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BUDAPEST MEMORANDUM'S LEGACY IN KAZAKHSTAN IN THE CONTEXT OF THE RUSSIAN-UKRAINIAN WAR

Abstract

With the Russian annexation of Crimea in 2014 and the subsequent Russian-Ukrainian war that began in 2022, the discussion on the Russian violation of the Budapest Memorandum has started. Like Ukraine, with the signing of the Budapest Memorandum in 1994 the Republic of Kazakhstan received security assurances from nuclear powers: Russia, the United Kingdom and the United States. With the content-analysis technique being employed, this paper aims to consider the Budapest Memorandum from a state practice perspective. The paper will argue that from the perspective of state practice, many disappointments and regrets over the Budapest memorandum have been expressed.

Key words: Budapest Memorandum, international security, international law, Kazakhstan, Russia, Ukraine, nuclear arms

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РЕСЕЙ-УКРАИНА СОҒЫСЫ КОНТЕКСТІНДЕГІ ҚАЗАҚСТАНДАҒЫ БУДАПЕШТ МЕМОРАНДУМЫНЫҢ МҰРАСЫ

Аннотация

2014 жылы Қырымның Ресейге қосылуымен және 2022 жылы басталған Ресей-Украина соғысымен Ресейдің Будапешт меморандумын бұзуы туралы пікірталас басталды. Украина сияқты, 1994 жылы Будапешт меморандумына қол қою арқылы Қазақстан Республикасы ядролық державалардан: Ресейден, Ұлыбританиядан және АҚШ-тан қауіпсіздік кепілдігін алды. Мазмұнды талдау әдісін қолдана отырып, бұл мақала Будапешт меморандумын мемлекеттік тәжірибе тұрғысынан қарастыруға бағытталған. Мақалада мемлекеттік тәжірибе тұрғысынан Будапешт меморандумына қатысты көптеген көңілсіздіктер мен өкініштер айтылғаны дәлелденеді.

Негізгі сөздер: Будапешт меморандумы, халықаралық қауіпсіздік, халықаралық құқық, Қазақстан, Ресей, Украина, ядролық қару

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НАСЛЕДИЕ БУДАПЕШТСКОГО МЕМОРАНДУМА В КАЗАХСТАНЕ В КОНТЕКСТЕ РОССИЙСКО-УКРАИНСКОЙ ВОЙНЫ

Аннотация

С присоединением Крыма к России в 2014 году и последующей российско-украинской войной, которая началась в 2022 году, началось обсуждение нарушения Россией Будапештского меморандума. Как и Украина, с подписанием Будапештского меморандума в 1994 году Республика Казахстан получила гарантии безопасности от ядерных держав: России, Великобритании и США. Используя метод контент-анализа, данная статья направлена на рассмотрение Будапештского меморандума с точки зрения государственной практики. В статье будет доказано, что с точки зрения государственной практики было выражено много разочарований и сожалений по поводу Будапештского меморандума.

Ключевые слова: Будапештский меморандум, международная безопасность, международное право, Казахстан, Россия, Украина, ядерное оружие

After the collapse of the Soviet Union, Russia, Kazakhstan, Ukraine and Belarus gained independence as well as nuclear weapons because nuclear weapons and means of delivery were physically located in the territories of these republics. With the Budapest Memorandum signed in 1994, Belarus, Kazakhstan and Ukraine gave up their nuclear weapons in favor of Russia mainly and nuclear arms infrastructure was deliberately destroyed under international supervision. In return, three nuclear powers (Russia, the United Kingdom and the United States) have provided their security assurances. France and the People's Republic of China have provided similar assurances in separate letters. With the Russian annexation of Crimea in 2014 and following the massive invasion of Ukraine in 2022, the discussion on the Russian violation of the Budapest Memorandum has started. In February 2022 with the start of the Ukrainian war, the President of Ukraine publicly addressed the Budapest Memorandum case several times and expressed his disappointment: "The Budapest Memorandum let us all down. Starting with those who were weak and legally signed this undertaking to our entire society, because we were sure that our territorial integrity and security exists and is protected" [1].

Key elements of the Budapest Memorandum [2] consist of the following:

1. Nuclear powers reaffirm their commitment to Ukraine/Kazakhstan/Belarus, in accordance with the principles of the Commission on Security and Cooperation in Europe Final Act, to respect the Independence and Sovereignty and the existing borders of Ukraine.

2. Nuclear powers reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine/Kazakhstan/Belarus, and that none of their weapons will ever be used against Ukraine/Kazakhstan/Belarus except in self-defense or otherwise in accordance with the Charter of the United Nations.

3. Nuclear powers reaffirm their commitment to Ukraine/Kazakhstan/Belarus, in accordance with the principles of the CSCE Final Act, to refrain from economic coercion designed to subordinate to their own interest the exercise by Ukraine/ Kazakhstan/Belarus of the rights inherent in its sovereignty and thus to secure advantages of any kind.

4. Nuclear powers reaffirm their commitment to seek immediate United Nations Security Council action to provide assistance to Ukraine/ Kazakhstan/Belarus, as a non-nuclear-weapon State Party to the Treaty on the Non-Proliferation of nuclear weapons, if Ukraine/Kazakhstan/Belarus should

become a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used.

5. Nuclear powers reaffirm, in the case of the Ukraine/ Kazakhstan/Belarus, their commitment not to use nuclear weapons against any non-nuclear-weapon State Party to the Treaty on the Non- Proliferation of nuclear weapons, except in the case of an attack on themselves, their territories or dependent territories, their armed forces, or their allies, by such a state in association or alliance with a nuclear weapon state.
6. Nuclear powers will consult in the event a situation arises which raises a question concerning these commitments.

Up to the annexation of Crimea in 2014, there has not been many talks on the Budapest Memorandum. One of the episodes was in 2013 when the United States Embassy in Minsk, Belarus made a statement, where it referred to the Budapest Memorandum as “not legally binding” [3]. It was an official Media Statement by the U.S. Embassy in Minsk as response to repeated assertions by the government of Belarus that U.S. sanctions violate the 1994 Budapest Memorandum. In the media statement they pointed out: Although the *Memorandum is not legally binding*, we take these political commitments seriously and do not believe any U.S. sanctions, whether imposed because of human rights or non-proliferation concerns, are inconsistent with our commitments to Belarus under the Memorandum or undermine them. Rather, sanctions are aimed at securing the human rights of Belarusians and combating the proliferation of weapons of mass destruction and other illicit activities, not at gaining any advantage for the United States.

The situation has changed dramatically after the Crimea annexation in 2014 and discussion on the Budapest Memorandum has been revived. There were couple of attempts from nuclear powers to refer to the obligations under the Budapest Memorandum since then.

After the Crimea annexation in 2014, Foreign Ministers of United Kingdom, the United States and Ukraine had an urgent meeting on the Budapest Memorandum, which Russian officials declined to attend. It is worth noting that the United States had conveyed an invitation to the Russian Federation to the meeting but Russia declined it. As for the official Press Statement on this meeting, “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” [4]. In the meeting, the Governments of the United States, United Kingdom and Ukraine discussed steps needed to restore Ukraine’s territorial integrity and called on Russia to engage in consultations with Ukraine as they have committed to in the Budapest Memorandum.

Another reference to the Budapest Memorandum was released on March 1, 2014 by the White House. President Obama had a phone call with Putin about the situation in Ukraine and “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” [5].

In March 2014, after the Crimea annexation, the UN Security Council failed to adopt draft resolution that would have urged member states not to recognize the results of the referendum in country’s autonomous Crimea region. It was caused by the Russia’s veto power, who is one of the UN Security Council permanent members [6]. During that meeting UN Security Council United States Ambassador to the UN at that time Samantha Power referred to the Budapest Memorandum in her speech: “Every country must fulfill its obligations under the UN Charter, and its commitments under the 1994 Budapest Memorandum and the Helsinki Final Act. Ukraine and the Russian Federation must abide fully by their bilateral agreements, including the 1997 Treaty of Friendship, Cooperation, and Partnership, and the 1997 basing agreement” [7].

The UN Security Council draft resolution that was not adopted due to the Russian veto recalled the Budapest Memorandum in the following context “*Recalling the 1975 Helsinki Final Act of the*

Conference on Security and Cooperation in Europe, and the 1994 Budapest Memorandum...” However, it does not clearly specify if it has a legally binding force or not. Nevertheless, Samantha Power referred to the Budapest Memorandum in her speech as binding: The resolution broke no new legal or normative ground. It simply called on all parties to do what they had previously pledged, through *internationally binding agreements*, to do. It recalled specifically the 1975 Helsinki Final Act and the 1994 Budapest Memorandum, in which Russia and other signatories reaffirmed their commitments themselves to respect Ukraine’s territorial integrity and to refrain from aggressive military action toward that country [8].

As for the reaction from Russia, in January 2016 Russian Foreign Minister Sergei Lavrov stated: “The Budapest Memorandum contains one single obligation: not to use nuclear weapons against Ukraine. No one did this and no threats to use nuclear weapons against Ukraine were made” [9].

In October 2022, Deputy Director of the Department for non-proliferation and arms control Konstantin Vorontsov emphasized that Russia is fulfilling its obligations under the memorandum and it is Washington and Kyiv, not Russia, violated the Budapest Memorandum with their actions: “The 1994 agreements were undermined by the destabilizing course of Washington and its allies towards the unrestrained advance of NATO and the military development of the post-Soviet space to the detriment of the fundamental security interests of Russia. This fundamentally contradicts the content of the Budapest package of documents, which essentially expresses commitment to the principle of equal and indivisible security”. He added: “For many years, Kiev itself did not comply with the Budapest obligations, in particular, those obligations that involved countering the growth of aggressive nationalism and chauvinism. In Kiev, nationalism was openly encouraged, and in its radical forms” [10].

Vorontsov emphasized that the Russian Federation is fulfilling its obligations under the Memorandum: “According to the memorandum, Russia confirmed its obligations towards Ukraine not to use nuclear weapons and not to threaten to use them against non-nuclear states. This obligation is invariably fulfilled in full”.

Ukraine made many desperate attempts to remind about the obligations under the Budapest Memorandum since the start of war in 2022.

In February 2022, the Ukrainian President Volodymyr Zelenskyy made a speech at the Munich Security Conference, where he asked for the consultations in the framework of the Budapest Memorandum [11].

In April 2023 former US president Bill Clinton expressed his regrets over persuading Ukraine to give up nuclear weapons: “I feel a personal stake because I got them [Ukraine] to agree to give up their nuclear weapons. And none of them believe that Russia would have pulled this stunt if Ukraine still had their weapons” [12].

It seems that high-level politicians in Ukraine share the same opinion and feel regrets over the Budapest Memorandum. One camp believes that signing the Budapest Memorandum was a mistake.

For example, in December 2022, Ukraine’s Head of the Office of the President Andriy Yermak expressed his disappointment and called the Budapest Memorandum “ill-fated” and said: “Never again. No more Budapest Memorandums” [13].

Ukraine’s Foreign minister Dmytro Kuleba in his interview mentioned that it was a mistake for Ukraine to give up its nuclear weapons and that “on that account, the United States “owed” Ukraine” [14].

Leonid Kuchma, who was president of Ukraine when the Budapest Memorandum was signed, has a similar opinion: “Without nuclear weapons, Ukraine is not in a condition to respond adequately to Russia” [15].

Another camp, on the contrary, believes in the power of the Budapest Memorandum. The opposing opinion was expressed back in 2014 by Rose Gottemoeller, who served as the Deputy Secretary-General of NATO and formerly oversaw the work of denuclearization at the National Security Council. She believes that the problem is not in the Budapest Memorandum *per se*, but rather Russian’s behavior on the first place. She pointed out that the Budapest Memorandum is a part of a complex legal system. *The core problem here is not the weakness of the document, but that Russia*

stepped aside of its initial commitments. In her opinion, Ukraine had not taken proper advantage of “two decades of peaceful development” to reform its political and defense institutions. She also stated that the United States fulfilled its commitments within the Budapest Memorandum: “Sanctions do not work in a snap, they are made for the long-term purpose. We will continue to step firmly in order to defend your territorial integrity” [16].

Since the start of the war in 2022 her opinion has not been changed:

- Despite my pain at the Russian invasion of Ukraine and all that has gone with it—the atrocities, the death, the damage both human and material I continue to believe that Ukraine’s formation as a nation would have been stunted from the start if it had insisted on hanging on to nuclear weapons. Instead, Ukraine bought itself three decades to become a sovereign state with a strong national identity and commitment to independence and democratic principles. The road has been rocky—Ukraine has been plagued by corruption, messy politics, poor economic performance, meddling from Moscow—but it has persevered. I would go so far as to say that Ukraine’s strong sense of national self, born of these 30 years, has given it the spirit to fight this war so successfully with Russia. In doing so, it has gained the respect and, indeed, the awe of its friends around the world. Seen in that way, its decision to become a non-nuclear weapon state in 1994 was the right one” [17].

Kazakhstan has been a part of the Budapest Memorandum and back in the 1990s it was considered as a necessary step of the newly independent country to get international recognition and contribution to global security. Some debates inside Kazakhstan were taking place for the security guarantees from the great powers and substantial investments into the economy from them could have been expected for signing the Memorandum. There were strong voices in Kazakhstan that this Memorandum is absolutely not binding for the parties involved and obviously such a serious document cannot be on three pages, wide discussions in the society and in the Parliament should take place and it should be ratified by the legislative bodies of the respective countries [18].

Until 2014 the Budapest Memorandum in Kazakhstan was not a topic for wide discussion but after Russia annexed the Crimea and supported instability in Donbass and then started full scale invasion in 2022, then the discussions reappeared [19].

The reference to the Memorandum as a part of the Strategic Arms Reduction Talks (START) and Treaty on the Non-Proliferation of nuclear weapons (NPT) has been emphasized in Clinton’s administration too.

In May 1992, Kazakhstan signed the Lisbon Protocol to the Strategic Arms Reduction Treaty, or START I as it is now commonly known. Under the Lisbon Protocol Kazakhstan was to enact the requirements of the START treaty as soon as possible including acceding to the Treaty on the Non-Proliferation of nuclear weapons also known as the Non-Proliferation Treaty or NPT. Kazakhstan acceded to the NPT on December 13, 1993. When it became apparent that Ukraine would accede to the NPT at the Budapest summit it was also decided that the United States, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland would sign for Ukraine, Kazakhstan, and Belarus Memorandum of Security Assurances. This exchange of this last document formally entered Kazakhstan into the START treaty. On April 24, 1995 Kazakhstan returned the last of the strategic nuclear weapons they held to Russia, five years ahead of the date agreed to under the Lisbon Protocol [20].

The New York Times back in 1992 confirmed that Kazakhstan had a fourth nuclear arsenal with 1400 long range missiles in hand and pressurized the process in the following words: “President Bush needs to persuade Nursultan Nazarbayev, Kazakhstan’s President, to give up his nuclear arsenal when they meet tomorrow. Kazakhstan deserves no political or economic support from the U.S. and its allies if it keeps arms cuts from being carried out expeditiously” [21].

Kazakh President Nursultan Nazarbayev published an article in New York Times in March 2012 to call Iran to stop nuclear arms development [22].

The Budapest Memorandum proved to be no obstacle for Russia to invade Ukraine and Kazakhstan was not referring to it as a document with power of the treaty. This memorandum is mentioned in the historical context only as a goodwill of Kazakhstan to renounce the nuclear weapons.

Similar comments were made by Prime Minister of Ukraine Arseny Yatseniuk in 2014: "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 defenseless 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"[23].

The failure of the Budapest Memorandum was also pointed out by the UN Secretary General Ban Ki-moon in March 2014: "the credibility of the assurances given to Ukraine in the Budapest Memorandum of 1994 has been seriously undermined by recent events" [24].

This case with the Budapest Memorandum is a warning signal for a bigger pattern of Russian behavior. In this regard Yost states that "Russia's disregard for its Budapest Memorandum commitments can be seen as consistent with a larger pattern of Russian disrespect for international agreements" [25].

The Crimea annexation in 2014 demonstrated the weakness of the Budapest Memorandum and new alternatives were discussed. In 2014 in his address during the ceremony of inauguration President of Ukraine Petro Poroshenko confirmed the ineffectiveness of the Budapest Memorandum and committed to replace it with another document: "Nobody will protect us until we learn to defend ourselves. 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" [26].

The war in 2022 intensified these discussions. As the Budapest Memorandum seems not to be working, there were proposals to establish a new mechanism of security guarantees. In December 2022, the Ministry of Foreign Affairs of Ukraine made a statement on the Budapest memorandum and suggested to develop a new mechanism of security guarantees: "Russia's blatant violation of its obligations emphasizes the need to develop a new high-quality system of security guarantees for Ukraine and the world, which will effectively prevent any possibility for the Russian aggression to occur again" [27].

The ineffectiveness of the Budapest Memorandum opened new alternatives for security assurances. For example, in 2024 alternative bilateral security agreements were signed between Ukraine and G7 member states including the UK, Germany, Canada, Italy, Japan and France. This was done in accordance with the "G7: Joint declaration of support for Ukraine" that was signed on July 12, 2023 [28]. These agreements, however, according to the Ukrainian officials "are not an alternative to NATO membership but help support Ukraine in defending its sovereignty and territorial integrity [29].

Membership of Ukraine in the North Atlantic Treaty Organization (NATO) is another solution for Ukraine. Article 5 of the North Atlantic Treaty is the cornerstone of the NATO (1949) and it states: The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area [30].

As for the response from NATO, in response to the annexation of Crimea in 2014, NATO adopted the Readiness Action Plan (RAP) with assurance and adaptation measures. After the annexation of Crimea in 2014 Ukraine tried to actively join NATO. After the Russian full-scale invasion in 2022, the talks on Ukraine's membership have intensified. At the official level, Ukraine views its NATO membership as the only way to stop Russia and highlights the importance of its membership in NATO. Oleksandr Korniyenko, First Deputy Chairman of the Verkhovna Rada of Ukraine stated in

January 2024: “Ukraine’s NATO membership is the only way to deter future Russian aggression” [31]. Head of the Office of the President of Ukraine Andriy Yermak stated in February 2024: Only the invitation and real concrete steps towards Ukraine’s full membership will give the world and Europe real chances to return to security [32].

The problem with the NATO membership, however, is whether Article 5 will be applied to Ukraine after the war. The decision on Ukraine’s membership in NATO is expected to be released during the summit in Washington in summer 2024. Given the ongoing conflict, there is a legal debate about the applicability of Article 5 to post-war Ukraine. Article 5 stipulates that an armed attack against any member in Europe or North America will be considered an attack against all members, triggering a collective defense response. However, it could be argued that if Ukraine’s membership is granted after the conflict, the provisions of Article 5 might not retroactively apply to the war that occurred prior to its membership. Additionally, there are concerns about whether the collective defense obligations can be invoked for ongoing disputes that began before NATO membership, potentially complicating the alliance’s legal and strategic commitments. The role of the UN Security Council in authorizing and overseeing measures taken under Article 5 further complicates the issue, as it could influence the extent and nature of collective defense actions for a conflict that predates Ukraine’s membership.

The Budapest Memorandum "is a big trauma" for Ukraine and its citizens [33]. It was a hasty decision in an unpredictable environment without proper legal support and follow-up actions. It has created more security for the great powers and middle powers were left alone and totally depending upon the existing world order.

As for the behavior of states, we can conclude that the Budapest Memorandum is not forgotten and is mentioned by states on a regular basis. Despite these discussions, the question here should go beyond the legally binding force of the document. Rather another interesting question to look into is “Even if there was a new legally binding document or mechanism, would that stop the aggressor?”. Despite the fact that we can discuss the Budapest Memorandum’s legal force and the possible development of another legally binding instrument or mechanism for the post-war world, we cannot be assured that it would serve as a deterrent for future possible aggressor. Therefore, the question of security guarantees remains open.

Another problem with the breach of the Budapest Memorandum by Russia is its global implications. This situation is a huge step back in global nuclear proliferation and disarmament. Other countries, that possess nuclear weapons, might use the Ukrainian case as an excuse not to reduce their nuclear warheads. As Yost stated in 2015: “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” [25].

This step back is proved by Russia which revoked its ratification of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) in 2023. Many countries have expressed their concerns regarding this, including the United States. In the official press statement, the United States highlights that “this continues Moscow’s disturbing and misguided effort to heighten nuclear risks and raise tensions as it pursues its illegal war against Ukraine” [34].

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