The Role of Nuclear Weapons During the Crisis in Ukraine

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Introduction

It is tempting and provocative to reevaluate Ukraine’s decision to become a Non-Nuclear Weapon State after the Russian annexation of Crimea. It is tempting because Moscow has broken security assurances it made in return for Soviet nuclear weapons based in Ukraine in the early 1990s and Ukraine’s incarnation as a Non-Nuclear Weapon State Party to the Treaty on the Nonproliferation of Nuclear Weapons (NPT). It is provocative because of the ongoing debate over NATO’s nuclear future and Ukraine’s future relationship to the Alliance.

In this paper, I deal broadly and specifically with two questions: Whether nuclear weapons play any role in the ongoing crisis in Ukraine, and, at the request of FRS, a counter-factual question, to wit, “What if Ukraine had kept Soviet nuclear weapons?” My first conclusion is that extant nuclear weapons assurances, exercises and declaratory policy—in and from NATO and Russia—certainly play a role in the ongoing crisis, even if this role is necessarily nuanced and confusingly political in light of misunderstanding regarding the terms “assurance” and “guarantee.” Second, Russian nuclear weapons do play a role in Moscow’s signaling during the crisis, as is evident in its decision to execute a major exercise of its triad. As for “Ukrainian nuclear weapons,” my conclusion is that Kyiv derives significant benefits from decisions it made in the 1990s, and that the implied counterfactual conditional—i.e., that if Kyiv had kept Soviet nuclear weapons then it would be in a better position to deal with Russian revanchism—is overwrought with prolepsis. If Kyiv had not finally decided over the course of 1992 to 1994 to abide by its own policy not to use, not to possess and not to allow nuclear weapons on its territory, then far worse things would have happened long before 2014. Indeed, the notion that Soviet/Russian weapons in Ukraine would provide some level of deterrence in 2014 in Crimea is a deeply attenuated proposition—but not because of abstract notions about nuclear
weapons, but rather situational uniqueness and practical reality.

Russian annexation of Crimea has unfrozen 19th Century animosity, ethnic conflict and modern Russian reinterpretations of its Soviet and post-Soviet past. The price of this revanchism are Russia’s security assurances, but even more broadly, its relationship with NATO as described in the NATO-Russia Founding Act. A plausible result of the war is that Ukraine no longer places faith in Russian assurances and will now look westward for new assurances (if not also guarantees). Ukraine is more likely to join NATO than to ever try to obtain nuclear weapons of its own, again, though the former scenario would still be difficult even after its June 27, 2014 Association Agreement with the European Union. Europe also has a renewed nuclear threat with which to contend, to include Ukraine: reported Russian noncompliance with the Intermediate-Range Nuclear Forces (INF) Treaty.

Russia has not attacked, and shows no signs of wanting to attack, any NATO Member under NATO security guarantees. Russia’s latest “small victorious war” in Crimea comes four years after NATO debated the relationship of its nuclear forces to its security guarantee and six years after the Russo-Georgian war. Past efforts to replace the NATO nuclear guarantee by reducing, consolidating or withdrawing non-strategic weapons in or from Europe, and intense intra-Alliance nuclear debates, have prepared the Alliance to deal with difficult questions related to the North Atlantic Treaty’s Article V even as the United States and Europe struggle with budgetary strain related to the weapons and platforms that make it salient. NATO’s 2010 Strategic Concept, while different from previous iterations, held in place what was then a political compromise but that is today an absolutely necessary measure of allied reassurance that NATO’s nuclear guarantee remains for all Alliance Members.

Results: Ukraine Closer to NATO and Reaffirmation of NATO’s Nuclear Guarantee

While the annexation crisis evokes a few nuclear questions unsettled in the past, the more important questions relate to its results for NATO nuclear weapons’ present and future, and the role the NATO nuclear guarantee plays in and among current NATO Members after the 2014 Russian annexation of Crimea. Ukraine, while not a NATO Member, has a 1997 Charter on Distinctive Partnership with NATO.[1] Unlike other potential NATO members, the visible contents of current NATO guarantees to Members of the North Atlantic Treaty now matter almost as much for Kyiv as they do for the rest of the Alliance, in particular its newer Members, after Russian annexation of Crimea. Ukraine’s policy of overall restraint in the face of an absolute threat continues a historic line in Kyiv’s security policy that stems from the value it, and the world, placed on its status as a responsible, new democracy. Ukraine’s decision obtains benefits, primarily from the United States and now the European Union, and is consistent with “an approach of bloc allegiance” to Europe and the West even while Kyiv maintains historic connections to Moscow.[2] The longer Russia maintains this crisis, the more it will push Ukraine further toward NATO and increase the salience of NATO’s guarantees to its current Members.
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Russia is testing the United States and the NATO Alliance, engaging in disassembly of the post-Cold War security architecture in Europe, binding and non-binding agreements, treaties, assurances and guarantees included. Russian noncompliance with the INF Treaty, as publicly reported in *The New York Times*,[3] has been suggested as a Russian response to the U.S. decision to withdraw from the 1972 Anti-Ballistic Missile (ABM) Treaty and failure to agree on missile defenses in NATO. But this Russian interpretation, that Russia picked treaties to leave just like the United States, and Russia decided in 2007 selected to suspend the Conventional Forces in Europe (CFE) Treaty, not the INF Treaty, is too convenient.[4] Russian President Vladimir V. Putin’s March 18, 2014 speech to members of the Russian Federal Assembly (and new “Russian citizens” in Crimea), and a previous speech from Medvedev in late 2011, reveal a combination of far deeper and older reasons than the U.S. 2002 ABM Treaty withdrawal for Russian revanchism.[5] Putin’s short victorious war speech is the end of relatively banal conclusions that have been the operating basis for dealing with Moscow in Europe for the last two decades. Russia has not yet withdrawn from the CFE or the INF treaties, but has suspended its implementation of the former and, according to press reports, is in noncompliance with the latter.

Russian conventional forces performed with a high degree of effectiveness in the Crimean invasion and occupation, successfully setting the conditions needed for Russian annexation. Former NATO Supreme Allied Commander Admiral James Stavridis noted that Russia “played their hand of cards with finesse.”[6] This “finesse” included the use and manipulation of both diplomatic and military means and rapid isolation and termination of Ukrainian command and control with advanced, coordinated and effective electronic warfare. All this while Russia simultaneously carried out “snap” conventional forces exercises, on land and at sea, around Ukraine, and a major exercise of all three legs of Russia’s nuclear triad.[7] Russia’s conventional presence now massed could, in as little as 12 hours, move against Ukraine.[8] As NATO Supreme Allied Commander Gen. Philip Breedlove, USAF, noted in April, “This is a combined-arms army, with all of the pieces necessary should there be a choice to make an incursion into Ukraine...supported by fixed-wing aircraft...rotary aircraft...all of the logistics required in order to successfully make an incursion if they needed.”[9] This force—and Russia’s use of it—led one observer to note “the old tired excuse that Russia must rely on nuclear weapons because its conventional forces are weak and broken is now demonstrably absurd.”[10]

Over the past five years, well before the initiation of the snap exercises official Moscow used to explain the presence of its forces near the Donets Basin and on the peninsula outside the delimited area of Sevastopol, Russia carried out many more exercises than has NATO involving nuclear forces that focused on NATO as a threat. NATO, until very recently, conducted few similar exercises and has yet to complete new crises management exercises (CMX) involving an Article V scenario in which the nuclear guarantee and shared nuclear forces play a role.

Placing official Russian nuclear doctrine next to its ongoing destabilization of Ukraine provides a disturbing parallel. Russia has not publicly reassessed the role its policy assigns to nuclear weapons (strategic and non-strategic) in “military conflicts involving the use of conventional means of attack (a large scale war or regional war).”[11] Public Russian doctrine appears to constrain this use to
“preventing the outbreak of”[12] such wars, but Russian nuclear saber-rattling related to these specified uses does not offer comfort for states that might be the subject of regional, conventional wars Russia opts to start on Russia’s borders. A scenario in which Russia starts such a war—uses irregular forces and paid mercenaries—and then blames the state it has penetrated and destabilized, if escalated, can develop into the kind of war Russian nuclear doctrine describes and its covert military and paramilitary forces have started in Ukraine. This leads to a potentially new insight: Heretofore, experts often interpreted public Russian nuclear employment strategy to mean that it depended on its nuclear forces since its conventional forces were shadows of their Soviet past, including the use of non-strategic weapons as “de-escalation” weapons that can be used to terminate conflict. This thought might have been appropriate heretofore since it was generally reasonable to assume that public Russian posturing “reflect[ed] the weakness of Russia in the sphere of conventional forces” and thus Russia “[sought] to maximize its military and political security by whatever means it [had] available.”[13] But now that Russian conventional forces have been used and are being used along with its nuclear forces, the latter as signaling tools and the former to change facts on the ground, lingering Russian nuclear-weapons ambiguities most certainly play roles in the Ukraine crisis.

In the ongoing crisis, Russian nuclear ambiguity regarding what its nuclear forces might be used to accomplish, and where they are, particularly with regard to intermediate-range and non-strategic forces implicated in its statements and press reports, and how many of them exist, creates a certain role for Russian nuclear weapons in this crisis. Russian nuclear signaling is a pervasive element of Russian policy, and while this signaling is meant to convey strength, and has two objectives. The first is to display to the United States its nuclear resolve and the second is to test the reactions of U.S. allies in Europe and the world over. It is only recently that Washington has begun to counter-signal, such as its “Global Lightning” exercise of May 2014.[14] Russia, to some extent, and the United States contend that these exercises were scheduled well before Russia’s invasion of Crimea, but within context appear to more than hint at nuclear signaling.

The annexation and ongoing crisis has likely had the (anti-Russian) result of further increasing the perceived and actual value of NATO’s nuclear guarantee precisely because it has pushed Ukraine further into NATO’s orbit and diminished the value of post-Soviet Russian security assurances related to Ukraine’s Non-Nuclear Weapon State status, and moreover, because Russia is a Nuclear Weapon State threatening significant conflict. Ukraine is more likely to join NATO, now, than it is to acquire its own nuclear weapons.

**The End of the NATO-Russia Founding Act**

NATO’s effort to secure a better relationship with Moscow stems from the *NATO-Russia Council Founding Act*, which in turn, repeats the sacrosanct post-World War II principle of respect for European borders found in the Helsinki Final Act (also contained in the 1994 Budapest Memorandum, see further). The focus on nuclear reductions in NATO over the past five years was the basis for discussing what appeared to be a brighter future. But, as became clear, the perceived diminishment in
U.S. commitment to Europe entailed in such proposals most acutely affected Eastern Europe. In extremis, advocacy to remove U.S. nuclear weapons from Europe could have been met by overtures from Eastern European states to host these weapons. Several NATO Members not currently participating in NATO nuclear sharing already possess or could procure tactical air platforms that could become dual-capable aircraft (DCA), thereby enabling possible participation in nuclear sharing and Alliance nuclear burden sharing. Although this prospect would affect the “three no’s” policy of the 1996 North Atlantic Council Final Communiqué and the Founding Act, newer NATO Members could argue that the alternative (a full withdrawal of U.S. nuclear forces) would constitute a material change to this commitment not foreseen in 1996-1997.

But one need not invent provocative scenarios that justify a factual conclusion that material changes have fundamentally affected the Founding Act or the “three no’s.” Russian noncompliance with the INF Treaty offers one such material, nuclear change. The Crimean annexation is itself the material change. As Gen. Breedlove said weeks ago, “when [Russia] crossed a sovereign boundary and annexed under fire a portion of a sovereign nation,” it created such a material change and accomplished something wholly inconsistent with the Founding Act that directly bears on both its and NATO’s previous assurances to one another.

**Reductions and Reassurance**

If anything, past reductions in U.S. European force posture—both conventional and nuclear—have increased allied sensitivity regarding the benefits of forward-deployed U.S. nuclear forces. Since 1997, U.S. policy in Europe has consistently embraced the expansion of NATO even while it withdraws many of the visible contents of its commitment to the Alliance. NATO at 28 Members has a border with Russia that it did not share in 1992-1997, one that encompasses new Members that seek full benefits of the Alliance. Since the Russian annexation of Crimea, Washington has slightly changed the content of the security assurances it provides through NATO and directly to Ukraine. The most important change has been the decision to seek $1 billion in funding from the U.S. Congress in fiscal year 2015 supplemental funding for a “European Reassurance Initiative” for training and exercises in NATO. It is unclear whether a reversal to an earlier decision to continue to reduce U.S. Army brigade combat teams in Europe from four to two by 2017 has been made. In addition, increased air policing in the Baltics and other forms of conventional assurance are all on the table. While these conventional force posture exercises and changes are needed, in fact demanded by the current tension, Washington has been less explicit with regard to the nuclear dimensions of the NATO-Russian relationship in 2014. This may reflect requisite caution, but it does beg the questions if the conventional force posture changes announced will be enough if the crisis deepens and when and if it is appropriate to refer to NATO’s nuclear guarantee.

Reassurance, whether nuclear or conventional, depends on its contents and binding guarantees or non-binding assurances stem from these substantive contents, which complete the full picture of reassurance. If anything has been proven over the course of the last five years it is that NATO...
conventional forces and its Article V nuclear guarantee are inextricably linked. Allies measure commitment in both spheres and corresponding Russian readiness to challenge it. The primary fear that many if not all of the NATO Members in Eastern Europe share is of precisely the scenario that played out in Georgia in 2008 and is now playing out in Ukraine, i.e., territorial incursions from Russia that result in new borders.\[18\] Significantly, however, Moscow has not shown signs that it is ready to undertake a direct conventional assault on any NATO Member and NATO Members in Eastern Europe continue to place value on NATO nuclear and conventional guarantees for this reason. How do we interpret this result if Russian conventional weakness and its previous security assurances to Europe and Ukraine no longer obtain?

The primary argument offered for further non-strategic nuclear weapons reductions in Europe has been that the weapons are of limited or no “military utility.”\[19\] Most proponents of deep cuts would still contend, even now, that this is true; that the weapons have lost their operational basis since the end of the Cold War, and, since the only measure of a weapon’s military utility (for some) is its use, less risk attaches to their elimination and/or removal. But the purpose of what remains of NATO’s shared nuclear forces is not to use them but to make the threat of their use in cases of attack more credible. Even though challenges exist with respect to U.S. program costs for its B61-12, and for finally equipping and budgeting for a nuclear-capable F-35, and Germany’s Tornados have not stopped aging, had the United States agreed with Germany and started a process of withdrawing or otherwise consolidating its weapons in Europe five years ago, halting or reversing that course after the Crimean annexation would have, under the logic of the deep-reductions position, still been possible, but would only have escalated the crisis. For now, these forces bear silent witness to Allied resolve and assurance of the grantee embodied in Article V and that it remains salient.

The view that U.S. or even other nuclear weapons assigned to NATO have no military utility also avoids the more difficult question as to whether or not Russia assesses nuclear weapons in NATO in the same way. This question also directly relates to the Ukrainian decision to return Soviet nuclear weapons to Russia in the 1990s. Prima facie, it might appear that countries with nuclear forces deter attack, and that Ukraine should thus have kept Soviet weapons. But Ukraine and NATO are very different for an obvious reason: The Soviet Union, not NATO, collapsed, and thus Soviet weapons found themselves in new countries overnight. Even if Soviet weapons had stayed where they were, it is passing strange to think, given practical and technical controls that might have been used by Moscow-Center to manipulate them, that these weapons could have provided some kind of reassurance to Kyiv—they were Russian weapons with Russian control. In turn, the Russian assurances made in the early 1990s related to nuclear weapons became, for both practical and political purposes, more important than the Soviet weapons in Ukraine, while NATO’s nuclear weapons and related assurance and reassurance remained, along with a binding treaty guarantee. Even while NATO non-strategic weapons were reduced, they were and are a constant, visible element that permitted new allies, even at substantially reduced levels, to have the same NATO guarantees as do others. This particular form of visible, in-theater content naturally reduced as the perception that
Russia was not the Soviet Union took hold and after Russia and NATO arrived at an amicable partnership in 1997.

But after the Russian annexation of Crimea, are the assurances and guarantees related to both NATO and Russian nuclear forces, including those in the Budapest Memorandum, still sufficient if they have been materially changed by Russian aggression and/or facts on the ground? If they are not sufficient, is there need for new assurances within the Alliance—and for Ukraine—after Crimea 2014? What might these assurances look like? To answer these questions, a partial examination of just what assurances, nuclear and otherwise, Ukraine had is needed.

**Assurances, Guarantees and Commitments: The Budapest Memorandum**

A prominent Ukrainian jurist has called the Budapest Memorandum “assurances without guarantees.”

[20] The U.S., U.K., Russian and Ukrainian Memorandum signed at the December 1994 Organization for Security and Cooperation in Europe (OSCE) summit in Budapest (the Budapest Memorandum) offers no nuclear or other guarantee of any kind to Ukraine. Nor do the separate assurances provided by China and France. Rather, it contains assurances that stem from the Helsinki Final Act. Its only nuclear assurance is consistent with the U.S. Negative Security Assurance (NSA) first offered in 1978, which paragraph 5 of the Memorandum largely restates.[21] But over the course of the crisis in Ukraine, the Memorandum has been repeatedly cited as providing nuclear or other guarantees to Ukraine. The intensity of feeling for this document is understandable and stems from both the convoluted history surrounding the Budapest Memorandum, heated politics and the very proper view that Russia has broken assurances specified in it.

On February 6, the Polish Foreign Ministry published the text of the Budapest Memorandum on its website.[22] On February 28, the Ukrainian Verkhovna Rada passed a resolution concerning the “security guarantees” in the Budapest Memorandum which, while it specifically cited the fact that Ukraine “obtained the assurances of its security” in “exchange for [the] nuclear disarmament of Ukraine,” also, however, notes in additional preambular clauses that these assurances come from “Guarantor States,” i.e., the five Nuclear Weapon State Parties to the NPT (which include the three depositaries of the NPT—the U.S., the U.K. and Russia—who signed the Budapest Memorandum, and France and China, who gave separate assurances to Kyiv).[23] To muddy the water even further, on March 28, the Australian Foreign Minister, in an address to the Polish Institute of International Affairs, decided to say, “Let me state at the outset the position of the Australian Government regarding Ukraine…. Russia has not only breached the UN Charter, but specifically the 1994 Budapest Memorandum that gave Ukraine security guarantees.”[24]

On March 5, the United States held a meeting in Paris that was an attempt to fulfill “the only specific obligation that the three nuclear states—the U.S., Russia, and the U.K.—took… that they ‘will consult in the event a situation arises which raises a question concerning these commitments.’”[25] The three nations that attended were relatively candid concerning the talks:
The purpose of the meeting was to discuss the urgent question of the Budapest Memorandum....The United States had conveyed an invitation to the Russian Federation to the meeting. We deeply regret that the Russian Federation declined to attend.... The Budapest Memorandum sets out the obligations of signatories in return for Ukraine giving up its nuclear weapons. Under its terms, the three parties commit to refrain from the threat or use of force against Ukraine's territorial integrity. The Memorandum also obliges the UK, US and Russia to consult in the event of a situation arising where the memorandum commitments are questioned.

Ukraine voluntarily surrendered the world's third largest nuclear weapons arsenal in exchange for these assurances. The three Governments treat these assurances with utmost seriousness, and expect Russia to as well. Russia has chosen to act unilaterally and militarily.[26]

Yet, the debate intensified within Ukraine, with some political candidates in elections contending that “We gave up nuclear weapons because of [the Budapest Memorandum]....Now there's a strong sentiment that we made a big mistake.”[27] Eventually, the U.S. Ambassador to Ukraine, Geoffrey Pyatt, had to contend with the assertion that “The U.S. failed to fulfill its obligations and did not manage to guarantee Ukraine its territorial integrity.”[28] To which he responded:

It would not be correct to state that U.S. did not fulfill its obligations regarding Ukraine. It is important to clearly understand that the U.S., as President Obama stated, is committed to the principle of Ukraine's territorial integrity and should stay sovereign. We do not accept the so-called referendum which took place in Crimea, which was imposed by Russia, as well as we do not accept annexation of Crimea and we still regard Crimea to be part of sovereign Ukraine.

The Budapest Memorandum, which was signed in 1994 by three countries, states that all the three sides respect the territorial integrity and sovereign state of Ukraine. Obviously, Russia failed to keep their obligations. The United States called for consultations between the mentioned three countries, following the procedures prescribed in the Memorandum. It was Russia who declined its participation in the consultations and failed to fulfill its obligations.[29]

By May 30th the press had taken note of Pyatt's earlier statement and now directly asked him “When the guarantor countries have not fulfilled their obligations under the Budapest Memorandum, among the Ukrainian population the idea has started to gain popularity of restoring [Ukraine’s] nuclear status and [its] acquisition of nuclear weapons. How do you comment?”[30] To which he responded:

The Budapest Memorandum has not been an agreement on provision of security guarantees. I spoke to Ambassador Steven Pifer, and some other experts who also participated in the negotiations on the Memorandum, and according to what I heard from them, then all parties clearly understand that the essence of this paper is that the signatories commit themselves to respect the sovereignty and territorial integrity of Ukraine. Russia obviously violated, trampled on their promises to the Budapest memorandum. Second, I personally am quite sure that if Ukraine had nuclear weapons it would have no influence on Russia's decision to invade Crimea and annex it.[31]
While the available record strongly supports Pyatt’s reply,[32] the day after Pyatt made these comments, he was finally asked whether, in light the clear fact that there were no guarantees made in 1994 at Budapest, a new agreement was needed to replace the Memorandum. The Ambassador said that “it is too early to speak about concrete agreements.”[33] Even so, in March, the Acting Ukrainian Defense Minster, Ihor Teniukh, made public a telephone conversation with U.S. Defense Secretary Chuck Hagel in which “one of the topics they covered was the possibility of the creation of a Council of Defense Chiefs of the Budapest Memorandum member states.”[34]

The most likely result of this brief history is that all concerned parties clearly believe that the content of pervious assurances provided, by Russia or anyone else, to Ukraine were not sufficient to endure current events. Quasi-legal wrangling cant aside, Russia’s own objection to accusations that it has violated its Budapest Memorandum assurances reveals the infirmity of any non-binding assurance contained in a political agreement next to changing political circumstances:

The current “government” in Kyiv, 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…. At the OSCE summit in Budapest in 1994 and during events on the side-lines, Russia did not undertake to force part of Ukraine to stay in it against the will of the local population, but the provisions of the Budapest Memorandum are not applicable to the conditions which have become a consequence of actions of foreign policy or social and economic factors.

[...]

Let us remind ourselves of the fact that along with this memorandum a joint statement was adopted in Budapest by the leaders of Russia, the United Kingdom the United States and Ukraine, which, inter alia, confirmed the importance of obligations within the OSCE, which are envisaged to counteract the growth of aggressive nationalism and chauvinism. It is absolutely clear that Ukraine has not fulfilled these 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.

As to the statement that Russia by its actions allegedly demonstrates the insecurity of the very concept of “negative guarantees” of the security of non-nuclear states and thus “destroys” the regime of nuclear non-proliferation, then it should be highlighted that only the obligation not to use and not to threaten to use nuclear weapons against non-nuclear states is the common element of the Budapest Memorandum and the concept of “negative guarantees” in its classic understanding. Russia has not violated this obligation vis-à-vis Ukraine in any way.[35]

Ukraine has no guarantees as a legal matter and no political assurances, from Moscow, as a practical one, relating to nuclear weapons, other than a relatively standard NSA. Political assurances regarding the sovereign territory of the Ukraine have indeed been vitiated by Russian revanchism. Yet, it would be difficult to envision Russia actually employing its nuclear forces against Kyiv, so Russia is unlikely
to violate the NSA in Article V of the Budapest Memorandum. To do so would risk Russian destruction of the cradle of its civilization since 988 A.D., to say nothing of the very Russian-speaking people it has said it is protecting from “Nazis.” But if, at any point in the future as the conflict escalates, Russia does threaten to use nuclear weapons against Kyiv, it will most definitely signal a grave willingness to break with its negative security assurance. As well, Moscow’s decision to rescind its assurance to respect the territorial integrity of Ukraine and Crimea casts doubt on its fidelity in general, and when combined with public knowledge of its nuclear weapons strategy, forces and past exercises, and absurd allusions to World War II, and reported INF noncompliance, militates against the foregoing caveat in the political if not the practical realm of inquiry. The true Budapest-Memorandum victim in this crime is the reliability of post-Cold War Russian political assurances.

Since Russia has removed credibility from its assurances to Kyiv, what does that result mean for Eastern European countries in NATO? Polish and Baltic interest in the actions NATO and the United States will take over the next months in respect of what might come after the Budapest Memorandum is high. And this presents an interesting component of the debate on Budapest assurances: If and when new assurances—or finally guarantees—could be provided to Kyiv, how will those reflect on the attitudes of governments already in NATO regarding their guarantees and the prospect of Ukrainian membership in NATO? Following the 2010 NATO Lisbon Summit, and adoption of the new *Strategic Concept*, Eastern Europe has observed the relative decline in readiness of NATO’s nuclear mission as well as U.S. debates regarding modernization of its strategic nuclear forces and those theater weapons it has assigned to NATO. This, despite the fact that in 2010 the Alliance decided, consistent with former Secretary of State Hillary R. Clinton’s “Tallinn Principles” that “NATO will remain a nuclear alliance as long as nuclear weapons exist” which is “a bedrock principle of American foreign policy.” [36]

**A Word on New Assurance**

As a factual matter, there are only non-binding political statements and binding agreements/treaties. But it would appear that Ukraine is moving into a realm where the post-Cold War doxology of overlapping assurances and guarantees might be insufficient. Naturally, agreeing to some new assurance for Kyiv, with a nuclear component, is an attenuated matter. Such a course could prompt an even more virulent Russian campaign to recapture Kyiv in order to preempt and prevent its accession to NATO precisely because such a prospect has always been a very real Russian red line. The issue, as well, of Sevastopol would present a particularly thorny legal and political issue in any such course. To date, Petro Poroshenko, the new Ukrainian President, has had to focus on two goals, the first of which was to achieve the interdependence with Europe rejected by his predecessor. It is unclear how strongly the Russian response to the Association Agreement signed last week will be or what it will include, apart from Russian tariffs and trade-related retaliation. Second, Poroshenko has terminated a cease-fire in order to regain control of Ukraine’s sovereign territory in the east. This second move comes after failure to convince Moscow to adopt a strategy that is slightly more honest than its present claim not to be involved in a war it started in Ukraine. But, the prospect of escalation,
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to include a wider war involving Transnistria or moving across the Dnieper, remains a risk. Kyiv has not yet followed up on the interim Ukrainian government’s public attempts to recoup some form of multilateral cooperation in and among Budapest Memorandum signatories. This said, there is now both a qualitative and quantitative shift toward more NATO-Ukraine association. It is too early to tell just what specific form this new relationship will take.

The extant nuclear forces assigned to NATO dictate a different picture than NATO’s declared policies, if only by dint of their relative state of budgetary and political uncertainty. And yet the reverse is true for Moscow. Moscow argues that it has not violated the Budapest Memorandum’s political assurances while also, as publicly reported, violating its binding obligations in the INF Treaty. And why, precisely, would Moscow need intermediate-range forces, like the INF-banned SS-20, today unless it is again contemplating nuclear war in Europe? These actions are all of a piece: Russia is signaling U.S. allies and partners in Europe in an effort to portray continued reliance on the United States as a risky bet. And there is, in fact, a very prominent role for nuclear weapons in this miasma: If NATO is a nuclear alliance, and Ukraine asks to join it to obtain a nuclear guarantee because Russian nuclear assurances made to Kyiv have been devalued, what alternative course is there? Naturally, delaying the process—as has been the case for Georgia—is one option open to the Alliance. But current events are accelerating over past tactics. Indeed, in light of the implications of future Ukrainian accession to NATO, it would be wise to have new agreements or new assurances, both bilaterally from the United States and multilaterally from NATO to Kyiv, in a new agreement that specifies more certainty than post-annexation assurances do.

What if Ukraine Had Kept Soviet Nuclear Weapons?—A Pakistan in Eastern Europe

Ukraine, had it not taken the path it did, could possibly have argued that it had succeeded to its former Soviet Socialist Republic as a state with nuclear weapons. But the historical record or at least the pieces of in public, do not support a conclusion that it ever truly sought to do so. Once the old Union had collapsed, newer ideas about central control and shared planning rapidly argued for simply removing Soviet IBCM, ALCM and non-strategic weapons. A series of steps, negotiations and now public documents show a desire to get the best deal possible for foregoing the difficult prospect of maintaining a vast and capable nuclear force that depended on the Russians to be effective, operational and reliable.

If Ukraine had retained all Soviet nuclear delivery vehicles, launchers and warheads, it would have had at least 1,240[37] warheads on ICBMs (46 SS-24 Mod 2S ICBMs in silos near Pervomaisk, with up to 10 warheads each, 40 SS-19s in silos near Pervomaisk, and 90 SS-19s deployed in silos near Khmelnitsky in the west, all with up to six warheads each) and an additional number of heavy-bomber accountable Kh-55 ALCMs, with 19 Tu-160 Blackjack heavy bombers and an additional 24 Tu-95 Bear-H heavy bombers in country. Adding all of the potential numbers of ALCM warheads and non-strategic weapons, Ukraine could have had up to 1,900 ICBM and heavy-bomber accountable warheads and an additional 2,500 non-strategic nuclear weapons. An official number from 1996
places the total at “more than 4,000 strategic and tactical nuclear warheads.”[38] Ukraine also had on its territory one of the largest missile production centers in the world, located near Dnipropetrovsk at the Yuzhnoye Design Bureau’s machine-building plant and the Pavlograd Machine Plant. Ukraine did not possess any warhead production facilities. Ukraine did, in fact, retain a number of first-stage rocket motors for SS-24s until very recently.

Ukraine could not maintain operational warheads on silo-based ICBMs and it is unclear if it could have done so for the Kh-55 ALCMs and non-strategic nuclear weapons it inherited from the Soviet Union, even though some members of its legislature did consider keeping portions of this arsenal, and unhelpfully suggest so, in the early 1990s. Ambassador Steven Pifer details a relatively significant study done by Ukraine’s (inherited) 43rd Rocket Army that evaluated its ability to retain ICBMs.

Questions for these officers included:

● Could Ukraine develop a system to control (and launch) the ICBMs?

● Could Ukraine maintain the nuclear warheads, which required delicate handling and had a service life of no more than 10-15 years?

● How would Ukraine manage issues such as production of tritium [?]

● How would Ukraine dispose of old warheads and their fissile material?

● Could Ukraine have confidence—lacking its own test site and data from Soviet nuclear tests—in the reliability of the warheads?[39]

Of course, as one Russian negotiator observed in 1994, “One can master anything. But what would it cost?”[40] The limiting factor on Ukrainian warheads would have been tritium production, for which Ukraine would have needed foreign assistance. No Nuclear Weapon State is likely to have offered to violate its obligations under the NPT to supply heavy water, heavy-water reactors or tritium directly to Ukraine for the purpose of maintaining Soviet warheads in Ukraine, to say nothing of tritium extraction technology. Still, Ukraine could have gone to states outside the NPT for assistance. Over time, Ukraine would have had to seek out technical expertise related to these matters, which would have put it in an even less admirable position than simply keeping Soviet weapons and agreeing to some corresponding reduction and monitoring of them under START I (continuous monitoring of final missile assembly was undertaken at the Pavlograd Machine Plant). But Ukraine’s possession of the weapons would have prevented START I from coming into force after Russia conditioned its ratification of the treaty on Ukraine becoming a Non-Nuclear Weapon State.

The Ukrainian decision to become a Non-Nuclear Weapon State was more than tangentially linked to the resolution of the first post-Soviet Crimean independence question in the early 1990s, including the fate of Sevastopol and the Black Sea Fleet, as well as the entry into force of the START I Treaty. Had Kyiv persisted in keeping Soviet nuclear weapons, it is likely that Russia would have eventually acted to protect its interests, and during a time of political and economic chaos across the former Soviet Union. This would have put the United States in a terrible position that could have risked its emerging
relationship with the independent states of the former Soviet Union and ultimately the entire framework of post-Cold War Europe.

Kyiv was not capable of weathering the negative consequences of retaining nuclear weapons. Russia, even though it planned continued modernization of “CIS weapons,”[41] could not maintain those weapons, so it would have been particularly challenging for Ukraine to keep them, raising not just the specter of war with Russia but also proliferation of the weapons, their components and means of delivery, to a point. Russian control over Soviet weapons located in newly independent states, particularly after the August 1991 Moscow coup, reflected Moscow-Center’s anxiety over its own ability to keep control over weapons in Russia. The steps taken after August 1991 may have some import for the weapons then in Ukraine, and certainly over the remainder of 1991, Moscow-Center was applying some of the lessons it had learned form other instances in which a loss of control, or uncertain control, over its nuclear weapons had occurred.[42]

None of these reasons has ever been sufficient for those who contend that—without regard for the kinds of nuclear weapons a state has, whether of strategic, intermediate or short range, nor even the yields of the warheads associated with these delivery vehicles, or the ability to emplace delivery vehicles on operational launchers, let alone the question in this case as to whether Soviet/Russian weapons in Ukraine could actually be used by Kyiv against Russia—simply having “nuclear weapons” provides a deterrent value that overwhelms any costs that attach to national weapons complexes and all other elements associated with them. In Ukraine, in 1991, Kyiv did have weapons, though the degree to which it had operational control over them—not just officers who had taken an oath of allegiance to Ukraine—is a foggy matter. It is also unlikely that Kyiv ever, at a high level, entertained serious plans to retain Soviet nuclear weapons. As former Ukrainian President Leonid Kuchma (finally) encapsulated in 1994, during Rada debate on the NPT:

I asked my opponents the question, “Who are our weapons aimed at?” If we are to retarget our missiles, we must choose a target to aim the missiles. Let us suppose that we choose a target. What will the reaction be in a situation where no one aims their missiles at us while we choose an “enemy” to target our missiles? What will be the international reaction and attitude toward Ukraine?[43]

Ukraine’s first transitional leader, President Kravchuk, appears to have supported “central control” over nuclear weapons in newly independent states, but also “participation in the mechanism for central control of nuclear weapons along the lines worked out between Yeltsin and Gorbachev” as well as Kazakh President Nazarbayev.[44] But this reflected more of a desire for parity with Moscow in the old Union than it did a desire to keep these weapons. Kravchuk engaged in ambiguity regarding whether or not Ukraine sought unconditional elimination of all Soviet nuclear weapons on its territory, but likely only as a means to get a better deal. Kravchuk’s successor, President Kuchma, continued this line, later adopting the view that Ukraine could not accept return of weapons to Russia unless he could be assured of their elimination in Russia. This argument eventually resulted in the suspension of Ukraine’s return to Russia of non-strategic weapons for a brief period of time in 1992.[45] The role of
U.S. Nunn-Lugar assistance was pivotal in allowing for the conclusion of safe, secure dismantlement (SSD) negotiations over Soviet strategic weapons in Ukraine, without which it is unlikely that the logjam would have been broken.[46]

The public record as to just what technical means Moscow could have employed to render unusable Soviet weapons in Ukraine is unclear. Through 1993, Moscow was still negotiating with Kyiv over certain measures related to weapon safety, including “remov[ing] targeting data from all nuclear weapons delivery vehicles on the territory of Ukraine”[47] Some anecdotal evidence suggests that Ukraine did in fact have “the codes for authorizing launch of the SS-19s and SS-24s in Ukraine.”[48] A chronology prepared by U.S. Ambassador James Goodby, done circa January 1994, stipulates that the Russians informed Washington in May 1993 that they had “removed ‘flight codes’ from all ALCMs at Ukrainian bases.”[49] Ukraine might have wanted to keep operational the SS-24s it had inherited, but not for very long. Yuri Dubinin recalled a brief effort to retain “[46] solid-propellant missiles...until the Nonproliferation Treaty is revised in 1995.”[50] Presumably none of them would have to be flight-tested for some time, until a follow-on system was required. While Russia has in the last four years begun to recoup a rail-mobile ICBM capability, potentially to replace its vanished rail-mobile variant of the SS-24, there is not an analogous cost estimate for the effort that would reflect what it would have cost Ukraine to develop a follow-on for its silo-based SS-24 Mod 2S. It is generally understood that it will take the United States a decade or more to develop a follow-on to its Minuteman III ICBM and at considerable cost.

The Counterfactual Game: Ukraine as Pakistan

If, however, as by magic, Ukraine somehow did have nuclear weapons, including some or all of the forces it inherited and all the warheads on them, what course would Russian revanchism in Crimea, or otherwise, have taken?

First, Ukraine’s status as the world’s third largest nuclear weapons state did provide an immediate source of power for Kyiv, one that certainly could have endured, in some state, until 2014, again presuming significant technical barriers were overcome and some form of warhead design work started in Ukraine, likely with significant foreign assistance or stolen Russian expertise. At the numbers of systems with warheads present in 1991, Moscow certainly would have had to contemplate very carefully any conflict with Kyiv. But this presumed superiority of numbers over looks several very difficult practicalities. First, Ukraine’s missile force would be of intercontinental range. They could be fired at depressed trajectories, but then Ukraine—not Russia—would be exploiting a large loophole in the INF Treaty. The target sets for Ukrainian weapons would presumably include some form of nuclear signaling in and of themselves, if Kyiv had developed a modern concept for its Soviet weapons. So, if we presume that Kyiv had maintained some kind of follow-on ballistic missile capability with accompanying warheads, these weapons could form the core of Ukrainian deterrent.
Ukraine, like Pakistan, would have, again if it kept everything, some number of non-strategic weapons of undetermined emplacement, deployment and delivery vehicle. These weapons might prove to be of a priori value for Kyiv in the Crimean conflict, particularly sea-based weapons, if we were to presume a deterrent effect from these weapons, too. However, Ukraine as a non-strategic nuclear power might have developed particularly destabilizing concepts for employing these weapons in precisely the Crimean situation: they could enable a neutralizing blow to massed conventional forces for which Ukraine did not have comparable numbers of troops and capabilities, and, by so doing, run the precise risk that Russian non-strategic weapons now run, given the opacity and ambiguity that attach to them.

Ukraine’s only sea-based nuclear capability might have been certain ships equipped with cruise-missile launch capability and perhaps other pre- Presidential Nuclear Initiative (PNI) naval weapons. Relatively anecdotal reports indicate that Russia might be moving its anti-ship cruise-missile capable naval forces into Sevastopol as if in anticipation of U.S. activity. The Black Sea Fleet itself was viewed by Moscow in 1991 as a component of Russian “strategic forces” since “The presence of tactical nuclear weapons on its ships and planes, and its important role in defending the CIS from a maritime sector were presented as arguments to emphasize the strategic nature of the Black Sea Fleet.”[51] It is, however, very likely that Ukraine could not have maintained the expense of keeping all of the Black Sea Fleet and all of its non-strategic nuclear weapons-capable ships and aircraft.

If Ukraine had retained all of its nuclear ALCMs and heavy bombers, it is likely that this element of its dyad could permit some form of nuclear signaling, as well. However, in 2014, given the presence of multi-static Russian radar—and relatively weak Ukrainian command and control links—these and all other Ukrainian nuclear forces would have been particularly dangerous to deploy, let alone maintain.

If Ukraine had kept nuclear weapons, as well, the United States would have been in a very difficult position. Kyiv sought and obtained—along with Russia and other former Soviet republics—a U.S. detargeting commitment.[52] The final set of U.S. detargeting measures included “changing weapon-system control settings so that on a day-to-day basis no country, including Russia, Ukraine, or any other former Soviet territory, will be targeted by U.S. strategic forces,” and had the consequence of removing targeting information from U.S. Trident I, II and Peacekeeper missiles but for “older-technology Minuteman III missile computers, which require[d] a constant alignment reference, [they were] set to ocean-area targets.”[53] If Ukraine had balked and kept its weapons, it is unclear whether this, primarily political exercise could have unfolded. For the United States, the nation that put strong pressure on Kyiv to become a Non-Nuclear Weapon State, more than detargeting would have been fundamentally affected. U.S. nuclear forces would have to remain ready to deal with an intercontinental threat which, while it still emanated from Russia, would have also included Ukrainian strategic offensive arms with no treaty-supplied information regarding them since there would have been no START I. At a minimum, this single counterfactual result would have greatly prevented anyone from getting anything they wanted—now, or in the past.
This paper uses briefings and meetings undertaken in 2011 as part of a Senate Foreign Relations Committee Staff Delegation to Moscow and to NATO capitals. The author thanks Marik A. String, formerly of the Foreign Relations Committee and now an Associate at Wilmer, Cutler, Pickering, Hale and Dorr, LLP, and a colleague and friend for his input on this paper and his work on our 2011 Staff Delegation.

As former German Defense Minister Karl-Theodor zu Guttenberg reportedly said while in office: “[W]e could have partners in mind who probably would be glad to offer their grounds and their soil for any weapons.” One NATO official from an Eastern European Ally underscored this point in a 2011 meeting: “Never say never.”

Endnotes


The Role of Nuclear Weapons During the Crisis in Ukraine


[9] Ibid.


[12] Ibid.


Claudette Roulo, “Army to Cut 12 Brigade Combat Teams by 2017, Odierno Says,” American Forces Press Service, June 25, 2013, at http://www.defense.gov/news/newsarticle.aspx?id=120361, last accessed on June 27, 2014. The White House Fact Sheet on the European Reassurance Initiative released on June 3, 2014 makes a vague reference to U.S. forces in Europe, but does not clearly indicate a decision to reverse troop withdrawals: “In addition to this initiative, we are reviewing our force presence in Europe in light of the new security challenges on the continent. These efforts will not come at the expense of other defense priorities, such as our commitment to the Asia Pacific rebalance.” At http://www.whitehouse.gov/the-press-office/2014/06/03/fact-sheet-european-reassurance-initiative-and-other-us-efforts-support-, last accessed on June 27, 2014.

Private conversations with Polish and Baltic experts in 2011.


Vasylenko.

In 1978, at the first U.N. Special Session on Disarmament, then-Secretary of State Cyrus Vance stated: “The United States will not use nuclear weapons against any Non-Nuclear-Weapon State Party to the NPT or any comparable internationally binding commitment not to acquire nuclear explosive devices, except in the case of an attack on the United States, its territories or armed forces, or its allies, by such a state allied to a Nuclear Weapon State, or associated with a Nuclear-Weapon State in carrying out or sustaining the attack.”


[29] Ibid.


[31] Ibid.


The Role of Nuclear Weapons During the Crisis in Ukraine


[37] A highly-precise number is offered in Steven Pifer, “The Trilateral Process: The United States, Ukraine, Russia and Nuclear Weapons,” Brookings Arms Control Series, Paper 6, May 2011, at p. 39 in a footnote describing a 2008 Carnegie-Moscow event. An unnamed expert states that “the precise number of strategic warheads in Ukraine when the Soviet Union collapsed was 1,272 warheads for SS-19 and SS-24 ICBMs, and 672 air-launched cruise missiles for the Blackjack and Bear-H bombers deployed in Ukraine. The participants in the Carnegie workshop, which was conducted on the basis of Chatham House rules, included Americans, Russians and Ukrainians who had participated directly in the trilateral process.” Available at http://www.brookings.edu/research/papers/2011/05/trilateral-process-pifer. No explanation is provided as to why there would be 32 more ICBM-accountable warheads in Ukraine than the publicly available numbers of SS-24 and SS-19 ICBMs could accommodate. Ambassador Pifer notes that his paper was reviewed by the Department of State, for declassification purposes, before it was published. Hereinafter, “Pifer.”


[43] Dubinin.


Dubinin.


Dubinin.


The European Union is supporting the Trans-Atlantic Energy Action Project & Arms Control and WMD Non-Proliferation Program. Learn more here.