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of Kyiv)***UDC 341.01****DOI <https://doi.org/10.32842/2078-3736/2023.3.47>****BUDAPEST MEMORANDUM 1994 – (NON)GUARANTEES FOR UKRAINE**

The article analyses the provisions of the Budapest Memorandum, with which Ukraine was supposed to ensure and secure its sovereignty from aggression as a result of giving up nuclear weapons. However, in order to understand in more detail why this did not happen, the article pays attention to the analysis of the historical and legal conditions of signing the Budapest Memorandum and its consequences for Ukraine. The separate role of the United States of America in the process of Ukraine's loss of the status of a nuclear power was also noted. In addition, certain aspects of the US policy in the field of nuclear non-proliferation are considered, as well as the joint efforts of the US and Russia to deprive Ukraine of the nuclear status inherited from the USSR in 1991–1996.

The article refers and draws a conclusion regarding the violation by the signatory states of the "assurances" set forth in the Memorandum and the absence, as such, of means of deterring Russian aggression against nuclear-free Ukraine. Attention is focused on the need for military and political assistance to Ukraine from the signatory allies in the fight against Ukraine's aggressive neighbour.

The article also pays attention to the analysis of the national legislation that preceded the signing of the Memorandum, including the Declaration on State Sovereignty of Ukraine. In addition, the author draws attention to the role of the Budapest Memorandum in Russia's invasion of the territory of Donetsk and Luhansk regions, as well as the annexation of Crimea. It is not clear, however, whether this document constituted a legal commitment between its Parties or whether it was instead a political declaration without legal force. The distinction between political instruments and legal instruments is a constant issue in interstate relations and litigation practice.

Key words: *Budapest Memorandum, non-proliferation of nuclear weapons, security guarantees, nuclear status.*

Івженко Д. А. Будапештський меморандум 1994 р. – (Не)гарантії Україні

У статті проаналізовані положення Будапештського Меморандуму, якими начебто Україна мала забезпечити та убезпечити свій суверенітет від агресії внаслідок відмови від ядерної зброї. Однак, щоб детальніше зрозуміти чому це так і не сталося, в статті приділена увага аналізу історико-правових умови підписання Будапештського меморандуму та його наслідків для України. Зауважена також окрема роль Сполучених Штатів Америки в процесі втрати Україною статусу ядерної держави. Окрім того, розглянуто окремі аспекти політики США у сфері нерозповсюдження ядерної зброї, а також спільні зусилля США та Росії щодо позбавлення України успадкованого від СРСР ядерного статусу у 1991–1996 рр.

У статті проаналізовано та зроблено висновок щодо порушення державами-підписантами «запевнень», викладених у Меморандумі 1994 р. та відсутності, як таких, засобів стримування російської агресії проти без'ядерної Укра-



їни. Увага акцентується на необхідності військово-політичної допомоги Україні з боку союзників-підписантів у боротьбі проти агресивного сусіда України. В статті також приділена увагу аналізу національного законодавства, що передувала підписанню Меморандуму, в тому числі Декларації про державний суверенітет України. Окрім того, автор звертає увагу на роль Будапештського Меморандуму у вторгненні росії на територію Донецької та Луганської областей, а також анексії Криму. Незрозуміло, однак, чи цей документ становив юридичні зобов'язання між його Сторонами, чи натомість він є політичною декларацією, яка не має юридичної сили. Різниця між політичними інструментами та правовими інструментами є постійним питанням у міждержавних відносинах і практиці позовів.

Ключові слова: Будапештський Меморандум, нерозповсюдження ядерної зброї, гарантії безпеки, ядерний статус.

Introduction. Considering the aggressive war of russian federation against Ukraine, our country is forced to ask for a huge amount of humanitarian and military help from the whole international community. Despite the obvious unreasonable russian federation's behaviour, some of «authoritative» EU politicians even allow themselves to accuse Ukraine in «asking too much», ready to support explicitly or implicitly russian aggression and sacrifice the interests of Ukraine in favour of russia.

Thus, Viktor Orban, Hungarian prime minister, repeatedly asserted that vladimir putin will not lose and time is on russia's side calling Ukraine «the land of nobody» [1].

At the same time, nobody should forget that at one time Ukraine received authoritative international legal guarantees of its security in exchange for giving up a significant part of its defence potential (the so-called Budapest Memorandum). Therefore, supporting Ukraine in the protection of its territorial integrity is not the mercy of the so-called «guarantors», but their international legal obligation.

«During the last few years, we witnessed a clear violation of the Budapest Memorandum, which guaranteed the territorial integrity of Ukraine in exchange for peaceful and voluntary nuclear disarmament» – Andrzej Duda stated [2].

«After annexing Ukraine's Crimea in 2014, russia continues to undermine the country's sovereignty, independence and territorial integrity, as well as its own Budapest Memorandum commitments to Ukraine» – Lithuania's Foreign Ministry has also condemned russia's moves [3].

In one of his interviews, the Head of the Office of the President of Ukraine Andriy Yermak, commenting on the 28th anniversary of the Budapest Memorandum, stated that "the piece of paper turned out to be just a piece of paper," and russia, as one of the guarantors of the document, was a terrorist [4].

Analysis of recent research and publications. There was a significant amount of scientific research paper on the problems of the Budapest Memorandum after 1994. The subject matter of these works generally differed by period. Thus, until about the middle of the 2000s, the prevailing opinion was that Ukraine had to get rid of its armed arsenal, primarily nuclear, under the pressure of world players. Later (2014), even when the ineffectiveness of the Budapest Memorandum became clear, Prof. V.A. Vasylenko stated the following: in order for Ukraine to become a sovereign state, and it's independent status to be recognised by the whole world, it was necessary to get rid of nuclear weapons [5, p. 6–10].

At the same time, at the end of the 2000s there were proposals to transform the Budapest Memorandum into a full-fledged, legally binding bilateral or multilateral legal agreement, in particular, its ratification. However, only after the fact of russian aggression against Ukraine, the problems of the status of the Budapest Memorandum and the presence/absence and scope of the obligations of the «guarantors» to Ukraine became the subject of practical discussion

The purpose of the article is to analyse the historical and legal issues of the signing of the Budapest Memorandum, as well as to find out the reasons for the non-fulfilment of the guarantees



established in the Memorandum, as well as to determine the legal consequences of such non-fulfilment considering the full-scale armed invasion of Russia into Ukraine.

Presenting main material. It should be started as of July 16, 1990, the day of the Declaration on the State Sovereignty of Ukraine. I believe that this day is one of the most memorable in the history of independent Ukraine, when it became finally clear that Ukraine is ready to remove the burden of the Soviet Union out of itself. The collapse of the communist empire was inevitable. However, the long existence of the USSR could not disappear without a trace, the new Russian Empire arose or revived from the ashes of the USSR, the only matter – under a different name, which is the Russian Federation.

It is also impossible not to mention the Agreement between the Ukrainian Soviet Socialist Republic and the Russian Soviet Federative Socialist Republic, signed on November 19, 1990., while analysing the provisions of which, it can be concluded that any agreement with the Russian Federation is not worth the paper it is signed on.

In accordance with Article 1 of the Treaty, the parties recognise each other as sovereign states and undertake to refrain from actions that may harm the state sovereignty of the other Party, as well as recognise and respect the territorial integrity of the Ukrainian Soviet Socialist Republic and the Russian Soviet Federative Socialist Republic in the currently existing within the borders of the USSR. As we can see Russian Federation has nothing common with complying with its obligations [6].

First of all, let us note that one of the final chords of the Cold War was the signing in Moscow on July 31, 1991 by the Soviet Union and the United States of the Treaty on the Reduction and Limitation of Strategic Offensive Weapons.

Due to the will of fate and historical circumstances, our state became the third largest in the world in terms of its nuclear potential after the USA and Russia. After looking at the statistics, which have become publicly available, we find out that with the collapse of the USSR, 222 units of strategic carriers remained on the territory of Ukraine – 176 intercontinental ballistic missiles (ICBM) and 46 heavy bombers (VB), including the latest TU -160, as well as appropriate nuclear equipment (about 2,000 nuclear warheads of intercontinental ballistic missiles (ICBMs), cruise missiles (CR) and nuclear bombs for bombers). In addition, a significant number of tactical nuclear warheads remained on the territory of Ukraine, which some modern politicians are so worried about. At the same time, it has been no secret for nearly 20 years that Ukraine inherited nuclear potential from the USSR under conditions of complete lack of control over it, since the decision to use nuclear weapons could only be made at the level of Moscow.

Already on December 18, 1991, L. Kravchuk assured US Secretary of State James Baker that Ukraine would do everything for the fastest withdrawal of nuclear missiles from its territory and asked to provide it with appropriate assistance in solving this problem. Also, in his letter to the US president, the Ukrainian leader claimed that Ukraine will ensure the destruction of all nuclear weapons, including strategic offensive weapons placed on its territory.

The collapse of the Soviet Union made it necessary to resolve the issue of nuclear weapons. The idea of the United States of America was to leave Russia as the sole heir to the nuclear status of the USSR, to retain the place of a permanent member of the UN Security Council, while forcing Kazakhstan, Belarus and Ukraine to become nuclear-free states, to remove tactical and strategic nuclear weapons from their territories.

The additional five-party Protocol to the Treaty on Strategic Offensive Weapons was signed by all participants on May 23, 1992 in Portugal and entered the history of diplomacy under the name of the Lisbon Protocol [7].

According to the Article 1 of the Protocol, Republic of Belarus, Republic of Kazakhstan, Russian Federation and Ukraine as states are the legal successors of the former Union of the Soviet Socialist Republics according to the Agreement and assume the obligations of the former Union Soviet Socialist Republics under the Agreement.

Moreover, according to the Article 5 of the Protocol, The Republic of Belarus, the Republic of Kazakhstan, and Ukraine accede as soon as possible to the Agreement on the Non-Proliferation



of Nuclear Weapons of June 1, 1968, as non-nuclear-weapon States Parties, and immediately take all necessary actions to that end in accordance with their constitutional practice.

In November 1993, the Parliament of Ukraine voted to ratify the Agreement, but defined 13 additional conditions. These conditions included security guarantees, financial assistance for disposal, compensation for tactical nuclear weapons already sent to Russia, and recognition that only 36% of launchers and 42% of warheads on Ukrainian territory should be eliminated. Therefore, the "nuclear club" should have expanded, but instead, the Ukrainian leadership came under strong pressure from NATO countries, in particular the United States, and especially from the Russian Federation. The Council's resolution received sharp criticism from the US and provoked corresponding threats from Russia.

Therefore, in September 1993, tripartite nuclear negotiations began in the format of the USA – Ukraine – the Russian Federation.

The sad reality for Ukraine is that, having become the owner after the collapse of the USSR of the third largest nuclear arsenal in the world, our country never had not only positive control over strategic nuclear weapons, that is, the ability to use them at its own discretion, but also the negative – the ability to prevent Moscow from using its main components. Initially, there was no unanimity in Washington on the issue of nuclear disarmament of Ukraine.

On September 30, 1994, the new President of Ukraine, L. Kuchma, sent letters to the Presidents of Russia, the United States, France, and the Prime Minister of Great Britain "with proposals for concluding a multilateral (USA, Russia, Great Britain, France, Ukraine) Memorandum».

On December 5 of the same year, 1994, the Memorandum on Security Assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons (Budapest Memorandum) was signed in Budapest. The mentioned document was signed by the Presidents of Ukraine, Russia and the USA – L. Kuchma, B. Yeltsin and B. Clinton – as well as the Prime Minister of Great Britain J. Major during the meetings of the CSCE/OSCE Summit in Budapest.

In addition to the three mentioned nuclear powers, two others, which are also permanent members of the UN Security Council, China and France, officially expressed similar guarantees, but did not formally sign the Budapest Memorandum (the Chinese government limited itself to a statement dated December 4, 1994, and France to the Declaration with the accompanying letter of President F. Mitterrand dated December 5, 1994). Undoubtedly, this in no way contributed to strengthening the legal foundations of this document, which did not even acquire the status of an Agreement.

Ukraine gave up nuclear weapons, and the USA, Russia and Britain promised: "To respect the independence, sovereignty and existing borders of Ukraine, to refrain from the threat of force or its use against the territorial integrity or political independence of Ukraine, to refrain from economic pressure aimed at subjugating its own interests, Ukraine's exercise of the rights inherent in its sovereignty". Russia has broken its promise. Former Minister of Foreign Affairs of Ukraine, Volodymyr Ogrzyzko believes that this «undermines the main principle of international law: *pacta sunt servanda* – agreements must be fulfilled» [8].

A few points should not be overlooked. First, if you compare the Ukrainian and English versions of the Memorandum, you should note terminological differences. In the English-language version, assurances are used to provide security, while in the Ukrainian-language version – guarantees. Ukraine was denied guarantees under completely absurd pretexts, no less absurd than those given in 2014–2016, in order to "justify" the refusal to provide Ukraine with defensive weapons ("not to provoke Moscow"), to which it is entitled under the UN Charter as a victim of external aggression.

Considering the territorial integrity, the Parties of the Agreement undertook to respect the territorial integrity of each of the participating States. Accordingly, they will refrain from any action against the territorial integrity, political independence or unity of any participating State and, in particular, from any action that constitutes the use of force or the threat of force. States Parties shall equally refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in violation of international law or the object of acquisition by



such measures or the threat of their implementation. No occupation or acquisition of this kind will be recognised as lawful. That is, the legal annexation by the Russian Federation of four regions of Ukraine and Crimea is a direct violation of the guarantees of the Budapest Memorandum.

I would also like to point out that even before the beginning of the Russian-Ukrainian war in 2014, the Russian Federation repeatedly violated the Budapest Memorandum, which was directly revealed by exerting economic pressure on Ukraine, in particular with regard to energy supplies, the introduction of unjustified restrictions on Ukrainian exports of certain types of agricultural and other products. However, all this was neither a lesson, nor a warning, nor an incentive for the Ukrainian leadership and politicians to think about the problem of the state's defence capability, which was limited to certain reflections and discussions in the expert environment.

On 19 February 2022, 5 days before the large-scale invasion of Russian invasion into Ukraine, which everyone in the West allegedly knew and warned about, President V. Zelenskyi during speech at the Munich Security Conference stated, that he initiates negotiations between the participants of Budapest Memorandum on providing security guarantees to Ukraine, and if negotiations do not take place, Kyiv will question the decision to give up nuclear weapons. Zelenskyi said that for giving up the world's third nuclear potential, Ukraine received security guarantees. «Now we don't have these weapons, we don't have security either. There is also no part of the territory of our state, which, by the way, is larger in area than Switzerland, the Netherlands or Belgium, and most importantly, there are no millions of our citizens – citizens of Ukraine. But we have right to demand a transition from a policy of appeasement to guarantees of security and peace. Since 2014, Ukraine has tried three times to convene consultations of the guarantor states of the Budapest Memorandum. Three times without success. Today, Ukraine will do it for the fourth time. I will initiate consultations within the framework of the Budapest Memorandum» – Zelenskyi stressed out [9].

After the annexation of Crimea in 2014, it became clear that "assurances" to preserve the integrity of Ukraine are not enough. This was understood both in Kyiv and in the world. At the time, Chatham House staff member and freelance academic consultant on international security James Scherr said: "Ukraine needs to make itself interesting, but in a positive way. It must overcome its perception by the West as a burden. It should be perceived as a country that solves its own problems. It should be supported not because of agreements, but because it is worth supporting». After the full-scale invasion on February 24, Ukraine proved that it is "worth supporting." But the negotiations convened by Volodymyr Zelenskyi on February 19 have not yet taken place.

Conclusions. Budapest Memorandum as of 05.12.1994 is a legally binding document according to which Ukraine exchanged its nuclear munitions and means of delivery for security guarantees as a nuclear-free state. Ukraine's renunciation of nuclear status is accompanied by lack of real security guarantees of our state. At the same time, issues regarding the implementation of the declared in the Budapest Memorandum provisions is not absolutely hopeless. Ukraine can insist on fulfilling the conditions of the act under study, since, as we have proven, the latter is legally binding for the signatory countries.

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