418c27085257631004e4bf/4bd51a4bdd15e65285257687005bbcb1f/\\$FILE/A-49-783_China-effective%20intl%20arrangements.pdf](https://disarmament-library.un.org/UNODA/Library.nsf/939721e5b418c27085257631004e4bf/4bd51a4bdd15e65285257687005bbcb1f/$FILE/A-49-783_China-effective%20intl%20arrangements.pdf). The Chinese statement also lacks a consultation pledge, and it is distinctive in urging all NWS to adopt China's commitment 'under no circumstances' to 'use or threaten to use nuclear weapons against non-nuclear-weapon States or nuclear-weapon-free zones'. All URLs accessed 17 March 2015.

¹⁰ Some of this discussion is drawn from David S. Yost, *NATO transformed: the alliance's new roles in international security* (Washington DC: United States Institute of Peace Press, 1998), pp. 153–5.

As William Potter has observed, Ukraine's road 'to NPT accession was by far the longest and most convoluted of any of the post-Soviet states'.¹¹ It involved a significant debate among Ukrainian political leaders about the feasibility, merits and disadvantages of becoming a fully fledged nuclear weapon state (NWS); about compensation for transferring the remaining Soviet-made nuclear weapons to Russia; and about security assurances. Such assurances were of critical importance, owing to Ukrainian apprehensions about Russia. Indeed, Ukrainian leaders would have preferred legally binding multilateral security commitments. As Potter has added: 'It would have been impossible to have gained the Rada's support for unconditional ratification of the START Treaty or approval of NPT accession in the absence of the security guarantees provided in the Trilateral Statement and, in a slightly different fashion, in pledges made by the [NPT-recognized] nuclear weapons states in late 1994'¹²—that is, the Budapest Memorandum, plus the separate statements by China and France.

In April 1995, Anatoliy Zlenko, then Ukraine's ambassador to the United Nations, emphasized the critical importance of these security assurances in the Ukrainian parliament's endorsement of accession to the NPT:

The agreement upon the quadripartite document on the provision to Ukraine of guarantees of its national security on the part of the United States of America, Great Britain and Russia and the unilateral statements on the matter by France and China were the principal factors ... that had a key role in the Ukrainian Parliament's decision in favour.¹³

It took eleven months to proceed from the Trilateral Statement in January 1994 to the Budapest Memorandum in December 1994. There were several reasons for this, including delays in working out and implementing bilateral Moscow–Kiev accords on transferring nuclear warheads to Russia and nuclear fuel rods to Ukraine. The Ukrainians feared Russia and wanted security assurances as well as financial compensation. On the diplomatic level, delays arose mainly because of the need to clarify the Rada's resolution concerning Ukraine's accession to the NPT as an NNWS. In its final form, the Budapest Memorandum contained a consultation clause for Kiev in addition to the security assurances already set out in the Trilateral Statement.¹⁴

Sherman Garnett has pointed out that previously Russia had linked its recognition of Ukraine's territorial integrity to the country's membership in the Commonwealth of Independent States (CIS). Moreover, the consultation pledge in the Budapest Memorandum established a new multilateral mechanism for recourse in an emergency. As Garnett has noted, Ukraine had 'wanted an international mechanism, preferably a binding international treaty, that would ensure that as Russian power grew, Ukraine would not be left to enforce these new rules

¹¹ William Potter, *The politics of nuclear renunciation: the cases of Belarus, Kazakhstan, and Ukraine*, Occasional Paper no. 12 (Washington DC: Stimson Center, April 1995), p. 19.

¹² Potter, *The politics of nuclear renunciation*, pp. 45–6. The Verkhovna Rada (literally 'Supreme Council') is Ukraine's parliament.

¹³ Statement by Anatoliy Zlenko in the 3514th Meeting of the UN Security Council, 11 April 1995, S/PV.3514, p. 3.

¹⁴ Pifer, *The trilateral process*, pp. 25–8.

with Russia on its own'.¹⁵ The Ukrainians accepted the package of relatively weak security assurances in the Budapest Memorandum, despite the fact that they fell short of 'guarantees', because they concluded that this was all that they could get. General Igor Smeshko, the director of the Center for Strategic Planning and Analysis in Ukraine's National Security and Defense Council, said: 'We knew, even in those naïve days, that no one would fight for us.'¹⁶ In other words, Ukraine accepted the assurances on offer, despite their weakness, as the strongest options then available; and the assurances turned out to be inadequate as means to protect the country's sovereignty and territorial integrity in March 2014, when Russia annexed Crimea.

As noted above, the Budapest Memorandum committed the parties—Russia, Ukraine, the United Kingdom and the United States—to 'consult in the event a situation arises which raises a question concerning these commitments'. While this commitment fell short of an international treaty guaranteeing Ukraine's neutrality, which the former Soviet republic had initially sought as protection against possible future Russian intervention, it implied that a multilateral consultation process had displaced what Moscow would have preferred—an essentially bilateral Moscow–Kiev relationship. The Ukrainians also obtained significant amounts of US economic and technical assistance, including programmes for US–Ukrainian defence cooperation.

It should be recalled that there was little interest in Ukraine in becoming an NWS on the basis of Soviet-era capabilities. Indeed, in 1990, the year before the Soviet Union's collapse, the parliament of the Ukrainian Soviet Socialist Republic declared that an independent Ukraine would uphold 'three nuclear free principles: to accept, to produce and to purchase no nuclear weapons'.¹⁷

In 1991, in the Alma-Ata Declaration of the newly established CIS, Ukraine and the other ten participating successor states of the Soviet Union agreed that 'a single control over nuclear weapons will be preserved'.¹⁸ In a parallel accord, the eleven founding states of the CIS added: '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, including tactical nuclear weapons by 1 July 1992.'¹⁹

In the May 1992 Lisbon Protocol to the 1991 US–Soviet START the four former Soviet republics with nuclear weapons on their territory agreed that Belarus,

¹⁵ Sherman W. Garnett, 'The "model" of Ukrainian denuclearization', in Jeffrey W. Knopf, ed., *Security assurances and nuclear non-proliferation* (Stanford, CA: Stanford University Press, 2012), pp. 261–3.

¹⁶ Smeshko, quoted in John Buntin, *The decision to denuclearize: how Ukraine became a non-nuclear weapons state*, Kennedy School of Government Case Program, C14-98-1452.0 (Cambridge, MA: Harvard University, 1997), p. 23.

¹⁷ Declaration of State Sovereignty of Ukraine, Verkhovna Rada of the Ukrainian Soviet Socialist Republic, Kiev, 16 July 1990, https://web.archive.org/web/20100111101705/http://gskaz.rada.gov.ua:7777/site/postanova_eng/Declaration_of_State_Sovereignty_of_Ukraine_rev1.htm, accessed 17 March 2015.

¹⁸ Commonwealth of Independent States, Alma-Ata Declaration, 21 Dec. 1991, http://lcweb2.loc.gov/ftd/cs/belarus/by_appnc.html, accessed 17 March 2015.

¹⁹ Commonwealth of Independent States, Minsk Agreement on Strategic Forces, 30 Dec. 1991, http://lcweb2.loc.gov/ftd/cs/belarus/by_appnc.html, accessed 17 March 2015.

Kazakhstan and Ukraine would accede to the NPT as NNWS and eliminate the nuclear weapons located in their territory.²⁰

Ukraine was disposed to settle for a denuclearization agreement for several reasons. To begin with, the question of command and control over the thousands of Soviet nuclear weapons found on Ukraine's soil when the Soviet Union collapsed was a source of tension with Russia. Accounts diverge regarding Ukraine's capabilities in this regard. William Martel, for example, held in 1994 that the permissive action links (PALs)—encrypted locks—for all the Soviet-made nuclear weapons had remained under Moscow's control since the USSR had come to an end.²¹ In contrast, Alexander Pikayev wrote in the same year that 'Ukraine successfully created its own autonomous, although embryonic and incomplete, command and control system. In fact, it effectively prevented any potential Russian attempts to launch the strategic weapons located on the Ukrainian territory without Kiev's permission. It also established the necessary conditions for a Ukrainian system of positive control.'²²

Although some western experts hold that it is simply not credible that the Russian General Staff would have given up or lost positive control over nuclear weapon systems in Ukraine, other sources offer differing accounts. According to Ambassador James Goodby, a US diplomat involved in the negotiations, it was not until May 1993 that the Russian authorities informed the United States that they had 'removed "flight codes" from all ALCMs [air-launched cruise missiles] at Ukrainian bases'.²³ In 2004 Yuri Dubinin, who participated in the relevant negotiations, including as Russia's deputy foreign minister from 1994 to 1999, stated that Ukraine had acquired 'a capability to use nuclear weapons'.²⁴ Leonid Kravchuk, president of Ukraine from 1991 to 1994, reportedly said that he possessed 'the codes for authorizing launch of the SS-19s and SS-24s in Ukraine'.²⁵ In a December 2014 discussion Steven Pifer said that Russian and Ukrainian sources had indicated that launch orders for the intercontinental ballistic missiles (ICBMs) had to be given by both the president of Ukraine and the Russian Strategic Rocket Force headquarters.²⁶ In an interview published the same month, however, Kravchuk said that

²⁰ Protocol to the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms, 23 May 1992, article V, <http://www.state.gov/documents/organization/27389.pdf>, accessed 22 March 2015. See also the accompanying letters signed by national leaders of Belarus, Kazakhstan and Ukraine.

²¹ William C. Martel, 'Why Ukraine gave up nuclear weapons: non-proliferation incentives and disincentives', in Barry R. Schneider and William L. Dowdy, eds, *Pulling back from the nuclear brink: reducing and countering nuclear threats* (London and Portland, OR: Frank Cass, 1998), pp. 89–90. See also William C. Martel and William T. Pendley, *Nuclear coexistence: rethinking US policy to promote stability in an era of proliferation* (Maxwell Air Force Base, Montgomery, AL: Air War College, 1994), p. 53.

²² Alexander A. Pikayev, 'Post-Soviet Russia and Ukraine: who can push the button?', *Non-proliferation Review* 1: 3, Spring–Summer 1994, pp. 44–5.

²³ 'Ukraine chronology prepared by Ambassador James Goodby', Jan. 1994, <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB447/1994-01-00%20Ukraine%20Chronology%20Prepared%20by%20Ambassador%20James%20Goodby.pdf>, accessed 17 March 2015.

²⁴ Yuri Dubinin, 'Ukraine's nuclear ambitions: reminiscences of the past', *Russia in Global Affairs*, 13 April 2004, http://eng.globalaffairs.ru/number/n_2913, accessed 17 March 2015.

²⁵ This statement was reported by a participant at a December 2008 Carnegie workshop. See Pifer, *The trilateral process*, p. 39, n. 14.

²⁶ Steven Pifer, in *The Budapest Memorandum at 20: the United States, Ukraine, and security assurances* (Washington DC: Brookings Institution, 9 Dec. 2014), p. 27.

Ukraine 'only formally' had a nuclear arsenal: 'All the control systems were in Russia. The so-called black suitcase with the start button ... was with Russian president Boris Yeltsin.'²⁷

Published information on the autonomy and scope of Ukrainian command and control over nuclear weapons is thus inconsistent and fragmentary, as befits a topic of great secrecy and sensitivity. Vladimir Orlov, the president of the PIR Center, a non-governmental research organization in Moscow, maintains that the Ukrainians were able to establish '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.'²⁸ According to a Federation of American Scientists report, Russian officers warned the Ukrainians that 'attempts to interfere with, or to damage the command and control systems of, Russian strategic troops located abroad would constitute a direct military threat to the Russian Federation'.²⁹ Pifer has referred to Russian and Ukrainian statements indicating that 'the Ukrainians had physical control over a lot of nuclear weapons', including 'the warheads for the air launch cruise missiles for the bombers and spare ballistic missile warheads', because the weapons were guarded by Ukrainian troops.³⁰

While there were important military-industrial facilities in Ukraine, including for the manufacture of strategic missiles, Ukraine lacked a capacity to manufacture and maintain nuclear weapons. Aside from these practical considerations, there were compelling political motives to cooperate with the denuclearization agenda preferred by Moscow and Washington. Above all, Ukraine sought greater autonomy from Russia. This could only be achieved by cultivating positive relations with western nations, and this in turn required behaviour as a responsible government committed to the NPT, among other international accords.

In order to gain support from the United States and other NATO countries, the Ukrainian leaders seeking independence from Russia in 1991 were keen to demonstrate that the situation in the post-Soviet space need not be the one feared by James Baker, then the US secretary of state: 'Yugoslavia with nukes.'³¹

Ukrainian decision-makers appear to have regarded the nuclear weapons inherited from the USSR as, on balance, political and practical liabilities; but nevertheless they tried to use them as negotiating chips in seeking financial assistance and security assurances from Russia and the United States. The Ukrainians obtained compensation from Moscow for the highly enriched uranium in the Soviet-made nuclear warheads transferred to Russia and financial assistance from the United

²⁷ Kravchuk, quoted in Roman Goncharenko, 'Ukraine's forgotten security guarantee: the Budapest Memorandum', *Deutsche Welle*, 5 Dec. 2014, <http://www.dw.de/ukraines-forgotten-security-guarantee-the-budapest-memorandum/a-18111097>, accessed 17 March 2015.

²⁸ Orlov, 'The Crimean crisis and the issue of security guarantees for Ukraine', p. 26.

²⁹ Federation of American Scientists, Nuclear Information Project, 'Ukraine special weapons', <http://fas.org/nuke/guide/ukraine/>, accessed 17 March 2015.

³⁰ Pifer in *The Budapest Memorandum* at 20, pp. 27–8.

³¹ Baker, quoted in Keith Bradsher, 'Noting Soviet eclipse, Baker sees arms risks', *New York Times*, 9 Dec. 1991, <http://www.nytimes.com/1991/12/09/world/noting-soviet-eclipse-baker-sees-arms-risks.html>, accessed 17 March 2015.

States to defray the costs of dismantling the Soviet-era ICBMs and strategic bombers and associated nuclear infrastructure in Ukraine.

Although the Budapest Memorandum was not a treaty, it included a restatement of legally binding UN Charter commitments, notably in the clause in which Russia, the United Kingdom and the United States chose to 'reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and [promised] 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'.

The standing and significance of the Budapest Memorandum were underscored when the four parties submitted it to the United Nations Secretary General with a request that it be circulated as a document of the General Assembly and the Security Council. Furthermore, the four heads of state and government attached a joint declaration to the Budapest Memorandum reaffirming the paramount importance of CSCE principles, including the following:

The leaders confirmed that CSCE commitments in the area of human rights, economics and security represent the cornerstone of the common European security space, and that they help ensure that countries and peoples in this space are not subjected further to the threat of military force or other undesirable consequences of aggressive nationalism and chauvinism.³²

As Steven Pifer has noted: 'Kyiv treated the [Budapest] memorandum as, in effect, an international treaty, including by publishing the document in a compendium of Ukraine's international treaties.'³³

In 2009, in a joint statement regarding the expiration of the original START Treaty, Russia and the United States reaffirmed the validity of the Budapest Memoranda signed in 1994 with Belarus, Kazakhstan and Ukraine. 'In this connection, the United States of America and the Russian Federation confirm that the assurances recorded in the Budapest Memoranda will remain in effect after December 4, 2009.'³⁴ In 2010, in the preamble to the New START Treaty, Russia and the United States reaffirmed their appreciation to Belarus, Kazakhstan and Ukraine for their 'contribution ... to nuclear disarmament and to strengthening international peace and security as non-nuclear-weapon states' party to the NPT—in other words, for fulfilling their commitments under the Budapest Memoranda.³⁵

³² The cover letter by the permanent representatives of Russia, Ukraine, the UK and the US to the UN Secretary General, as well as the Budapest Memorandum involving Ukraine and the joint declaration by the four heads of state and government, may be found at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_1994_1399.pdf, accessed 17 March 2015.

³³ Pifer, *The trilateral process*, p. 28.

³⁴ Joint statement by the US and the Russian Federation regarding the expiration of the Treaty on the Reduction and Limitation of Strategic Offensive Arms, Bureau of Public Affairs, Office of the Spokesman, US Department of State, Washington DC, 4 Dec. 2009, <http://www.state.gov/r/pa/prs/ps/2009/dec/133204.htm>, accessed 17 March 2015.

³⁵ Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, Prague, 8 April 2010, preamble, <http://www.state.gov/documents/organization/140035.pdf>, accessed 23 March 2015.

Sources differ as to how many Soviet-made nuclear weapons were transferred from Ukraine to Russia. The White House indicated in June 1996 that ‘more than 4,000 strategic and tactical nuclear warheads’ had been removed from Ukraine.³⁶ Yuri Dubinin wrote that, ‘considering tactical weapons, about 5,000 nuclear munitions were moved to Russia’.³⁷ It is widely agreed that, as Steven Pifer put it, ‘Ukraine had 1,900 strategic nuclear warheads—a larger arsenal than those of Britain, France, and China combined’. The weapons on Ukrainian soil included 130 SS-19 ICBMs, 46 SS-24 ICBMs, 44 Bear-H and Blackjack strategic bombers, and ‘hundreds of Kh-55 nuclear air-launched cruise missiles to arm those aircraft’.³⁸

Russia’s violations of the Budapest Memorandum

In the Budapest Memorandum, Russia, the United Kingdom and the United States reaffirmed ‘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’. Furthermore, they confirmed ‘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 or otherwise in accordance with the Charter of the United Nations’.

While the extent of official Russian involvement in the activities of the ‘little green men’—Russian troops operating without insignia—in Ukraine was disputed for some weeks in early 2014, the annexation of Crimea in March 2014 made it clear that Moscow was not respecting either ‘the independence and sovereignty and the existing borders of Ukraine’ or its ‘territorial integrity or political independence’. Ukraine posed no threat to Russia, so no case could be made that Moscow was acting ‘in self-defence’. Nor did Russia have a mandate from the UN Security Council to intervene in Ukraine, much less to annex part of the country.³⁹ Gérard Araud, then France’s ambassador to the United Nations, said that with the annexation of Crimea ‘Russia vetoed the UN Charter’.⁴⁰ Russia has continued to conduct a ‘hybrid war’ against Ukraine, backing the separatists and Russian armed forces on Ukrainian soil.⁴¹

³⁶ State Department Telegram 113222 to European Political Collective, ‘Presidential statement: removal of nuclear warheads from Ukraine and agreement on CFE flank issues’, 1 June 1996, <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB447/1996-06-01%20Cable.%20State%20Department%20to%20European%20Political%20Collective.%20Presidential%20Statement%20Removal%20of%20Nuclear%20Warheads%20from%20Ukraine%20and%20Agreement%20on%20CFE%20Flank%20Issue.pdf>, accessed 17 March 2015.

³⁷ Dubinin, ‘Ukraine’s nuclear ambitions’.

³⁸ Steven Pifer, ‘Honoring neither the letter nor the law’, Brookings Institution, 7 March 2014, <http://www.brookings.edu/research/opinions/2014/03/07-honoring-neither-letter-nor-law-ukraine-russia-pifer>, accessed 17 March 2015.

³⁹ For a valuable overview and analysis, see Roy Allison, ‘Russian “deniable” intervention in Ukraine: how and why Russia broke the rules’, *International Affairs* 90: 6, Nov. 2014, pp. 1255–97.

⁴⁰ ‘La Russie a opposé son veto à la Charte des Nations Unies’: Gérard Araud, quoted in Alexandra Geneste, ‘Crimée : “le veto russe signifie que la force prime le droit”’, *Le Monde*, 15 March 2014, http://www.lemonde.fr/europe/article/2014/03/15/la-resolution-sur-la-crimée-rejetée-a-l-onu_4383819_3214.html, accessed 17 March 2015.

⁴¹ Lawrence Freedman, ‘Ukraine and the art of limited war’, *Survival* 56: 6, Dec. 2014–Jan. 2015, pp. 7–38.

The US administration gave little public attention to the Budapest Memorandum, but there were nonetheless some references to it. On 1 March 2014, the White House informed the press that President Obama had in a phone call with President Putin

expressed his deep concern over Russia's clear violation of Ukrainian sovereignty and territorial integrity, which is a breach of international law, including Russia's obligations under the UN Charter, and of its 1997 military basing agreement with Ukraine, and which is inconsistent with the 1994 Budapest Memorandum and the Helsinki Final Act.⁴²

In a statement the next day the North Atlantic Council, NATO's supreme decision-making body, also referred to the Budapest Memorandum among the various accords violated by Russia:

Military action against Ukraine by forces of the Russian Federation is a breach of international law and contravenes the principles of the NATO–Russia Council and the Partnership for Peace. Russia must respect its obligations under the United Nations Charter and the spirit and principles of the OSCE, on which peace and stability in Europe rest. We call on Russia to de-escalate tensions. We call upon the Russian Federation to honor its international commitments, including those set out in the Budapest Memorandum of 1994, the Treaty on Friendship and Cooperation between Russia and Ukraine of 1997, and the legal framework regulating the presence of the Russian Black Sea Fleet, to withdraw its forces to its bases, and to refrain from any interference elsewhere in Ukraine.⁴³

In December 2014 the US State Department's International Security Advisory Board took note of 'the annexation of Crimea, the first time that one nation has seized and annexed territory from another in Europe since the end of World War II, and one where Russia was in direct violation of pledges subscribed to in the Helsinki Final Act and the Budapest Memorandum of 1994'.⁴⁴ In February 2015 Angela Merkel, the German Chancellor, said that

Russia's actions conflict with the commitments it has made, for instance in the CSCE Final Act or—above all—in the Budapest Memorandum, in which the United States of America, the United Kingdom and Russia had pledged to protect the territorial integrity of Ukraine, in return for which the country would renounce its nuclear armament.⁴⁵

According to the Budapest Memorandum, the four signatories 'will consult in the event a situation arises that raises a question concerning these commitments'. In March 2014 William Hague, then the British foreign secretary, 'called for urgent consultations under the Budapest memorandum' and urged Russia 'to accept the

⁴² 'Readout of President Obama's call with President Putin', White House, Office of the Press Secretary, 1 March 2014, <http://www.whitehouse.gov/the-press-office/2014/03/01/readout-president-obama-s-call-president-putin>, accessed 17 March 2015.

⁴³ North Atlantic Council statement on the situation in Ukraine, 2 March 2014, http://www.nato.int/cps/en/natolive/official_texts_107681.htm, accessed 17 March 2015.

⁴⁴ *Report on US–Russia relations* (Washington DC: International Security Advisory Board, US Department of State, 9 Dec. 2014), p. 6, see <http://www.state.gov/t/avc/isab/234902.htm>.

⁴⁵ Speech by Federal Chancellor Angela Merkel on the occasion of the 51st Munich Security Conference, 7 Feb. 2015, http://www.bundestkanzlerin.de/Content/EN/Reden/2015-02-07-merkel-sicherheitskonferenz_en.html, accessed 17 March 2015.

invitation to attend talks under the Budapest memorandum in Paris'.⁴⁶ Hague and the US Secretary of State, John Kerry, met with the Acting Foreign Minister of Ukraine, Andriy Deshchysia, in Paris on 5 March 2014, but Russian Foreign Minister Sergei Lavrov declined to attend, even though he was in Paris that day.⁴⁷ The US–UK–Ukraine press statement indicated that the parties 'deeply regret' Russia's decision not to participate:

Russia has chosen to act unilaterally and militarily. The United Kingdom and United States will continue to support Ukraine's sovereignty and territorial integrity and we commend the new Ukrainian government for not taking actions that might escalate the situation. Russia's continued violation of Ukraine's sovereignty and territorial integrity can only degrade Russia's international standing and lead to greater political and economic consequences.⁴⁸

Russia has denied that it has violated the Budapest Memorandum on the grounds that the Ukrainian government has changed. Russia has pointed out that the Ukrainian government in power since February 2014, when President Viktor Yanukovich fled from Kiev, is not the government with which the Budapest Memorandum was concluded in 1994. In March 2014, President Putin said that Yanukovich had been removed in 'an anti-constitutional coup' or a 'revolution'. If it was a revolution, Putin said, that would mean the emergence of 'a new state ... in this territory ... a new state with which we have signed no binding agreements'.⁴⁹

Putin asserted that 'This is just like what happened when the Russian Empire collapsed after the 1917 revolution and a new state emerged'.⁵⁰ Putin's historical reference is inexact. The revolutionary government that took power from the Russian Empire in March 1917 proclaimed 'that it would respect strictly all engagements entered into by the government of the Czar before the revolution'.⁵¹ The Soviets, however, deposed the initial revolutionary government and proceeded in late 1917 and early 1918 to declare 'annulled' many treaty obligations assumed by the czarist government and the first revolutionary government. The Soviet government declared treaties void 'in so far as they tend to the augmentation of the profits and the privileges of Russian capitalists'. Moreover, the Soviets 'annulled' all Russian state debts.⁵² The Soviets nonetheless did not repudiate 'all the treaties concluded by Russia under the former régime and under the Provisional Government'; they examined 'each treaty separately' according to pragmatic as well as

⁴⁶ William Hague, Hansard (Commons), 4 March 2014, col. 755, <http://www.theyworkforyou.com/debates/?id=2014-03-04a.755.o#g755.1>, accessed 17 March 2015.

⁴⁷ Michael R. Gordon and Steven Erlanger, 'US effort to broker Russia–Ukraine diplomacy fails', *New York Times*, 5 March 2014, http://www.nytimes.com/2014/03/06/world/europe/ukraine.html?_r=0, accessed 17 March 2015.

⁴⁸ US–UK–Ukraine press statement on the Budapest Memorandum Meeting, Office of the Spokesperson, US Department of State, Washington DC, 5 March 2014, <http://www.state.gov/r/pa/prs/ps/2014/03/222949.htm>, accessed 17 March 2015.

⁴⁹ 'Vladimir Putin answered journalists' questions on the situation in Ukraine', 4 March 2014, <http://eng.kremlin.ru/transcripts/6763>, accessed 17 March 2015.

⁵⁰ 'Vladimir Putin answered journalists' questions on the situation in Ukraine'.

⁵¹ 'Article 24. Effect of Governmental Changes', *American Journal of International Law*, vol. 29, Supplement: Research in International Law (1935), p. 1051.

⁵² Eugene A. Korovin, 'Soviet treaties and international law', *American Journal of International Law* 22: 4, Oct. 1928, pp. 762–3.

ideological criteria.⁵³ As a result, some treaties concluded before 1917 (for instance, regarding 'metric and telegraphic conventions') were regarded and confirmed as remaining in force.⁵⁴

Aside from Putin's imprecise history, his example is misleading. It concerns a state (Soviet Russia) that selectively abrogated international obligations on the grounds of the ideology of its new post-revolutionary regime, while Ukraine does not reject its legal and political obligations on the basis of its having a new post-Yanukovich government. Indeed, Ukraine has retained the same constitution and is in fact asking its agreement partners (Russia in particular) to honour their obligations in the Budapest Memorandum.

Moscow nonetheless holds that the change of government in Kiev resulted from a revolution or *coup d'état*, and that this excuses Russia from honouring its obligations to Ukraine. According to a 'senior Russian official', 'the security assurances were given to the legitimate government of Ukraine but not to the forces that came to power following the coup d'état.'⁵⁵ Lavrov repeated this argument in December 2014, saying that the Budapest Memorandum 'contains political obligations that are exactly the same as the OSCE obligations: to respect the sovereignty, territorial integrity and political independence of Ukraine. But it does not contain an obligation to recognise the results of armed coups d'état.'⁵⁶

The Russian argument implies that agreements are concluded not between countries but between governments, and that they therefore entail no enduring obligations if there is a change of government in one of the parties. It is a longstanding principle of international law, however, that treaties and other international agreements are concluded by governments on behalf of states. If a country's government changes, the state and its treaty partners are still bound by its treaties and other international agreements. In the words of a leading authority on treaty law:

There is no difference in international law between a treaty concluded on behalf of states and one concluded on behalf of governments, ministries or state agencies, since a treaty entered into by a government, ministry or state agency binds the state, and a change of government will, in itself, *not* affect its binding force.⁵⁷

This principle also applies to revolutions. 'International law does not generally count revolutions among those events that justify termination of existing treaty rights and obligations'.⁵⁸

⁵³ Statement by the Government of the Union of Soviet Socialist Republics in 1924, quoted in 'Article 28. Rebus Sic Stantibus', *American Journal of International Law*, vol. 29, Supplement: Research in International Law, 1935, p. 1119.

⁵⁴ 'Article 24. Effect of governmental changes', *American Journal of International Law*, vol. 29, Supplement: Research in International Law, 1935, p. 1053.

⁵⁵ Statement by a 'senior Russian official' to the Arms Control Association, 14 March 2014, quoted in 'Ukraine, nuclear weapons, and security assurances at a glance', March 2014, <http://www.armscontrol.org/factsheets/Ukraine-Nuclear-Weapons>, accessed 17 March 2015.

⁵⁶ Remarks and responses to reporters' questions by Foreign Minister Sergey Lavrov during a news conference following the OSCE Ministerial Council meeting, Basel, 5 Dec. 2014, http://mid.ru/brp_4.nsf/o/385F88ABE477B8A3C3257DA6003426D2, accessed 17 March 2015.

⁵⁷ Anthony Aust, *Modern treaty law and practice*, 3rd edn (Cambridge, UK, and New York: Cambridge University Press, 2013), p. 55 (emphasis in original).

⁵⁸ 'Revolutions, treaties, and state succession', *The Yale Law Journal* 76: 8, July 1967, p. 1669.

It bears repeating that the post-February 2014 government of Ukraine does not claim to represent a new state not bound by the treaties and other international agreements concluded by preceding governments. It is Russia that has asserted that a new Ukrainian state has been established, and that this releases Moscow from obligations to respect its agreements with preceding Ukrainian governments.

Furthermore, the Russian government has accused the Ukrainian government of violating OSCE principles by cultivating 'extremely aggressive nationalism'. In Moscow's view, the Ukrainian government mistreated the country's ethnic Russians to such an extent that it 'pushed' out 'an entire region' (Crimea), which sought 'self-determination ... by entering the Russian Federation'.

The current 'government' in Kiev, which came to power as a result of an anti-constitutional coup, by their policy, primarily with regard to national minorities, has in fact itself broken the unity of Ukraine and literally pushed an entire region out ... Ukraine's loss of its territorial integrity was a result of complicated internal processes, with which neither Russia nor its obligations under the Budapest Memorandum have anything to do ... It is absolutely clear that Ukraine has not fulfilled these [OSCE] obligations and had been conniving in the growth of extremely aggressive nationalism for many years, which finally led to the self-determination of the Crimean population by entering the Russian Federation.⁵⁹

Rather than acknowledging its intervention in Ukraine, Moscow has asserted that it has respected the country's sovereignty, and has drawn a contrast between its own behaviour in this respect and that of western countries: 'The Russian Federation strictly observed and still observes its obligations under the Budapest Memorandum to respect the sovereignty of Ukraine, including during the many months of political confrontation in Kiev, which cannot be said about the policy of western countries, who openly neglected this sovereignty during the events on the "maidan".'⁶⁰ In other words, from Moscow's perspective, it is western countries that have infringed the Budapest Memorandum commitments. In Moscow's view, the United States and the European Union failed to respect Ukraine's 'sovereignty and political independence' because 'they had "indulged a coup d'état" that ousted President Viktor Yanukovich' in February 2014.⁶¹

US officials have advanced a different interpretation of the events in Ukraine in February 2014. In March 2015, Anthony Blinken, the US deputy secretary of state, said, 'Yanukovych fled. Having forfeited his legitimacy, and indeed lost the support of his own party, western-oriented reformers filled the void—pursuant

⁵⁹ 'Statement by the Russian Ministry of Foreign Affairs regarding accusations of Russia's violation of its obligations under the Budapest Memorandum of 5 December 1994', 1 April 2014, http://www.mid.ru/bdomp/brp_4.nsf/e78a48070f128a7b43256999005bcbb3/b173cc77483edeb944257cafo04e64c1!OpenDocument, accessed 17 March 2015.

⁶⁰ 'Statement by the Russian Ministry of Foreign Affairs regarding accusations of Russia's violation of its obligations under the Budapest Memorandum of 5 December 1994'. The 'maidan' (or 'square') is shorthand for Independence Square in Kiev, the scene of the 'Euromaidan' demonstrations that began in November 2013.

⁶¹ 'Russia, West trade accusations over 1994 Ukraine deal', Reuters, 19 March 2014, <http://www.reuters.com/article/2014/03/19/us-ukraine-crisis-russia-pact-idUSBREA2I0ZA20140319>, accessed 17 March 2015.

to the constitution and with the overwhelming support of Yanukovych's party—to try and make good on the promise of the Maidan.⁶²

In February 2015 a British House of Lords committee noted that: 'As one of the four signatories of the Budapest Memorandum (1994), which pledged to respect Ukraine's territorial integrity, the UK had a particular responsibility when the crisis erupted. The Government has not been as active or as visible on this issue as it could have been.'⁶³ Some observers have attributed the failure of western governments to condemn more strongly Russia's disregard for the Budapest Memorandum to a 'stovepipe mentality'—that is, a tendency to regard the agreement as part of the Russia–Ukraine dossier rather than as an important case in point about security assurances affecting global non-proliferation prospects.⁶⁴ While some may have viewed it this way, informed specialists understood at once its relevance to nuclear non-proliferation. A more compelling factor explaining the restraint of London and Washington might have been an interest in minimizing domestic and international pressures to take action in response to Russia's violations of the Budapest Memorandum.⁶⁵

Grim consequences for Ukraine's security

Despite the public elements of the negotiating record, which show that the United States was cautious in its formulations, many Ukrainians mistakenly construed the security assurances in the Budapest Memorandum as guarantees. For this reason many Ukrainians now refer to the Budapest Memorandum with an epithet that signifies 'infamous or notorious'.⁶⁶

The Ukrainian government has expressed interest in replacing the Budapest Memorandum with a more reliable diplomatic instrument. In his inaugural address in June 2014, Ukraine's newly elected president, Petro Poroshenko, said: 'I will use my diplomatic experience to ensure the signature of an international agreement that would replace the Budapest Memorandum. Such agreement must provide direct and reliable guarantees of peace and security—up to military support in case of threat to territorial integrity.'⁶⁷

⁶² Remarks on Transatlantic Cooperation and the Crisis in Ukraine, Antony J. Blinken, Deputy Secretary of State, Berlin, Germany, 5 March, 2015, <http://www.state.gov/s/d/2015/238644.htm>. For an informative account of the collapse of Yanukovich's authority, see Andrew Higgins and Andrew E. Kramer, 'Ukraine leader was defeated even before he was ousted', *New York Times*, 3 Jan. 2015, <http://www.nytimes.com/2015/01/04/world/europe/ukraine-leader-was-defeated-even-before-he-was-ousted.html>, both accessed 17 March 2015.

⁶³ House of Lords, European Union Committee, *The EU and Russia: before and beyond the crisis in Ukraine*, 6th Report of Session 2014–15, HL Paper 115 (London: The Stationery Office, 20 Feb. 2015), p. 29, para. 82. The *Financial Times* offered a comparable judgement in an editorial: 'Given that Britain was one of three powers that offered Ukraine assurances about its territorial integrity in a 1994 agreement, it is hard not to agree that Britain should have been playing a more prominent role from the start': 'Britain's drift to the foreign policy sidelines', *Financial Times*, 7–8 Feb. 2015.

⁶⁴ Author's interviews, Paris, Nov. 2014.

⁶⁵ To quote a British observer, 'shining a light' on Russian non-compliance with the Budapest Memorandum could create demands for a response: 'The more the US and the UK agitated about the Budapest Memorandum, the more vulnerable they would have been to people saying, "Why don't you do something about it?"': Author's interview, London, 2 Dec. 2014.

⁶⁶ Oleksandr Zaytsev, in *The Budapest Memorandum* at 20, p. 8.

⁶⁷ Petro Poroshenko, 7 June 2014, address of the President of Ukraine during the ceremony of inauguration,

In August 2014, Prime Minister Arseniy Yatsenyuk said that his government would ask the parliament to approve legislation that would allow Ukraine to pursue NATO membership.⁶⁸ In December 2014 he said that 'the first step' to NATO membership would be 'to eliminate so-called non-bloc status that was granted to Russia by then President Yanukovych'.⁶⁹ Later that month the Ukrainian parliament approved legislation to end the country's 'non-aligned' status in view of the 'aggression against Ukraine from the side of the Russian Federation, its illegal annexation of the autonomous republic of Crimea, waging of a so-called "hybrid war", military interventions in eastern regions of Ukraine, and constant military, political, economic and informational pressure'.⁷⁰ In signing this law, President Poroshenko predicted that Ukraine would be ready for NATO membership in five or six years and that 'the people of Ukraine will determine whether the country will join NATO', implying that a referendum on the question would be organized.⁷¹

Despite Kiev's intermittent expressions of interest in NATO membership over the years, Ukrainian accession to the alliance remains a distant prospect, owing in part to the reluctance of several NATO allies to take actions seen as antagonistic to Russia in a sensitive area. While Russian behaviour has clearly increased interest in NATO membership within Ukraine, Putin's actions in this crisis have made the attainment of that membership even more remote. Welcoming Ukraine into their collective defence organization would mean accepting the risk of armed conflict with Russia; and despite their willingness to provide some forms of assistance to Ukraine, the NATO allies are not prepared to run the risk of war with Russia for the sake of Ukraine. As Putin has apparently intended, as a result of the crisis Ukraine has become the scene of a 'frozen conflict' with unresolved border disputes. When the allies stated at the 2008 Bucharest Summit, with no specific time horizon but in a curiously imperious, even prophetic tone, that Georgia and Ukraine 'will become members of NATO',⁷² they raised the prospect of eventual membership without offering any protection against Russian aggression. This seems to have been a factor in Russia's actions making these countries the sites of interminable 'frozen conflicts', with diminished prospects for inclusion in the alliance and, not incidentally, the European Union.

Russian actions affecting Ukraine have made the country more vulnerable to Russian pressures. These actions go beyond the annexation of Crimea and the

<http://www.president.gov.ua/en/news/30488.html>, accessed 17 March 2015.

⁶⁸ Eyder Peralta, 'Ukrainian Prime Minister says government will seek NATO membership', 29 Aug. 2014, <http://www.npr.org/blogs/thetwo-way/2014/08/29/344202662/ukrainian-prime-minister-says-government-will-seek-nato-membership>, accessed 17 March 2015.

⁶⁹ Joint press point with NATO Secretary General Jens Stoltenberg and the Prime Minister of Ukraine, Arseniy Yatsenyuk, 15 Dec. 2014, <http://www.nato.int/cps/en/natolive/116040.htm?selectedLocale=en>, accessed 17 March 2015.

⁷⁰ Ukrainian legislation quoted in Roman Olearchyk, 'Ukraine moves closer to Nato bid', *Financial Times*, 23 Dec. 2014, <http://www.ft.com/intl/cms/s/0/70d1639a-8ac2-11e4-82db-00144feabdc0.html>, accessed 17 March 2015.

⁷¹ Poroshenko, quoted in Radio Free Europe/Radio Liberty, 'Ukrainian President signs law allowing NATO membership bid', 29 Dec. 2014, <http://www.rferl.org/content/ukraine-poroshenko-signs-law-allowing-nato-bid/26767916.html>, accessed 17 March 2015.

⁷² North Atlantic Council, Bucharest summit declaration, 3 April 2008, para. 23.

creation of a zone of permanent destabilization in eastern Ukraine. The Russians have also made clear Ukraine's dependence on Russian energy resources, with no respect for another of their Budapest Memorandum promises—'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'.

Perceptive Ukrainian observers saw long ago the weakness of the Budapest Memorandum and related commitments and the prohibitive drawbacks to pursuing a national nuclear weapons programme, and concluded that NATO membership was the only possible source of security for their country. In the words of Volodymyr Vasylenko, a prominent Ukrainian diplomat and scholar, 'instead of speculating on false and dangerous ... alternatives such as pseudo assurances or nuclear status, efforts should be made to speed up Ukraine's integration into NATO'.⁷³

Steven Pifer argued in June 2014, however, that not pursuing a deeper relationship with NATO now seems an appropriate policy for Ukraine: deepening relations with NATO would antagonize Moscow, and there is no appetite in the Alliance to accept Ukraine as a member or offer a membership action plan. Most importantly, a push toward NATO would be hugely divisive within Ukraine, where polls show at most only 20–30 per cent of the population would support such a policy; it would be particularly controversial in eastern Ukraine.⁷⁴

Subsequent polls have shown much higher levels of Ukrainian public support for joining the alliance: 44 per cent in October 2014 and 51 per cent the following month.⁷⁵ Moreover, Ukrainian proponents of NATO membership such as Vasylenko hold that 'properly informed citizens of Ukraine will say "yes" to our country's NATO membership and, hence, to their security and the reliable guarantee of their rights, basic freedoms, and wellbeing'.⁷⁶

NATO allies differ on the question of membership for Ukraine, with Poland and certain other allies in central and eastern Europe more favourably disposed than some west European allies. Consensus among all the current allies is an essential precondition of an invitation to a country to join the alliance; and there is no prospect of consensus to offer Ukraine a Membership Action Plan or another

⁷³ Volodymyr Vasylenko, 'Why Ukraine should not issue threats about leaving the NPT', 4 Feb. 2010, <http://www.day.kiev.ua/en/article/day-after-day/why-ukraine-should-not-issue-threats-about-leaving-npt>, accessed 17 March 2015.

⁷⁴ Steven Pifer, 'Ukraine, Russia and the US policy response, statement for the record', Senate Foreign Relations Committee, 5 June 2014, p. 10.

⁷⁵ For the October 2014 poll result, see Agence France-Presse, 'Poll: support for NATO membership grows in Ukraine', *Defense News*, 16 Oct. 2014, <http://archive.defensenews.com/article/20141016/DEFREG01/310160031/Poll-Support-NATO-Membership-Grows-Ukraine>. For the November 2014 poll result, see Brianna Lee, 'Ukraine inches toward NATO, but membership not likely anytime soon, analysts say', *International Business Times*, 23 Dec. 2014, <http://www.ibtimes.com/ukraine-inches-toward-nato-membership-not-likely-anytime-soon-analysts-say-1765996>, both accessed 17 March 2015.

⁷⁶ Volodymyr Vasylenko, 'On assurances without guarantees in a "shelved document": idealizing the Budapest Memorandum cannot and must not be a "step" in the shaping of Ukraine's foreign policy', 15 Dec. 2009, <http://www.day.kiev.ua/en/article/close/assurances-without-guarantees-shelved-document>, accessed 17 March 2015.

route to membership in the foreseeable future.⁷⁷ Despite the alliance's 'open door' declarations of principle, some allied observers have publicly expressed profound misgivings about accepting responsibility for Ukraine's security. In the United Kingdom, for example, Julian Lewis, a Conservative Member of Parliament, wrote in December 2014 that the credibility of NATO's Article 5 collective defence commitment 'was stretched to its absolute limit with the admission of the Baltic States' and that admitting 'countries such as Ukraine ... would undermine, at a stroke, the credibility of Article 5'.⁷⁸

In April 2014 Alexander Vershbow, NATO's deputy secretary general, said that the allies would 'maintain a long-term "non-recognition" policy regarding Russia's annexation of Crimea'. He added that the allies

have agreed to strengthen our support for Ukraine through intensified political and military cooperation. This includes helping Ukraine's armed forces transform into modern and effective institutions that can defend their country against external threats while providing credible deterrence. It includes improving the ability of Ukrainian forces to operate together with Allied forces and greater participation in NATO exercises, so that Ukraine can continue to be a contributor to global security as we have seen in the Balkans, in Afghanistan and, most recently, in our maritime counter-piracy mission, Ocean Shield.⁷⁹

This statement made clear that Ukraine's armed forces—not NATO forces—would 'defend their country against external threats while providing credible deterrence'. It also suggested that Ukrainian interoperability with NATO forces would be pursued for crisis management operations outside the provisions of Article 5, not for collective defence. Ukraine is not a member of the alliance, and therefore does not benefit from its Article 5 collective defence protection. The NATO allies have taken decisions regarding the security of partners outside the alliance on a case-by-case basis, and so far they have carefully demarcated their actions in support of Ukraine. Some allied observers, notably in Warsaw, have expressed concern that the limited western response to Russia's violations of the Budapest Memorandum in Ukraine has led to an 'emboldening' of Russia and has thus contributed to the continuation of Moscow's intervention in Ukraine, with direct implications for the security of Poland, the Baltic states, and other NATO allies.⁸⁰

The NATO allies have emphasized the importance of Article 5 of the North Atlantic Treaty to minimize any erosion of the credibility of that collective defence commitment. Underscoring Ukraine's status as a non-ally has nonetheless raised important questions about extended deterrence protection for the NATO allies most geostrategically exposed, owing in part to their proximity to Ukraine and/or Russia, and for non-NATO US allies and partners dependent on US protection.

⁷⁷ For an overview of NATO–Ukraine relations prior to the outbreak of the Ukraine crisis in November 2013, see David S. Yost, *NATO's balancing act* (Washington DC: United States Institute of Peace Press, 2014), pp. 227–31.

⁷⁸ Julian Lewis, letter to the editor, *Financial Times*, 29 Dec. 2014.

⁷⁹ 'A new strategic reality in Europe', speech by NATO Deputy Secretary General Ambassador Alexander Vershbow to the 21st International Conference on Euro-Atlantic Security, Krakow, Poland, 4 April 2014, http://www.nato.int/cps/en/natolive/opinions_108889.htm?selectedLocale=en, accessed 17 March 2015.

⁸⁰ Author's interviews, Warsaw, May 2014.

The grim consequences of Russia's violations of the Budapest Memorandum include the discrediting in the post-Soviet space of security commitments short of NATO membership. Prior to the Ukraine crisis, some expert observers had speculated that Russia's objections to further NATO enlargement might be appeased with multilateral pacts involving Russia as one of the guarantors of the security of non-NATO neighbours. That option appears implausible in the wake of Russia's violations of the Budapest Memorandum. As Michael Rühle, a German expert, has observed:

The flagrant violation of the 1994 Budapest agreement, which aimed at safeguarding Ukraine's territorial integrity through assurances by the US, the UK and Russia, has invalidated schemes that sought to work around the dilemma that NATO membership for Ukraine might have created. No country in Russia's neighbourhood will any longer regard such arrangements as reliably ensuring its security.⁸¹

György Schöpflin, a Hungarian scholar and Member of the European Parliament, recently wrote: 'Given the precedents, what guarantees are there that Russia would abide by the terms of a deal? The fate of the Budapest Memorandum (1994), binned by Russia, is hardly reassuring.'⁸²

Russia's annexation of Crimea and its interventions elsewhere in eastern Ukraine have demonstrated yet again Moscow's rejection of NATO's vision of cooperative security in the Euro-Atlantic region. Indeed, Russia has brought into question the international order based on the UN Charter by flouting its legal obligations and, as with the case of Georgia in 2008, attempting to modify international borders by force to its geostrategic advantage.⁸³

Responding to Russia's violations of the Budapest Memorandum

Despite the many articles and speeches referring to the Budapest Memorandum assurances as 'guarantees', such commitments were never made. The Americans refused to grant the Ukrainians the security 'guarantee' that they sought. Such a 'guarantee' would be similar to that in Article 5 of the North Atlantic Treaty; and, as John Buntin noted, 'the United States viewed this kind of guarantee as being completely out of the question'.⁸⁴

Roman Popadiuk, who was involved in the negotiations as the US ambassador to Ukraine in 1992–3, wrote that: 'While the United States was willing to entertain the idea of security assurances, it was not willing to provide ones that

⁸¹ Michael Rühle, *NATO enlargement and Russia: die-hard myths and real dilemmas* (Rome: NATO Defense College, 15 May 2014), p. 7.

⁸² György Schöpflin, 'Sovereignty of Ukrainian people must be taken seriously', letter to the editor, *Financial Times*, 12 Aug. 2014.

⁸³ In 2008 Russia occupied the Georgian regions of Abkhazia and South Ossetia and recognized them as independent states with which Moscow has concluded military basing agreements. In 2014 Russia annexed Crimea and Sevastopol from Ukraine and declared them new subjects of the Russian Federation. NATO governments have refused to recognize these border modifications. See the North Atlantic Council's Wales summit declaration, 5 Sept. 2014, paras 16 and 94, http://www.nato.int/cps/en/natohq/official_texts_112964.htm, accessed 17 March 2015.

⁸⁴ Buntin, *The decision to denuclearize*, p. 23.

would be legally binding.’⁸⁵ Popadiuk has added that non-compliance with the security assurances was expected to elicit at least a diplomatic *démarche* from the United States. ‘The Trilateral Agreement, if called into force by Kiev, would make it incumbent upon Washington to respond at least in a diplomatic fashion on Kiev’s behalf.’⁸⁶ Even though the United States took care to ensure that its Budapest Memorandum security assurances involved no new commitments to Ukraine and no obligations beyond consultations in the event of violations, in the face of Russia’s intervention in Ukraine the assurances were rightly interpreted as encompassing grave obligations that Washington and London should honour.

Pifer, who participated in the deliberations, has reported that it was clear from the negotiations that took place between Washington and Kiev and also with the Russians that it was understood that if there was a violation then—I mean Ukrainian concern as articulated to us was about Russian violations of Ukrainian sovereignty or territorial integrity—that there would be a response incumbent on the United States and on Great Britain.

Pifer has added that, while ‘we did not get into at any point a detailed conversation [about] what would that response be’, ‘there is an obligation on the United States that flows from the Budapest Memorandum to provide assistance to Ukraine, and ... that would include lethal military assistance’.⁸⁷ In Pifer’s view, this should consist of ‘defensive arms’ such as ‘portable light anti armor weapons that ... would help stabilize the cease fire and stabilize a settlement’.⁸⁸

In March 2014 the Ukrainian parliament approved a resolution asking the United Kingdom and the United States to ‘fulfil their obligations ... and take all possible diplomatic, political, economic and military measures urgently to end the aggression and preserve the independence, sovereignty and existing borders of Ukraine’.⁸⁹ London and Washington had, however, taken care in the Budapest Memorandum only to promise ‘to respect the independence and sovereignty and the existing borders of Ukraine’, not to ‘preserve’ them—or to defend or to guarantee or to protect them. Despite such a literal reading of the document, Washington in particular had conveyed the impression to the Ukrainians that, as Pifer has reported, there would be a substantive response to Russian violations of the commitments.

Mark Shields, a prominent American journalist, said in August 2014 that:

In 1994 ... for Ukraine to surrender its considerable nuclear arsenal at that time, there was a guarantee given by the United States and western democracies and European nations of support and defense and security. And I don’t think there is any question that that obligation

⁸⁵ Roman Popadiuk, *American–Ukrainian nuclear relations*, McNair Paper no. 55 (Washington DC: Institute for National Strategic Studies, National Defense University, October 1996), pp. 59–60.

⁸⁶ Popadiuk, *American–Ukrainian nuclear relations*, p. 61.

⁸⁷ Pifer, in *The Budapest Memorandum* at 20, pp. 4, 16, 11.

⁸⁸ Pifer, in *The Budapest Memorandum* at 20, p. 5.

⁸⁹ Andrew Osborn and Alastair Macdonald, ‘Ukraine appeals to West as Crimea turns to Russia’, Reuters, 11 March 2014, <http://uk.reuters.com/article/2014/03/11/uk-ukraine-idUKBREA1HoEM20140311>, accessed 17 March 2015.

is on the table right now. I mean, the plausible deniability that Putin could sort of hide behind has just been totally exposed ... totally revealed for the fraud that it is.⁹⁰

Although the Budapest Memorandum was mistakenly called a 'forgotten treaty',⁹¹ and discussed by commentators as if it were a new legally binding obligation, its authors deliberately reaffirmed treaty commitments or political assurances already granted by the UN Charter, the CSCE Final Act, and the five NPT-recognized NWS. Russia's actions and the lack of a firmer western response to them have undermined these norms and assurances.

Steven Pifer has written that 'the United States must live up to its Budapest commitments', and that this means 'coordinating with European and other countries to penalize Russia until it alters its behavior'. Pifer has rightly added that 'security assurances in the future will have little credibility unless the United States fulfills those that it undertook in Budapest'.⁹² He has prescribed, as noted above, a combination of measures, including defensive military assistance, and 'more intense' economic sanctions 'if the Russians do not change course'.⁹³

A paradoxical aspect of this prescription is that, as Pifer has noted in other works, the United States took care to ensure that the Budapest Memorandum security assurances (other than those restating UN Charter provisions) were not legally binding and to avoid incurring obligations beyond those already assumed under other auspices. As Pifer has written, 'we were very clear—and the Ukrainians understood this back in 1994—that we were not going to use the word guarantee because we were not prepared to extend a military commitment'.⁹⁴ Even so, despite the caution of US diplomats and lawyers about the word 'guarantee', leading journalists such as Philip Stephens of the *Financial Times* have written that 'the security guarantees offered in the Budapest memorandum in return for Kiev's surrender of nuclear weapons were unequivocal'.⁹⁵

As noted above, the US government took care to limit its commitments to respecting its UN-, NPT- and CSCE-related obligations and consulting with the other parties to the Budapest Memorandum. Many observers—including a number of Ukrainians, as Pifer has reported—nonetheless got the impression that the US and others were committed by the memorandum not only to respect Ukraine's territorial integrity but to help defend it. Western governments may decide that it is in their security interests, and morally and politically right, to do more in support of Ukraine's security, owing in part to the commitments reaffirmed in the Budapest Memorandum—above all, the UN Charter and the Helsinki Final Act.

⁹⁰ Mark Shields, PBS NewsHour, 29 Aug. 2014, <http://www.pbs.org/newshour/bb/shields-brooks-islamic-state-cancer-crists-campaign/#transcript>, accessed 22 March 2015.

⁹¹ Jill Reilly and Lizzie Edmonds, 'Revealed: the forgotten treaty which could drag the US and UK into WAR with Russia if Putin's troops intervene in Ukraine', *Daily Mail*, 28 Feb. 2014, <http://www.dailymail.co.uk/news/article-2570335/Former-British-Ambassador-Moscow-warns-Russia-invaded-Ukraine-difficult-avoid-going-war.html>, accessed 17 March 2015.

⁹² Pifer, 'Honoring neither the letter nor the law'.

⁹³ Pifer, in *The Budapest Memorandum* at 20, p. 6.

⁹⁴ Steven Pifer, National Public Radio interview, 'The role of 1994 nuclear agreement in Ukraine's current state', 9 March 2014, <http://www.wbur.org/npr/288298641/the-role-of-1994-nuclear-agreement-in-ukraines-current-state?ft=3&f=288298641>, accessed 17 March 2015.

⁹⁵ Philip Stephens, 'Guns are only half an answer for Ukraine', *Financial Times*, 13 Feb. 2015.

Russia's violations of its commitments in these accords have, in conjunction with other Russian actions, furnished grounds for prudent steps to strengthen the alliance's deterrence and defence posture and to reassure allies in central and eastern Europe. In September 2014, in the Wales summit declaration, the allies announced their approval of a Readiness Action Plan to ensure that allied forces can 'conduct NATO's full range of missions, including deterring aggression against NATO allies and demonstrating preparedness to defend NATO territory'.⁹⁶

Moreover, the allies may well choose to reassess the extent to which their partners, notably in Partnership for Peace, could benefit from assurances and assistance short of the collective defence pledge in Article 5 of the North Atlantic Treaty. The allies agreed in 1994, in establishing Partnership for Peace, with language echoing that of Article 4 of the North Atlantic Treaty,⁹⁷ that 'NATO will consult with any active participant in the Partnership if that Partner perceives a direct threat to its territorial integrity, political independence, or security'.⁹⁸ Similarly, in 1997 the allies agreed with Ukraine to 'develop a crisis consultative mechanism to consult together whenever Ukraine perceives a direct threat to its territorial integrity, political independence, or security'.⁹⁹ On the basis of these pledges and others in the NATO–Ukraine Charter, Ukraine and the allies have undertaken extensive cooperation, including Ukrainian contributions to NATO-led crisis management operations and Ukrainian participation in alliance exercises.

The protective deterrent effect of such pledges and activities might nonetheless be enhanced by cultivating what Alexandra de Hoop Scheffer has called 'a middle-way between Article 5 and a complete absence of reaction, especially vis-à-vis the security of NATO partners'. As she has noted, for the NATO allies there are important principles of international order at stake in addition to the security of specific partner nations.

In the case of Ukraine, the legitimacy of NATO's reaction is based on the need to protect international rules and values, not on Article 5. As such, NATO should not defend Ukraine as a non-member nation, and therefore create a precedent, but should defend the international order that has been threatened by the violations of Ukrainian territory.¹⁰⁰

The allies are moving to provide assistance to Ukraine on a collective and national basis, with sanctions against Russia and various economic and military measures in support of Ukraine. In September 2014 the NATO–Ukraine Commission

⁹⁶ North Atlantic Council, Wales summit declaration, 5 Sept. 2014, para. 8.

⁹⁷ According to Article 4 of the North Atlantic Treaty, 'the Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened'.

⁹⁸ Partnership for Peace: framework document issued by the heads of state and government participating in the meeting of the North Atlantic Council, Brussels, 10–11 Jan. 1994, para. 8, <http://www.nato.int/docu/comm/49-95/c940110b.htm>, accessed 17 March 2015.

⁹⁹ Charter on a Distinctive Partnership between the North Atlantic Treaty Organization and Ukraine, 9 July 1997, para. 15, http://www.nato.int/cps/en/natolive/official_texts_25457.htm, accessed 17 March 2015.

¹⁰⁰ Alexandra de Hoop Scheffer, 'NATO should act in Europe's defense, not Ukraine's', *New York Times*, 9 Sept. 2014, <http://www.nytimes.com/roomfordebate/2014/09/08/should-nato-be-helping-ukraine-face-russia/nato-should-act-in-europes-defense-not-ukraines>, accessed 23 March 2015.

noted that 'all 28 allies, including through NATO, are enhancing their support so that Ukraine can better provide for its own security ... allies have taken note of Ukraine's requests for military-technical assistance, and many allies are providing additional support to Ukraine on a bilateral basis, which Ukraine welcomes'.¹⁰¹

In December 2014 Jens Stoltenberg, the NATO secretary general, confirmed that the alliance had established five defence capacity building trust funds to 'help Ukraine to improve its own security' and that 'several NATO allies are providing different kinds of support', including 'practical support' and 'equipment'.¹⁰² While the NATO allies have deepened their cooperation with Ukraine, they decided in April 2014 'to suspend all practical civilian and military cooperation between NATO and Russia', while continuing 'political dialogue in the NATO–Russia Council'.¹⁰³

In the current debates within and among NATO nations about the extent to which they are prepared to supply military assistance to Ukraine, some of the proponents of providing such assistance have referred specifically to Russia's disregard for its Budapest Memorandum promises. For example, in February 2015 a group of eight former high-level US officials wrote that 'Russia has grossly violated those [Budapest Memorandum] commitments, which were key to Kiev's decision to eliminate its nuclear weapons. The United States and Britain should, in response, do more to robustly support Ukraine and penalize Russia'.¹⁰⁴

The debates about the extent to which NATO and EU countries are willing to provide lethal military equipment to the Kiev government have delivered a further illustration of the weakness of the Budapest Memorandum security assurances. Ukraine renounced its post-Soviet nuclear status and acceded to the NPT as an NNWS in return for assurances that have proved unenforceable in practice and unreliable in terms not only of direct military intervention but also of the supplies of lethal military equipment for self-defence requested by Kiev.

The Russian government has brandished nuclear threats with 'nuclear signalling' and exercises, show-of-force manoeuvres along NATO and EU borders with nuclear-capable aircraft,¹⁰⁵ and statements, official and 'unofficial'.¹⁰⁶ Among

¹⁰¹ Joint statement of the NATO–Ukraine Commission, press release (2014) 124, 4 Sept. 2014, http://www.nato.int/cps/en/natohq/news_112695.htm?selectedLocale=en, accessed 17 March 2015.

¹⁰² Joint press point with NATO Secretary General Jens Stoltenberg and the Prime Minister of Ukraine, Arseniy Yatsenyuk, 15 Dec. 2014.

¹⁰³ Statement by NATO foreign ministers, 1 April 2014, para. 6, http://www.nato.int/cps/en/natolive/news_108501.htm, accessed 17 March 2015.

¹⁰⁴ Ivo Daalder, Michele Flournoy, John Herbst, Jan Lodal, Steven Pifer, James Stavridis, Strobe Talbott and Charles Wald, *Preserving Ukraine's independence, resisting Russian aggression: what the United States and NATO must do* (Washington DC: Atlantic Council of the United States, Feb. 2015), p. 3.

¹⁰⁵ For an overview of recent Russian exercises and show-of-force manoeuvres, see Thomas Frear, Łukasz Kulesa and Ian Kearns, *Dangerous brinkmanship: close military encounters between Russia and the West in 2014* (London: European Leadership Network, Nov. 2014), http://www.europeanleadershipnetwork.org/dangerous-brinkmanship-close-military-encounters-between-russia-and-the-west-in-2014_2101.html, accessed 17 March 2015. See also Kathrin Hille, 'Putin aide says US arming Kiev would draw Russia into war', *Financial Times*, 11 Feb. 2015.

¹⁰⁶ In March 2014 Dmitry Kiselyov, a Russian state television broadcaster, said that: 'Russia is the only country in the world realistically capable of turning the United States into radioactive ash'. Quoted in Maria Tadeo, 'State television presenter warns Russia could "turn the US into radioactive dust"', *Independent*, 17 March 2014, <http://www.independent.co.uk/news/world/europe/state-television-presenter-warns-russia-could-turn-the-us-into-radioactive-dust-9197433.html>, accessed 17 March 2015.

Putin's many remarks referring to Russia's nuclear weapons, one might note his comment that: 'We are hoping that our partners will understand the imprudence of attempts to blackmail Russia, [and] remember what discord between large nuclear powers can do to strategic stability.'¹⁰⁷ Putin's statement in March 2015 that he was prepared to put Russia's nuclear forces on alert during the Crimea operation in February–March 2014 can also be interpreted as a nuclear warning to foreign governments as to Russia's sphere of interests.¹⁰⁸ Russia's coercive nuclear threats appear to have contributed to the reluctance of western governments to arm the Kiev government's forces and enable them to impose greater costs on Russia in response to its aggression.¹⁰⁹ Although such costs might undermine Putin's domestic support and help to deter further aggression, Moscow's implicit threats of escalation to nuclear conflict seem to have had an impact.

While fear of war with a nuclear-armed Russia appears to be an important factor explaining the reluctance of NATO and EU governments to arm Ukraine with lethal military equipment, there are other factors as well, including an assessment that the future status of Ukraine matters much more to Russia than to NATO and EU governments collectively (with some important differences among the western governments) and that Russia will therefore spend whatever it takes to gain its ends—more than western governments are willing to spend in support of Ukraine. According to this assessment, if providing arms to Kiev did not lead to a wider war involving other countries, it might simply increase the number of Ukrainians (and Russians) killed before reaching the same political result, because NATO is not prepared to fight Russia to defend the sovereignty and territorial integrity of Ukraine.

It is noteworthy in this regard that the German Chancellor has repeatedly cited the Cold War experience of a prolonged political-military stalemate as preferable to war. In September 2014 she said, 'We needed 40 years to overcome East Germany. Sometimes in history one has to be prepared for the long haul, and not ask after four months if it still makes sense to keep up our demands.'¹¹⁰ The implications of this protracted crisis extend beyond Russia, Ukraine and the post-Soviet space to the global nuclear non-proliferation regime.

¹⁰⁷ Quoted in Tom Parfitt, 'Vladimir Putin issues new "large nuclear power" warning to West', *Daily Telegraph*, 16 Oct. 2014, <http://www.telegraph.co.uk/news/worldnews/vladimir-putin/11167192/Vladimir-Putin-issues-new-large-nuclear-power-warning-to-West.html>, accessed 17 March 2015.

¹⁰⁸ Roger McDermott, 'Putin celebrates first anniversary of seizing Crimea', *Eurasia Daily Monitor* 12: 49, 17 March 2015.

¹⁰⁹ NATO officials have noted Russia's implicit nuclear threats. In March 2015, for example, Ambassador Alexander Vershbow, the NATO Deputy Secretary General, said that 'the Russians are flaunting their nuclear capability' with 'more nuclear exercises' and statements 'as part of their messaging ... Maybe this is just rhetoric, but it's very irresponsible.' See the interview with Ambassador Vershbow, 'Russia's nuclear capability', *Defense News*, 29 March 2015, <http://www.defensenews.com/videos/defense-news/2015/03/29/70629414/>, accessed 11 April 2015.

¹¹⁰ Merkel quoted in Arne Delfs and Brian Parkin, 'Merkel evokes Cold War in warning of long Ukraine crisis', 30 Sept. 2014, <http://www.bloomberg.com/news/articles/2014-09-29/merkel-says-eu-u-s-may-be-facing-long-ukraine-crisis>, accessed 22 March 2015. See also her remarks in the discussion at the Munich Security Conference, reported in Alison Smale, 'Crisis in Ukraine underscores opposing lessons of Cold War', *New York Times*, 8 February 2015, http://www.nytimes.com/2015/02/09/world/crisis-in-ukraine-underscores-opposing-lessons-of-cold-war.html?_r=0, accessed 13 April 2015.

Security assurances and nuclear non-proliferation and disarmament

Russia's disregard for its Budapest Memorandum commitments—and the decisions by the United Kingdom and the United States to take little action beyond economic sanctions on Russia and limited military assistance to Ukraine—may have a grave impact on the credibility of major-power security assurances. These assurances have been regarded as important instruments in efforts to persuade new NWS (such as North Korea) to accede to the NPT as NNWS, and to persuade NNWS developing nuclear options (such as Iran) to cease activities inconsistent with the NPT. As Arseniy Yatsenyuk, the prime minister of Ukraine, put it:

What does the current military aggression of the Russian Federation on Ukrainian territory mean? ... It means that a country which voluntarily gave up nuclear weapons, rejected nuclear status and received guarantees from the world's leading countries is left defenceless and alone in the face of a nuclear state that is armed to the teeth. I say this to our western partners: if you do not provide guarantees, which were signed in the Budapest Memorandum, then explain how you will persuade Iran or North Korea to give up their status as nuclear states.¹¹¹

Moreover, security assurances have historically been highly valued by the NNWS parties to the NPT, and Russia's disregard for such assurances will reinforce widespread perceptions of their limitations. Russia has violated its UN Charter and Helsinki Final Act commitments concerning Ukraine's territorial integrity; these were among the assurances in the Budapest Memorandum extended to Ukraine in the context of its accession to the NPT as an NNWS. As Patricia Lewis of Chatham House has observed:

Russia has demonstrated that such assurances count for little in the real world. These assurances were part of the package that enabled Ukraine to join the NPT and Russia's actions will send shivers down the spines of all 180+ non-nuclear weapons states that rely on such assurances. Russia's actions could lead to a severe loss of trust in security assurances.¹¹²

If this proves to be the case, Russia will have undermined the sustainability of the global nuclear non-proliferation regime. Proliferators are likely to employ Russia's sabotaging of the Budapest Memorandum as part of their argumentation to justify their own weapons development programmes. The security assurances did not provide security for Ukraine, and some observers criticize the United Kingdom and the United States for their caution almost as much as Russia for its action. Moreover, the consequent erosion of confidence in the non-proliferation regime and in the international order affects countries other than those seeking an additional pretext for initiating or continuing nuclear weapons programmes. The disappointment of Japan and certain other countries that would prefer to have confidence in the non-proliferation regime may lead to further hedging

¹¹¹ Yatsenyuk, quoted in Andrew Osborn and Alastair Macdonald, 'Ukraine appeals to West as Crimea turns to Russia', Reuters, 11 March 2014, <http://uk.reuters.com/article/2014/03/11/uk-ukraine-idUKBREA1H0EM20140311>, accessed 17 March 2015.

¹¹² Patricia Lewis, 'Ukraine, security assurances and nuclear weapons', 28 March 2014, <https://www.chatham-house.org/media/comment/view/198641>, accessed 17 March 2015.

measures—precautions against dangers in an increasingly unstable security environment. In short, doubts about the reliability of major-power security assurances could create incentives to initiate, retain or accelerate national nuclear weapons programmes.

Mark Fitzpatrick of the International Institute for Strategic Studies has underscored the damage that Russia has done to security assurances as diplomatic tools for nuclear non-proliferation. 'From here on out, any Russian guarantees associated with the NPT will not be deemed credible. Security assurances by other nuclear-weapons states will likely be assigned guilt by association.'¹¹³ Indeed, to some extent this is already the case.

In the wake of Russia's violations of the Budapest Memorandum, Bernard Sitt, a French scholar, has noted 'concern that the entirety of the nuclear non-proliferation regime may be weakened'. In Sitt's analysis, the implications include diminished prospects for further negotiations on US–Russian nuclear arms reductions and fresh doubts about the commitments of 'certain States' to their NNWS status under the NPT.¹¹⁴

The prospects for negotiating further reductions in Russian and US nuclear weapons were in fact poor even before the Ukraine crisis. Since the entry into force of the New START treaty in February 2011, the Russians have shown little interest in such negotiations. Foreign Minister Lavrov and other high-level Russian officials responded to President Obama's June 2013 proposal to go beyond New START, 'reducing our deployed strategic nuclear weapons by up to one-third',¹¹⁵ by repeating a list of demanding preconditions for further negotiations on nuclear arms reductions, including a treaty limiting US missile defences, the full implementation of the New START objectives, the removal of all US non-strategic nuclear weapons from Europe, and the participation of other NWS in the reductions negotiations and process.¹¹⁶

Alexander Yakovenko, the Russian ambassador to the United Kingdom and a former deputy foreign minister (2005–2011), said that the negotiations should include not only the five NPT-recognized NWS (China, France, Russia, the United Kingdom and the United States) but 'all states which in fact possess nuclear weapons'. Yakovenko reiterated the Russian position that the negotiations should encompass 'the entire complex of factors that influence ... strategic stability', such as missile defence, 'non-nuclear strategic weapons', 'the issue of placing weapons in space' and 'a serious imbalance in the sphere of conventional weapons in Europe'.¹¹⁷ In October 2014 Lavrov emphasized the Russian interest

¹¹³ Mark Fitzpatrick, 'The Ukraine crisis and nuclear order', *Survival* 56: 4, Aug.–Sept. 2014, p. 86.

¹¹⁴ Bernard Sitt, 'The Ukraine crisis and the nuclear order', *Non-Proliferation Monthly*, March 2014, <http://www.cesim.fr/documents/onp/eng/91.pdf>, accessed 17 March 2015.

¹¹⁵ President Obama, remarks at the Brandenburg Gate, Berlin, 19 June 2013, www.whitehouse.gov/the-press-office/2013/06/19/remarks-president-obama-brandenburg-gate-berlin-germany, accessed 17 March 2015.

¹¹⁶ Pavel Felgenhauer, 'Obama's nuclear cuts initiative meets frosty response in Moscow', *Eurasia Daily Monitor* 10: 117, 20 June 2013.

¹¹⁷ Alexander Yakovenko, 'Is it possible to make a nuclear-free world?', 28 June 2013, <http://rt.com/op-edge/nuclear-free-obama-berlin-399/>, accessed 17 March 2015.

in constraining missile defences and non-nuclear strategic strike capabilities in any negotiations on nuclear force reductions.¹¹⁸

In March 2014, Ban Ki-moon, the UN secretary general, pointed out that security assurances had made it possible for Ukraine to accede to the NPT as an NNWS, and that 'the credibility of the assurances given to Ukraine in the Budapest Memorandum of 1994 has been seriously undermined by recent events'. Indeed, the credibility of the Russian assurances has been annulled. Ban added: 'The implications are profound, both for regional security and the integrity of the nuclear non-proliferation regime.' He recommended that the 2015 NPT Review Conference 'address the legitimate interest of non-nuclear states in receiving unequivocal and legally-binding security assurances from nuclear-weapon states'.¹¹⁹

It should be recalled, however, that the Budapest Memorandum security assurances regarding respect for Ukraine's 'territorial integrity' were already legally binding, since they were restatements of UN Charter obligations. Russia's disregard for its Budapest Memorandum commitments could weaken the nuclear nonproliferation regime while aggravating the long-standing debate between the NPT-recognized NWS and the NNWS on the adequacy of existing positive and negative security assurances, as opposed to proposed legally binding assurances.¹²⁰

Russia's behaviour may reinforce the policies pursued by Iran and North Korea. It is hard to establish credible and reliable guarantees for NNWS allies,¹²¹ and all the more difficult to make security assurances for non-allies effective and convincing. The United Kingdom and the United States were clearly not prepared to extend a guarantee with existential stakes to Ukraine.

Except for economic sanctions against Russia and limited military aid to Ukraine, as noted above, London and Washington have taken little action beyond what the Budapest Memorandum prescribed—to convene consultations, which were snubbed by Russia. This has given rise to concern that Japan, South Korea and other US allies may lose confidence in US commitments and become more disposed to consider seeking their own nuclear deterrence capabilities. According to a *Wall Street Journal* editorial: 'U.S. and U.K. assurances have been exposed as meaningless ... Ukraine's fate is likely ... to make nonnuclear powers and even close U.S. allies wonder if they can still rely on America's security guarantees.'¹²²

In response to this argument, the United States could point out that Ukraine was not protected by a legally binding commitment such as the North Atlantic Treaty or the Japan–US Security Treaty, nor were US interests engaged in Ukraine to the same extent as with its treaty allies. In Mark Fitzpatrick's words: 'For the

¹¹⁸ 'Remarks by Foreign Minister Sergey Lavrov during an open lecture on Russia's current foreign policy', Moscow, 20 Oct. 2014, http://www.mid.ru/brp_4.nsf/o/28BF39A9DFD8DDE544257D77005CCE7B, accessed 17 March 2015.

¹¹⁹ Fredrik Dahl, 'Ukraine crisis could affect global anti-atom bomb pact—UN's ban', Reuters, 24 March 2014, <https://uk.news.yahoo.com/ukraine-crisis-could-affect-global-anti-atom-bomb-183513261.html#ahKDLBg>, accessed 17 March 2015.

¹²⁰ For background on the debate about positive and negative security assurances, see Joseph F. Pilat, 'Reassessing security assurances in a unipolar world', *Washington Quarterly* 28: 2, Spring 2005, pp. 159–70.

¹²¹ David S. Yost, 'Assurance and US extended deterrence in NATO', *International Affairs* 85: 4, July 2009, pp. 755–80.

¹²² 'Ukraine and nuclear proliferation', *Wall Street Journal*, 19 March 2014, p. A16.

US, the Korean Peninsula is a priority; the Crimea Peninsula is not.’¹²³ In view of these political realities the question of Ukraine’s nuclear options has been posed again.

Russia’s disrespect for the Budapest Memorandum has provoked speculation in Ukraine and elsewhere that a nuclear-armed Ukraine might have been able to deter Russia’s aggression. President Poroshenko has publicly regretted Ukraine’s decision to transfer the Soviet-made nuclear weapons on its soil to Russia.¹²⁴ Vladimir Ogryzko, Ukraine’s foreign minister from 2007 to 2009, has said that unless western countries take effective measures to ensure Ukraine’s security, Ukraine should withdraw from the NPT and build nuclear weapons.¹²⁵ Pavlo Ryzanenko, a Ukrainian member of parliament, has said: ‘If you have nuclear weapons people don’t invade you.’¹²⁶ According to Walter Russell Mead of Yale University: ‘If Ukraine still had its nukes, it would probably still have Crimea.’¹²⁷

By this logic, Ukraine’s experience—the violation of its sovereignty and territorial integrity after having acceded to the NPT and transferred the Soviet-made nuclear weapons on its soil to Russia on the basis of the Budapest Memorandum assurances—could serve as an argument for others to retain or initiate nuclear weapons programmes. Laurent Fabius, the French foreign minister, expressed this concern incisively:

If the feeling is given out that a state which had nuclear weapons and agrees to give them up not only doesn’t have its integrity guaranteed but has a part of its territory severed, that’s clearly an incentive for countries that may have nuclear weapons not to give them up, and above all it’s an incentive for the other countries to tell themselves: we must acquire nuclear weapons so that our territory is protected.¹²⁸

Similarly, Angela Merkel asked: ‘What country would give up its nuclear capacity when we cannot ensure that territorial integrity is accepted?’¹²⁹ In other words, the consequences of Russia’s disregard for the Budapest Memorandum—and the lack of effective enforcement action in response to this disregard—could include a loss of credibility for security assurances and the creation of incentives to retain or acquire nuclear capabilities. In view of the violation in 2014 of assurances provided in 1994, states may judge it prudent to hedge against the possible need to produce nuclear weapons decades hence.

¹²³ Fitzpatrick, ‘The Ukraine crisis and nuclear order’, p. 86.

¹²⁴ ‘Poroshenko regrets Ukraine formerly gave up its nuclear weapons’, *Euromaidan Press*, 24 Aug. 2014, <http://euromaidanpress.com/2014/08/24/poroshenko-regrets-ukraine-formerly-gave-up-its-nuclear-weapons/>, accessed 17 March 2015.

¹²⁵ ‘Kyiv should rebuild its nuclear arsenal, says former minister’, *EurActiv.com*, 17 March 2014, <http://www.euractiv.com/global-europe/ukraine-rebuild-nuclear-arsenal-news-534179>, accessed 17 March 2015.

¹²⁶ Pavlo Ryzanenko, quoted in Oren Dorell, ‘Ukraine may have to go nuclear, says Kiev lawmaker’, *USA Today*, 11 March 2014, <http://www.usatoday.com/story/news/world/2014/03/10/ukraine-nuclear/6250815/>, accessed 17 March 2015.

¹²⁷ Walter Russell Mead, ‘Putin invades Crimea: Obama hardest hit?’, *American Interest*, 3 March 2014, <http://www.the-american-interest.com/wrm/2014/03/03/putin-invades-crimea-obama-hardest-hit/>, accessed 17 March 2015.

¹²⁸ Ukraine: statements by M. Laurent Fabius, Minister of Foreign Affairs, during his joint press conference with his Brazilian counterpart, Paris, 19 March 2014, <http://www.ambafrance-uk.org/Crimea-vote-has-absolutely-no>, accessed 17 March 2015.

¹²⁹ Speech by Federal Chancellor Angela Merkel on the occasion of the 51st Munich Security Conference.

Whether having somehow retained Soviet-made nuclear weapons and delivery systems—and gained operational control over them—would have enabled Ukraine to deter Russian intervention in Crimea and elsewhere in the eastern part of the country is a matter of speculation and debate, a counterfactual thought experiment based on implausible premises. Thomas Moore of the Lugar Center has called it ‘a deeply attenuated proposition—but not because of abstract notions about nuclear weapons, but rather situational uniqueness and practical reality’.¹³⁰ Steven Pifer has observed: ‘Soviet nuclear warheads had relatively short shelf lives, and Ukraine lacked the infrastructure to refurbish the warheads, build new ones or produce needed elements such as tritium gas.’¹³¹ As for the option of Ukraine starting from scratch, in 1994 Victor Mikhailov, then Russia’s atomic energy minister, wrote: ‘It would take many decades for Ukraine to become a nuclear power—and funds which it does not have ... One can master anything. But what would it cost?’¹³² In an interview in 2014, Leonid Kravchuk said that producing and maintaining nuclear weapons was too costly a course for the country to envisage: ‘It would have cost us \$65 billion (53 billion euros), and the state coffers were empty.’¹³³ Moreover, the great costs of nuclear weapon capabilities would have been political as well as financial, in terms of Ukraine’s relations with Russia, the United States and the EU. In the light of these potential costs, Ukraine chose the Budapest Memorandum security assurances and associated financial and practical compensations.

Western countries remain convinced that Ukraine should not pursue a national nuclear weapons programme. In the words of Carlo Trezza, an Italian diplomat currently serving as head of the Missile Technology Control Regime: ‘Any European support to Ukraine should be linked to the maintenance of its status as a non-nuclear weapon state.’¹³⁴ What ‘European support’ could substitute for the Budapest Memorandum security assurances that Russia has disregarded? Since those security assurances, granted as inducements for Ukraine’s accession to the NPT as an NNWS, have proved useless in restraining Russia, some Ukrainians have asked whether their country could somehow be granted guarantees from NATO and/or the United States. Without such guarantees they fear that Ukraine will remain highly vulnerable to Russia.

Russia’s actions have called into question not only Ukraine’s security, but also the future of measures intended to promote nuclear arms control, disarmament and non-proliferation. The Budapest Memorandum was an element in a positive narrative of progress towards nuclear force reductions and negotiated constraints

¹³⁰ Thomas C. Moore, ‘The role of nuclear weapons during the crisis in Ukraine’, working paper presented at seminar at the Fondation pour la Recherche Stratégique, Paris, 2 July 2014, <http://www.thelugarcenter.org/newsroom-tlcexperts-8.html>, accessed 22 March 2015.

¹³¹ Steven Pifer, ‘Getting rid of nukes: the Trilateral Statement at 20 years’, Brookings Institution, 13 Jan. 2014, <http://www.brookings.edu/blogs/up-front/posts/2014/01/14-getting-rid-nukes-trilateral-statement-20-years-pifer>, accessed 17 March 2015.

¹³² Mikhailov, quoted in Dubinin, ‘Ukraine’s nuclear ambitions’.

¹³³ Kravchuk, quoted in Goncharenko, ‘Ukraine’s forgotten security guarantee’.

¹³⁴ Carlo Trezza, ‘Se Kiev riporta nella spirale degli armamenti’, *Istituto Affari Internazionali*, 19 March 2014, <http://www.affarinternazionali.it/articolo.asp?ID=2573#sthash.673PQUrX.dpuf>, accessed 17 March 2015.

on nuclear capabilities. It appears that Russia signed the memorandum when it was expedient to do so, and disregarded it when it posed an obstacle to the annexation of Crimea and further intervention in Ukraine.

In March 2014 President Putin argued that Russia had several justifications for its action regarding Crimea: that Soviet leaders had committed an 'outrageous historical injustice' in placing Crimea and other historically Russian territories under Ukrainian rule; that Crimea and Sevastopol are 'dear to our hearts, symbolising Russian military glory and outstanding valour'; that Russian-speakers and Russian citizens in Ukraine were victims of efforts 'to deprive' them 'of their historical memory, even of their language and to subject them to forced assimilation'; that 'nationalists, neo-Nazis, Russophobes and anti-Semites' had carried out a 'coup' in Kiev at the direction of 'foreign sponsors' in the West; that this 'coup' meant that there was 'no legitimate executive authority in Ukraine now'; that the residents of Crimea and Sevastopol had asked Moscow for help in pursuing self-determination on the model of the Kosovo precedent; that 'western partners, led by the United States', had 'lied to us many times, made decisions behind our backs, placed us before an accomplished fact', notably 'with NATO's expansion to the East, as well as the deployment of military infrastructure at our borders'; and that Ukrainian membership in NATO would put 'NATO's navy ... right there in this city of Russia's military glory, and this would create not an illusory but a perfectly real threat to the whole of southern Russia'.¹³⁵

These have remained the principal themes in Russian expositions of Moscow's motives, with scant attention to the implications for nuclear non-proliferation and disarmament of disregarding the Budapest Memorandum assurances about Ukraine's territorial integrity. By undermining prospects for nuclear non-proliferation, the Russians have undercut their own security interests, but they have demonstrated by their actions and their declared policy rationales that they have other political and strategic priorities.

These priorities may well include controlling not only Crimea and Sevastopol but also adjacent Ukrainian territories that could support broader ambitions beyond the exploitation of energy resources.¹³⁶ Russia's increased investments in its Black Sea Fleet, its recently established Mediterranean Task Force, and the improvements in Crimea's air defences and strike forces underline the fact that Crimea and Sevastopol constitute military assets applicable to many purposes.¹³⁷ As Paul Schwartz has observed, Russia's annexation of Crimea 'has rendered the

¹³⁵ Vladimir Putin, address by President of the Russian Federation, Kremlin, 18 March 2014, <http://eng.kremlin.ru/news/6889>, accessed 17 March 2015.

¹³⁶ Frank Umbach, 'The energy dimensions of Russia's annexation of Crimea,' *NATO Review*, 2014, <http://www.nato.int/docu/review/2014/nato-energy-security-running-on-empty/Ukraine-energy-independence-gas-dependence-on-Russia/EN/index.htm>; and William J. Broad, 'In taking Crimea, Putin gains a sea of fuel reserves,' *New York Times*, 17 May 2014, http://www.nytimes.com/2014/05/18/world/europe/in-taking-crimea-putin-gains-a-sea-of-fuel-reserves.html?_r=0, both accessed 11 April 2015.

¹³⁷ Capt. Thomas R. Fedyszyn, US Navy (ret.), 'The Russian navy "rebalances" to the Mediterranean', *US Naval Institute Proceedings Magazine* 139: 12, Dec. 2013, <http://www.usni.org/magazines/proceedings/2013-12/russian-navy-rebalances-mediterranean>; Dmitry Gorenburg, 'The role of the Black Sea Fleet in Russian naval strategy', *Russian Military Reform*, 6 March 2014, <https://russiamil.wordpress.com/2014/03/06/the-role-of-the-black-sea-fleet-in-russian-naval-strategy/>, both accessed 17 March 2015.

eastern half of Ukraine much less defensible' against air and naval operations.¹³⁸ Putin has nonetheless emphasized that 'This [Crimea operation] was not simply about land, of which we have no shortage as it is ... The issue at stake was the sources of our history, our spirituality and our statehood—the things that make us a single people and a single, united nation.'¹³⁹

The Russian authorities have made clear that—despite economic sanctions and international condemnation—they are willing to disregard longstanding legal and political norms, including those expressed in the Budapest Memorandum, in pursuit of strategic and economic advantages and the fulfilment of national identity goals.

Foreign Minister Lavrov and other high-level officials have highlighted the strategic significance of the annexation of Crimea by asserting that Moscow has the right to deploy nuclear weapons in Crimea, since (in Moscow's view) it has become part of Russia and is no longer part of Ukraine.¹⁴⁰ Some US members of Congress have deplored Russian statements since April 2014 indicating that Moscow might deploy nuclear weapons in Crimea: 'Locating nuclear weapons on the sovereign territory of another state without its permission is a devious and cynical action'. In their view, it 'further undermines Russian credibility in terms of the Budapest Memorandum that the Russian Federation signed in 1994'.¹⁴¹

Conclusion: implications for international order

Moscow's behaviour in the Ukraine crisis has reduced the credibility and utility of security assurances as a means to assuage anxieties, particularly those involving Russia, a major power capable of holding the United States at risk of nuclear attack. Russia's disregard for the Budapest Memorandum has also contributed to a general destabilization trend.

In a sense, as noted above, the Budapest Memorandum involved no new commitments by Russia, the United Kingdom and the United States. However, Russia's violations of the Budapest Memorandum are significant precisely because this document drew together and reaffirmed so many basic obligations in international law. While the CSCE Helsinki Final Act is deemed politically rather than legally binding, the UN Charter has been regarded as a bedrock foundation of international law since 1945.

¹³⁸ Paul N. Schwartz, 'Crimea's strategic value to Russia', Center for Strategic and International Studies, 18 March 2014, <http://csis.org/blog/crimeas-strategic-value-russia>, accessed 17 March 2015.

¹³⁹ Putin quoted in David M. Herszenhorn, 'A year after seizing Crimea, Putin celebrates as Ukraine seethes', *New York Times*, 18 March 2015, http://www.nytimes.com/2015/03/19/world/europe/a-year-after-seizing-crimea-putin-celebrates-as-ukraine-seethes.html?_r=0, accessed 22 March 2015.

¹⁴⁰ Lavrov, quoted in Sergei L. Loiko, 'Russia says it has a right to put nuclear weapons in Crimea', *Los Angeles Times*, 15 Dec. 2014, <http://www.latimes.com/world/europe/la-fg-russia-nuclear-crimea-20141215-story.html>, accessed 17 March 2015.

¹⁴¹ Letter to the President, 23 Sept. 2014, by Rep. Howard P. 'Buck' McKeon, Chairman of the Committee on Armed Services, US House of Representatives; Rep. Mike Rogers, Chairman of the Subcommittee on Strategic Forces; and Rep. Michel R. Turner, Chairman of the Subcommittee on Tactical Air and Land Forces. This letter is quoted in Bill Gertz, 'Russia deploying tactical nuclear arms in Crimea', *Washington Free Beacon*, 10 Oct. 2014, <http://freebeacon.com/national-security/russia-deploying-tactical-nuclear-arms-in-crimea/>, accessed 22 March 2015.

In March 2014 the G7 leaders referred to Russia's 'commitments in the Budapest Memorandum of 1994' as well as its UN Charter and CSCE obligations, and declared that, 'in addition to its impact on the unity, sovereignty and territorial integrity of Ukraine, the annexation of Crimea could have grave implications for the legal order that protects the unity and sovereignty of all states'.¹⁴² In September 2014 the NATO allies deplored 'Russia's pattern of disregard for international law' and 'its use of military and other instruments to coerce neighbours' as behaviour that 'threatens the rules-based international order and challenges Euro-Atlantic security'.¹⁴³

Expert observers throughout Europe have called attention to the perilous implications of Russia's conduct for international order and security. Karsten Voigt, a distinguished German diplomat and former member of the Bundestag, has cited Russia's violation of the Budapest Memorandum among various Russian actions that have led him to conclude that, 'for the foreseeable future, the vision of a pan-European peace order, regrettably, is not a realistic option'. In his judgement, 'Russia is alienating itself more and more from the democratic countries of Europe through its increasingly authoritarian development'.¹⁴⁴

Timothy Garton Ash, a British scholar, has emphasized the turmoil that could be provoked by the Putin doctrine of irredentism based on Russian ethnicity, in disregard of international law.

Russia, Mr. Putin insists, has a responsibility to protect all Russians abroad, and he gets to decide who is a Russian ... It is impossible to overstate the degree to which this is a threat not just to Russia's Eastern European and Eurasian neighbors but to the whole post-1945 international order.¹⁴⁵

The argument that Russia has a right based on history and ethnicity to disregard recognized international borders in order to correct territorial anomalies arising from actions by Khrushchev and other Soviet leaders sets a precedent with the potential to cause great upheavals. Using force to modify established borders on the basis of historical and ethnic grievances poses a fundamental challenge to international order. Nicolas Roche, a French specialist in nuclear affairs, has written that:

With its aggressive behaviour against a sovereign country, Russia has confirmed its revisionist will concerning the nuclear, European, and international order. It has put in danger one of the elementary principles of nuclear disarmament: it is realistic only if security is guaranteed. How can new phases of American–Russian nuclear disarmament be envisaged in such a context? How can it be argued that a world without nuclear

¹⁴² Statement of G7 Leaders on Ukraine, White House, Office of the Press Secretary, 12 March 2014, <http://www.whitehouse.gov/the-press-office/2014/03/12/statement-g-7-leaders-ukraine>, accessed 17 March 2015.

¹⁴³ North Atlantic Council, Wales summit declaration, 5 Sept. 2014, para. 18. The allies added that: 'We continue to believe that a partnership between NATO and Russia based on respect for international law would be of strategic value ... We regret that the conditions for that relationship do not currently exist' (para. 22).

¹⁴⁴ Voigt, quoted in Judy Dempsey, 'Europe and the future of German Ostpolitik', *Strategic Europe*, 13 Nov. 2014, <http://carnegieeurope.eu/strategieurope/?fa=57211>, accessed 17 March 2015.

¹⁴⁵ Timothy Garton Ash, 'Putin's deadly doctrine: "protecting" Russians in Ukraine has fatal consequences', *New York Times*, 18 July 2014, http://www.nytimes.com/2014/07/20/opinion/sunday/protecting-russians-in-ukraine-has-deadly-consequences.html?_r=0, accessed 12 April 2015.

weapons would necessarily be a safer world if elementary respect for the rule of law is not guaranteed?¹⁴⁶

As William Burke-White has observed, Russia's self-serving reinterpretation of basic principles of international law in the Ukraine crisis 'could well destabilise the tenuous balance between the protection of individual rights and the preservation of states' territorial integrity that undergirds the post-Second World War order'.¹⁴⁷ Russia has challenged long-established international legal principles 'in an effort to establish an alternative framework for the use of force in its sphere of influence'.¹⁴⁸ In the Russian outlook, as propounded by Putin, some states are more sovereign than others, and major powers define their own approach to international law.

It is a noteworthy geopolitical fact that Russia was not completely isolated in the March 2014 UN General Assembly vote on a resolution on Ukraine's territorial integrity. The resolution, which emphasized that the referendum in Crimea and Sevastopol had 'no validity' and could not serve as the basis for any alteration of their status, referred specifically to the Budapest Memorandum and the Helsinki Final Act, among other international instruments, including the 1997 Russia–Ukraine Treaty on Friendship, Cooperation, and Partnership.¹⁴⁹ Ten states joined Russia in rejecting the General Assembly resolution: Armenia, Belarus, Bolivia, Cuba, North Korea, Nicaragua, Sudan, Syria, Venezuela and Zimbabwe. It is significant that, although the resolution was adopted with the affirmative votes of 100 states, 58 states chose to abstain and 24 did not vote by being absent, perhaps deliberately in some cases. Argentina, Brazil, China, India and Kazakhstan were among the abstaining states.¹⁵⁰

In October 2014, Putin said that 'if there is an area where Russia could be a leader—it is in asserting the norms of international law', and repeatedly declared that Crimea had exercised a UN Charter right to self-determination in seeking membership in the Russian Federation.¹⁵¹ This reasoning could furnish the basis for an indefinite number of territorial expansions by Russia.

As Roy Allison has observed, the fact that 'western states do not have an unblemished record' in their post-Cold War military interventions 'in no manner serves to justify Russian actions in Crimea and eastern Ukraine, especially the grave step of annexation'.¹⁵² Moreover, Russia's assertive position may encourage competition among 'hubs' of leadership in defining and winning supporters for

¹⁴⁶ Nicolas Roche, 'L'interventionnisme de M. Poutine en Ukraine remet en cause l'ordre nucléaire', *Le Monde*, 11 March 2014, http://www.lemonde.fr/idees/article/2014/03/11/l-interventionnisme-de-m-poutine-en-ukraine-remet-en-cause-l-ordre-nucleaire_4381013_3232.html, accessed 17 March 2015.

¹⁴⁷ William W. Burke-White, 'Crimea and the international legal order', *Survival* 56: 4, Aug.–Sept. 2014, p. 65.

¹⁴⁸ Burke-White, 'Crimea and the international legal order', p. 69.

¹⁴⁹ Resolution adopted by the General Assembly, 27 March 2014, 68/262, 'Territorial integrity of Ukraine', http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262, accessed 17 March 2015.

¹⁵⁰ See, among other sources, 'Backing Ukraine's territorial integrity, UN Assembly declares Crimea referendum invalid', UN News Centre, 27 March 2014, http://www.un.org/apps/news/story.asp?NewsID=47443&Cr=ukraine&Cr1=#.VPffYcaRit_; Xinhua, 'UN General Assembly adopts resolution affirming Ukraine's territorial integrity', 28 March 2014, http://news.xinhuanet.com/english/world/2014-03/28/c_126325576.htm, both accessed 17 March 2015.

¹⁵¹ Putin speaking at the meeting of the Valdai International Discussion Club, Sochi, 24 Oct. 2014, <http://eng.kremlin.ru/news/23137>, accessed 17 March 2015.

¹⁵² Allison, 'Russian "deniable" intervention in Ukraine', p. 1295.

distinct and autonomous interpretations of international legal standards and precedents.¹⁵³

Russia's disregard for its Budapest Memorandum commitments can be seen as consistent with a larger pattern of Russian disrespect for international agreements. This includes Russia's suspension of compliance with the Conventional Armed Forces in Europe (CFE) Treaty and its non-compliance with the Intermediate-Range Nuclear Forces (INF) Treaty.¹⁵⁴ In his important speech of 18 March 2014, Putin asserted a right of intervention abroad to defend Russian-speakers and Russian citizens, denied violating international law with respect to Ukraine's territorial integrity, and compared Russia's behaviour towards Ukraine to that of western nations towards Serbia in the case of Kosovo.¹⁵⁵ In his October 2014 Valdai speech Putin added that Crimea's accession to the Russian Federation 'does not in any way mean that we do not respect Ukraine's sovereignty. We do respect Ukraine's sovereignty and will continue to do so in the future.'¹⁵⁶

It is significant that Russia has not only denied any violation of its Budapest Memorandum commitments, but has also denied annexing Crimea. In May 2014 Russian Prime Minister Dmitry Medvedev said:

We did not annex any part of Ukraine ... The population of the Autonomous Republic of Crimea held a referendum and voted for self-determination and for joining Russia in accordance with the existing procedure ... They started by proclaiming independence and after that, they asked to join Russia. We satisfied their request. The Russian Constitution was amended so that Crimea could join Russia as the result of a popular vote.¹⁵⁷

Unless Russia reverses its dangerous and unpredictable course, the Ukraine crisis, including Moscow's violations of its Budapest Memorandum commitments, may in retrospect stand out as a landmark in the breakdown of international order as it has been known since the formulation of the UN Charter and the Helsinki Final Act. Putin's aggressive efforts to advance Russian interests in the post-Soviet space, in Ukraine and elsewhere, promise to have damaging global repercussions.

¹⁵³ Burke-White, 'Crimea and the international legal order', pp. 73–4.

¹⁵⁴ Russia suspended its compliance with the 1990 CFE Treaty in 2007, without having ever complied with the Article IV requirement concerning host nation consent for the presence of its military forces in Georgia and Moldova. For details, see Yost, *NATO's balancing act*, pp. 323–6. As for the INF Treaty, according to the State Department's July 2014 compliance report: 'The United States has determined that the Russian Federation is in violation of its obligations under the INF Treaty not to possess, produce, or flight-test a ground-launched cruise missile (GLCM) with a range capability of 500 km to 5,500 km, or to possess or produce launchers of such missiles.' See *Adherence to and compliance with arms control, non-proliferation, and disarmament agreements and commitments* (Washington DC: US Department of State, July 2014), p. 8.

¹⁵⁵ Putin, address by President of the Russian Federation, 18 March 2014.

¹⁵⁶ Putin speaking at the meeting of the Valdai International Discussion Club, Sochi, 24 Oct. 2014. On the same occasion, Putin said: 'If Ukraine wants to keep its territorial integrity, and this is something we want as well, they need to understand that there is no sense in holding on to some village or other—this is pointless.'

¹⁵⁷ Russian Prime Minister Dmitry Medvedev, interview with Bloomberg TV, 20 May 2014, <http://government.ru/en/news/12509>, accessed 17 March 2015.