

**Bruno Tertrais**

Deputy director, Fondation pour la recherche stratégique

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## What security guarantees for Ukraine?

Western countries are discussing what security guarantees should be given to Ukraine. This short paper seeks to clarify the debate and discuss a range of possible options.

### Forms of security guarantees

While “guarantees” is a stronger word than “assurances”, the two terms are sometimes confused or used interchangeably, including because their legal value varies considerably from one type and context to another. They are formal or informal commitments to do (positive) or not do (negative) something in the realm of security and defense. All security guarantees are meant to have a reassurance value.

The expression “security assurances” refers primarily to nuclear non-proliferation. Negative security assurances (translated as “*garanties*” in French) are commitments given by Nuclear Weapons States (NWS) to refrain from using nuclear weapons against Non-Nuclear Weapons States (NNWS) which are parties to the Nuclear Nonproliferation Treaty (NPT). Positive ones are commitments to assist such countries should they become victims of such attacks, and to seize the UN Security Council in case they happened. Some of them are treaty-based (assurances contained in protocols to treaties establishing nuclear-weapon-free-zones).

“Security guarantees” are commitments to support a country (positive), or to refrain from such or such military initiative (negative) against another. Positive security guarantees can take various forms, from treaty obligations such as NATO’s Article 5 or bilateral arrangements to presidential statements such as “*we will help country X... to defend itself*”. Negative security guarantees include treaty-based obligations or mere political commitments such as NATO’s

reassurance commitments to Russia (no deployment of nuclear weapons or permanent presence of significant combat forces in Central Europe) made in the late 1990s.

## The debate about Ukraine

The current debate about Ukraine often confuses all these different types of commitments. This is understandable given that the invasion of the country since 2014 has shed light on the Budapest memorandums, signed in 1994 and which included several different kinds of assurances. In exchange for returning Soviet nuclear weapons to Russia, Ukraine (as well as Belarus and Kazakhstan) became a NNWS in the sense of the NPT. Three of the five NWS – the US, the UK and Russia – signed the memoranda. China and France committed themselves separately. Notably, the five NWS (re-)committed themselves to “*respect the independence and sovereignty and the existing borders of Ukraine*” and to “*refrain from the threat or use of force against the territorial integrity or political independence of Ukraine*” (negative assurances)<sup>1</sup>. In addition, they reaffirmed their NPT-related negative (no use of nuclear weapons against a NNWS) and positive (seek immediate UN Security Council action should Ukraine “*become a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used*”) security assurances.

The debate about Ukraine is further troubled by discussions about a very different kind of security guarantee: that which results from the provision of self-defense weapons and systems, including on the long run. This too is understandable: most Western allies consider that their security is ensured as much by the constant access to arms transfers as by diplomatic language, whatever its form. To wit, three key countries, Israel, Saudi Arabia and Taiwan, are considered *de facto* (but not *de jure*) allies of the United States because of the combination of strong language committing US assistance in case of aggression and sustained deliveries of defense equipment.

## What to do?

While Ukraine will eventually become a member of both NATO and the EU, thus benefitting from both organizations’ strong positive treaty-based security guarantees (Article 5 of the Washington Treaty and Article 42.7 of the Lisbon Treaty), membership will not come swiftly. So what to do in the meantime?

1. Giving an Article 5-equivalent security guarantee to Ukraine immediately is politically impossible. No Western country will commit itself to defend occupied territories (that would mean deliberately going to war against Russia). As per limiting the defense commitment to those regions which are under Kyiv’s control – a proposal sometimes made by Ukrainian officials before 2022 –, it is hardly feasible either: the battlefield is fast-moving and Russian air attacks continue much beyond the battle lines, including on distant cities.

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<sup>1</sup> « re-committed » for State parties to CSCE and OSCE treaties and agreements, which include similar provisions.

2. NATO and its member States will commit themselves to continue supporting Ukraine. The key question is how strong a language can be adopted at 30. If need be, a coalition of willing countries could issue a separate statement. The Quad – an old and informal but still valuable sub-NATO format that includes the US, the UK, France and Germany – has been mentioned in recent weeks, but it is difficult to see the value of a format that does not include Poland and the Baltic States.
3. A durable ceasefire – should Ukraine and Russia ever agree to one – would leave open the possibility of a security guarantee even if Kyiv had not recovered its full territorial integrity.
  - ⇒ While some have cited the precedents of Korea and Germany, these are hardly appropriate. These were countries occupied by outside powers, leading to the creation, in each case, of two independent States. The most relevant parallel is Cyprus: even though it is considered by the European Union as partly occupied since the Turkish intervention of 1974 and the creation of the “Turkish Republic of Northern Cyprus”, Nicosia does benefit, on paper, from the security guarantee of Article 42.7.
  - ⇒ Such a guarantee could be given in two different forms complementing each other: (i) a political statement by NATO (and perhaps also the EU) for instance to the effect that Ukraine’s security is of “*direct and material concern*” to their own security (a language already used by the Alliance in 1991<sup>2</sup>); and (ii) national statements by the three Western nuclear powers, the United States, the United Kingdom and France, which are also permanent members of the UN Security Council, akin to those given to Sweden and Finland as soon as their candidacy to NATO was accepted, to avoid any attempt by Russia to change the status quo before these countries are formally covered by Article 5.

Finally, giving security guarantees to Ukraine should not leave other countries in limbo. Georgia, to which membership of NATO was promised in 2008, and Moldova, a neighbor of Ukraine, should also benefit of a particular attention<sup>3</sup>.

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<sup>2</sup> « *The consolidation and preservation throughout the continent of democratic societies and their freedom from any form of coercion or intimidation are therefore of direct and material concern to us* » (North Atlantic Council, Copenhagen, 6-7 June 1991).

<sup>3</sup> The longer term question of possible negative guarantees to Russia, which has been raised by some in the past 18 months, is a separate issue. Moscow has long sought assurances of non-enlargement or neutralization of its neighbors, in contradiction with the principle of “freedom to choose” that it has itself subscribed to). It is unlikely that the political conditions under which Europe and the United States could consider giving security guarantees to Russia will be present any time soon.

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