



MULTILATERAL SECURITY GUARANTEES: UKRAINIAN CONTEXT

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1. The history of multilateral collective guarantees

Multilateral collective guarantees are rather common military and political phenomenon in the historical evolution of international relations and its political-legal dimension. Legally, such guarantees are a special integral part of international law and can be presented as the international legal acts, such as treaties, pacts, memoranda or additional protocols to international agreements. These acts include guarantees, assurances or surety (external security and political patronage) of certain groups of states in relation to other actors of the international relations (states, states associations, nations, international organizations and others), according to a certain course of action, ensuring compliance with established rights or status of any state (group of states), international obligations or maintaining a certain condition (character) of international relations. The subject of multilateral guarantees is mostly covenants, maintenance of state's neutrality, sovereignty of governance, integrity of the territory and other (specifically provided) security guarantees.

Classic examples of the state's neutrality guarantees are cases of Switzerland and Luxembourg. According to the Paris Peace Treaty on 20 November 1815 ("Second Paris Peace") which was concluded between Austria, United Kingdom, Prussia, Russia and France, the states guaranteed neutrality and integrity of the territory of Switzerland.

Similarly, as a result of the second peace conference in London ("London Agreement") dated May 11, 1867, which included Austria, Belgium, France, Great Britain, Italy, Luxembourg, Netherlands, Prussia and Russia, "The Luxembourg crisis" was solved and Luxembourg has received the guarantees of neutrality. However, despite the similarities in a political and legal procedure providing substantial security and political guarantees of neutrality and territorial integrity of Switzerland and Luxembourg, the guarantees provided to Luxembourg (alternatively to Switzerland) was violated by Germany twice in 1914 and 1941.

The most common type of providing multilateral security guaranteed in today's world process are multilateral treaties, which guarantees donors declare their readiness to be a part of the guarantees of rights, status or security of the international relations participants, established by the relevant international legal act. The equivalent examples of such agreements are the Antarctic Treaty (1959), the Outer Space Treaty (1967), the Treaty on the Non-Proliferation of Nuclear Weapons (came into force in 1970), the Budapest Memorandum (1994), the Dayton Agreement (1995) the Comprehensive Nuclear-Test-Ban Treaty (1996), the Minsk agreement (2014), etc..

Agreements that combine both military-political guarantees and prevent environmental loss of humanity mould a separate cluster of the international multilateral guarantees. For example, alongside with the concern for the environmental status of Antarctica (which represents about 10% of the earth's surface), the purpose of the Antarctic Treaty¹ is also political and military neutralization and demilitarization. It says, "It is the interest of all mankind that Antarctica shall continue forever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord".² Article 1 of the Treaty states that Antarctica should be used for peaceful purposes only, prohibits any measures of a military nature, such as military bases or fortifications, the carrying out of military maneuvers, as well as testing of any type of weapons. Article 5 marks that any nuclear explosions and disposal of radioactive waste shall be prohibited in this area. Due to the demilitarization of the region it has become possible to secure such guarantees in the CCAMLR Convention (Convention on the Conservation of

¹ http://www.ats.aq/documents/ats/treaty_original.pdf

² http://www.ats.aq/index_r.htm

Antarctic Marine Living Resources, 1980).³ Similarly, the Outer Space Treaty is an example of multilateral collective security on the use of space for peaceful purposes only and prevention from placing in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction or from installing such weapons on the Moon or on the station in cosmic space. An attempt to consolidate the implementation of the Agreement was an adoption of the Convention on International Liability for Damage Caused by Space Objects (1971).⁴ But the basic agreement in terms of multilateral collective guarantees is the Treaty on the Non-Proliferation of Nuclear Weapons.⁵ It acts as a political and legal matrix providing international political guarantees of sovereignty and territorial integrity in the world, where military and technological access to nuclear weapons by some countries and the absence of this type of weapons in possession of other ones makes international order fragile and international law too vulnerable.

2. The current state of the multilateral collective guarantees to Ukraine

The independence of Ukraine in 1991 has put on the agenda the issue of assurance of its state sovereignty, security and external defense. Absence of effective state building experience, presence of the significant problems associated with the lack of political democracy institutions, market economy and national unity were complicated by the Soviet military heritage. First of all it referred to the nuclear arsenal (tactical and strategic), which held the third place in the world by its capacity after the Russian and American ones. Resolution of the Ukrainian national building challenges, initially, took place within a difficult international context - collapse of the bipolar system of the international political and security order and aggravation of military and political relations between the newly independent states in the South and South-East Europe. The process of dismantling of the communist statehood got specific

³ <http://www.ccamlr.org/ru/organisation/%D1%82%D0%B5%D0%BA%D1%81%D1%82-%D0%BA%D0%BE%D0%BD%D0%B2%D0%B5%D0%BD%D1%86%D0%B8%D0%B8-%D0%B0%D0%BD%D1%82%D0%BA%D0%BE%D0%BC>

⁴ http://zakon2.rada.gov.ua/laws/show/995_126

⁵ http://www.un.org/ru/documents/decl_conv/conventions/npt.shtml

exasperation in the Balkans and the Caucasus. Ukraine with its very hard political and economic problems and the most powerful potential of the weapons of mass destruction was at risk of civil and military disruption as a central link of a so-called destabilization arc from the Western Balkans to the South Caucasus.

One of the main possible fuses of trans-regional destabilization appeared to be a plan of the Ukraine's nuclear disarmament and strengthening the institutional control over weapons of mass destruction that had somehow to stabilize a pathway of the military and political development of Ukraine.⁶ Achieving this goal became possible by the accession of Ukraine to the Treaty on Nonproliferation of Nuclear Weapons (1967) (the Non-Proliferation Treaty, NPT). This Agreement is a multilateral international act, developed by the UN bodies to prevent the increase in the countries possessing nuclear weapons and to ensure international control over implementation of their obligations under the Treaty to prevent an armed conflict with the use of nuclear weapons. Along with a military mission, this Agreement aimed to legalize a possibility of some countries for the peaceful use of nuclear energy and circulation of relevant technologies. The treaty also declared the inalienable right of all participating countries to develop research and production of nuclear energy. Institutional control over nonproliferation of nuclear weapons assigned to the International Atomic Energy Agency (IAEA). In accordance with the Treaty five countries with the nuclear weapons arsenal declared their commitments not to use it against states without it. The exception could be only a case when nuclear weapons would be used in response. Such a planning of handling nuclear weapons developed under the military doctrine of the Mutually Assured Destruction (MAD).

Another important additional element of guarantees to countries that do not possess nuclear weapons is a resolution of the UN Security Council (on June 19, 1968),⁷ in which among the necessary security guarantees to the non-nuclear-weapon state it is said that in case of aggression with use of nuclear weapons, the permanent members of

⁶ Another dimension of the issue of the Ukraine's nuclear disarmament was an internal setting to achieve this goal. Verkhovna Rada of Ukraine stated the idea of a non-nuclear status in the Declaration of the State Sovereignty of Ukraine (from 16 July 1990). Thus, firstly, the late Ukrainian elite was trying to demarcate its separateness from the Soviet management and pressure in Moscow. Secondly, the nuclear status of Ukraine was considered by the Ukrainian elite as a factor of further dependence on the central Soviet government, because there were certain problems with independent (sovereign) use and disposal of this type of armament by the Ukrainian authorities.

⁷ <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/248/72/IMG/NR024872.pdf?OpenElement>

the UN Security Council would have to act immediately in accordance with their obligations under the UN Charter.⁸

The collapse of the Soviet Union created a collision because the Russian Federation was declared as a legal successor of the USSR, while the nuclear weapons were deployed in several of the newly independent countries, including Ukraine. According to the UN Charter among the permanent members are only five countries that possess nuclear weapons. So for bringing current situation into line and for reducing the international military and political risks, it was crucial to limit the "nuclear club" to the number that had preceded the collapse of the USSR. Hence, the key donors of the international security - the US, the Russian Federation and the United Kingdom chose such a strategy of nuclear disarmament of Ukraine. For more coherent and guaranteed process of the nuclear disarmament and Ukraine's accession to the NPT as a non-nuclear weapon state, the leaders of Ukraine, the USA, Russia and the UK signed «Memorandum on Security Assurances in connection with the accession of Ukraine to the Treaty on the Non-Proliferation of Nuclear Weapons» (from December 5, 1994).⁹

According to the Memorandum, considering Ukraine's obligations regarding nuclear disarmament, the US, Russia and the UK reaffirmed their commitments: to respect the independence, sovereignty and existing borders of Ukraine; to refrain from the threat or use of force against the territorial integrity and political independence of Ukraine (except in self-defense, according to the UN charter); to refrain from economic coercion designed to subordinate to their own interests the exercise by Ukraine of her rights inherent in its sovereignty and thus to secure advantages of any kind; to seek an immediate United Nations Security Council action to provide assistance to Ukraine, as a non-nuclear-weapon State, which is a party to the Treaty on the Non-Proliferation of Nuclear Weapons, if Ukraine should become a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used; not to use nuclear weapons against any non-nuclear-weapon State, party to the Treaty on the Non-Proliferation of Nuclear Weapons, except in case of an attack on themselves, their territories or dependent territories, their armed forces, or their allies, by such a State in

⁸ <http://www.un.org/ru/documents/charter/index.shtml>

⁹ France and China as permanent members of the UN Security Council declared similar to the Memorandum's guarantees of the sovereignty and territorial integrity of Ukraine.

association or in alliance with a nuclear-weapon State; hold consultations in the event of a situation that raises a question concerning these commitments.

4. Short-term and medium-term prospects for implementation of multilateral guarantees for Ukraine

In the current condition of security partnership between Ukraine and the countries-signatories to the Budapest Memorandum is largely devalued by the absence of

1) joint security and political strategy in relation to Russia, as the main destabilizing factor of the world order;

2) joint strategy in relation to Ukraine, as a country, declared its pro-European course and despite significant internal and external challenges keeping pro-Western preferences both in a public opinion and in the "European elite consensus";

3) clear strategic projection of a "pan-European" security system for the future, according to which the "red lines" of the European security, which the European system of security guarantees will not cross, but also does not allow to violate, are still unformulated.

On "the level of uncertainty" in the implementation of the multilateral guarantees for Ukraine will influence the rotation of the ruling establishment in western countries - donors of the international security. The presidential elections in the United States demonstrated unreadiness of the Ukrainian authorities to the changes in the ruling "political team" and possible difficulties in lining up a new dialogue to work out the strategy of countering Russian aggression and de-occupation of the Ukrainian territory (Crimea and special districts of Donetsk and Lugansk regions). The perspective of supporting Ukraine in key countries of "Normandy format" — Germany and France due to the possible political rotation in 2016 (presidential elections in France and parliamentary elections in Germany) remains uncertain.

Thus, in a short-term perspective (up to 3 years), a significant strengthening of the multilateral guarantees for Ukraine is not expected. De-facto Ukraine will be left with a choice: to continue use of the "idle guarantees" of the Budapest Memorandum or to

take responsibility for potential consequences of the aggravation of confrontation with Russia (and the CSTO). In the Western partners' strategies will dominate the strategy of deterring Ukrainian from abrupt political and military moves that can "trigger" Russia to reinforce its military and political pressure on Ukraine in particular and the West in general. Security assurances will be implemented as a limited interpretation of security - humanitarian, economic, informational, social dimensions and so on.

Military guarantees in a confined mode (limited military assistance, humanitarian supply of lethal weapons) through the structures of NATO, military structures of some NATO member states and other international partners of Ukraine, most likely, will only happen in case of the Russian direct military aggression beyond perimeter of the currently occupied Ukrainian territory.

In a medium term perspective, the probability of providing multilateral collective guarantees to Ukraine is slightly increasing. But this increment is tied to the prospects of a successful political and security reforming of the Ukrainian state (first of all, these systems need to be adapted to the institutional mechanisms of provision/ adoption military assistance and collective security guarantees within NATO and the EU). It is necessary to have a realistic vision on development of Ukraine in the medium term perspective. In the nearest future, Ukraine does not acquire full membership neither in NATO nor in the EU (therewith, outside the EU and NATO, there is no effective system of the multilateral guarantees, and taking into account the falling confidence between global players, building of such a system of guarantees outside NATO and the EU in the medium term looks unlikely). At the same time, the Western guarantors are able to transform a system of the "non-performing guarantees" considering the prospect of Ukraine as a potential donor of the European and transatlantic security, providing to the Ukrainian state a status of the priority partnership outside NATO.

But this scenario is tangent only to the deep institutional transformation of the Ukrainian state and probably prolonged absence of direct military clashes in the area of the Ukrainian-Russian confrontation (this situation, in the middle term perspective is quite undesirable development of Russian aggression against Ukraine for Ukraine's Western partners).

5. Conclusions and recommendations for improving in providing multilateral guarantees to the country

1 ■ The multilateral security guarantees, considering the historicity and utility of this phenomenon, is rather complex and controversial political and legal product of the international military and diplomatic constellation. Institutional and legal aspect of the multilateral guarantees tend to be vulnerable because of imperfections of both mechanisms and tools to implement this type of the security guarantees, and due to the current limitations of the international law. Therefore, it should be noted that successful implementation of the multilateral guarantees is, in some sort, an exception, first of all, caused by the efficient internal security policies of recipient country (Switzerland despite collective neutrality guarantees has built a powerful national system of security and the defence of the country).

2. The involvement in the Ukrainian security system the institute of the multilateral collective guarantees has not received effective political and legal arrangement of these guarantees in, for example an international treaty or an international conference. The Budapest Memorandum misses any mechanisms and instruments to guarantee security of Ukraine and counter the relevant threats to the sovereignty of Ukraine, clear guarantees in case of violations, etc. The proposed format of "Memorandum" has not been even ratified by the parliaments of the signatory countries, which significantly reduced the legal and political perspective of this document.

3. In 1994, as a security support of nuclear its disarmament, Ukrainian government, instead of the Budapest Memorandum, had to make a full-fledged intergovernmental treaty on security guarantees to Ukraine. The content had to contain either providing guarantees of a "neutral status" to the Ukrainian state (Swiss version) or a roadmap for smooth (according to the will of the Ukrainian people) joining of the collective security system: NATO or the CSTO. Instead of that, the idea of the document appeared a refusal to participate in the transatlantic security frame and the temporary focus on a "pro-Russian security autonomy" without membership in the CSTO.

4. Ineffectiveness of the collective guarantees of the Budapest Memorandum had been obvious long before the Russian military aggression and occupation of the Ukrainian

territory. The greatest challenges to the Ukrainian sovereignty came from that part of the memorandum, which refers to the need to "refrain from economic pressure" from the side of the signatories. At the same time, political and security institutions of Ukraine had not reacted on existed threats to the Ukrainian sovereignty (did not appealed to the multilateral collective guarantees under the Budapest Memorandum using international public diplomacy), which created a security casus of Ukraine: State-signatories have abstained from performing security guarantees and ensured the practical opportunity for forthcoming cases of pressure and harassment against Ukraine.

5. Despite the extremely unfavorable context in providing multilateral security guarantees to Ukraine, Ukrainian foreign policy strategies should be directed to the further implementation (reforming) of these guarantees. The main foreign policy strategy of getting (restitution) of security guarantees is a need to ensure a signing of the international agreement (which would become substitute to the Budapest Memorandum) with reliable guarantees of military, diplomatic, political and economic support. A promising way out of the Russian-Ukrainian military conflict escalation can be a transition from the "Normandy format" to the "Budapest format" of diplomatic efforts in implementing security guarantees for Ukraine.

6. Voluntary nuclear disarmament of Ukraine marked the beginning of a progress in the nuclear disarmament on the post-Soviet space and largely stabilized the Eurasian geopolitical space. The aggression of Russia against Ukraine led to a violation of the UN Charter, the OSCE core principles, principles of inviolability of frontiers and a number of other international agreements and documents. Ukrainian efforts should be concentrated on promoting the US President Barack Obama effort, according to which Ukraine can become a part of a new initiative, the European Reassurance Initiative, which aims to provide NATO partner-countries from Central and Eastern Europe with further assistance, military patrols, conduct training and more.

7. Russian military aggression against Ukraine is a challenge for the current global political and legal order and institutions of collective security. The introduction of "Hybrid aggression" technology (symbiosis between military intervention and humanitarian actions and information expansion) to a sovereign state in conjunction with a "veto" power in the UN Security Council creates geopolitical tensions in international relations. Donors of collective security system must work out models of response to these new

threats by creating new security mechanisms, finding a way to deter external military aggression and limiting / overcoming the veto of a permanent member of the UN Security Council.

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