

# THE YERMAK-RASMUSSEN REPORT ON SECURITY GUARANTEES FOR UKRAINE

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On 24 May 2022, the head of the Office of the President of Ukraine, Mr Andriy Yermak, announced the creation of an international advisory group to develop proposals for future security guarantees for Ukraine.<sup>1</sup> The report was published on 13 September 2022, after several rounds of consultations among the members of the group.<sup>2</sup> This analysis considers the background to the report and reviews its recommendations. It draws on an earlier discussion of security guarantees in the context of Ukraine.<sup>3</sup>

## I. BACKGROUND

### 1. Security Guarantees and Neutrality in the Initial Phase of the Conflict

Ukraine had demanded future security guarantees ever since the outbreak of the war with the Russian Federation on 24 February 2022. However, the understanding of what this would mean shifted over the following months.

In its initial negotiations with the Russian Federation, provision was made for the future neutrality of Ukraine, which would be balanced by such guarantees.<sup>4</sup> Perhaps somewhat oddly, it was foreseen that the Russian Federation would be one of the guarantor states. Indeed, in the Russian version of the draft agreement that was nearly approved, the Russian Federation would have exercised a veto over the application of the guarantee in case of future – most likely its own – aggression.

As the conflict progressed, however, Ukraine stepped back from the offer of a future status of permanent neutrality. In view of the brutal nature of the conflict and allegations of very serious breaches of humanitarian law by the occupying forces of the Russian Federation, the prospect of a peaceful settlement receded in any event. Instead, Ukraine reiterated its requests for direct military intervention by NATO states, in the exercise of its right of collective self-defence.

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<sup>1</sup> <https://www.president.gov.ua/en/news/andrij-yermak-ta-anders-fog-rasmussen-ocholyat-mizhnarodnu-k-75345>, 24 May 2022.

<sup>2</sup> [https://www.president.gov.ua/storage/j-files-storage/01/15/89/41fd0ec2d72259a561313370cee1be6e\\_1663050954.pdf](https://www.president.gov.ua/storage/j-files-storage/01/15/89/41fd0ec2d72259a561313370cee1be6e_1663050954.pdf).

<sup>3</sup> Marc Weller, Options Paper on Security Guarantees, Ukraine Peace Settlement Initiative: [https://www.lcil.cam.ac.uk/sites/www.law.cam.ac.uk/files/images/www.lcil.cam.ac.uk/ukraine/weller\\_security\\_guarantee\\_options\\_paper.pdf](https://www.lcil.cam.ac.uk/sites/www.law.cam.ac.uk/files/images/www.lcil.cam.ac.uk/ukraine/weller_security_guarantee_options_paper.pdf)

<sup>4</sup> <https://meduza.io/en/slides/ukraine-s-10-point-plan>.

## **2. Requests for Direct Military Involvement**

Of course, the option of NATO ‘boots on the ground’ was rejected in Western capitals. In consequence, Ukraine requested instead the imposition of a no-fly zone over Ukraine. This was meant to neutralise what then appeared to be the emerging air dominance or superiority of the Russian Federation. However, like the proposal to send troops to help defend Ukraine, this option, too, would have pitted NATO forces against Russian federation units, in this instance, air forces. It was thought that this would entail a high risk of further military escalation. In view of this risk, Western states consistently refused to involve themselves directly in a military confrontation with the Russian Federation.

Instead, they focused on equipping and training Ukrainian forces, along with intelligence sharing and other forms of support short of direct military intervention. Rather than engaging in covert programmes, as might have been felt necessary in other circumstances, this support was quite public and quite massive. It included highly capable weapons, particularly anti-tank missiles and rockets. This had a significant role in helping to reverse the military dynamics of the conflict. Still, the supply of weapons was again carefully calibrated, excluding longer-range systems that could reach deeper into Russian Federation territory from Ukraine. This extended to the eventual refusal to supply former Soviet-era MIG fighters from Poland or other former Eastern bloc countries that still operated them. As yet, the supply of highly accurate land-to-land missile systems, used to suppress the artillery units of the Russian Federation forces, has been restricted to relatively short-range versions.

In the meantime, as its military position improved, the Ukrainian position on a possible peace settlement with Ukraine hardened further. There was a sense that the Russian Federation had committed itself to the wholesale destruction of Ukraine. This, it was thought, would remain its longer-term goal, whatever the immediate outcome of the so-called ‘Special Military Operation’ on the ground. A possible peace agreement would therefore only provide cover for the Russian Federation to prepare for another onslaught after mobilizing yet greater and better equipped military forces. In short, there was no option of peace, only the option of a pause.

If a genuine peace settlement was not an option in the eyes of the Ukrainian leadership, there were few alternatives. The invasion and lack of a decisive response from the United Nations or regional European security structures had proven that there are no collective security mechanisms that might protect Ukraine from further aggression by the Russian Federation—a permanent member of the UN Security Council. There were some suggestions by Ukrainian interlocutors that a New European Security Architecture might be built around a new security mechanism for Ukraine. However, this was neither an immediate, nor a likely prospect given the state of East-West relations in the wake of the aggression against Ukraine.

## **3. The NATO Perspective**

If collective security was not available, this would only leave collective defence. Hence, rather than offering neutrality, which would have meant abandoning the aim of joining NATO, Ukrainian policy re-committed itself to assuring its security through collective self-defence in partnership with Western allies.

In fact, after gaining independence from the Soviet Union, Ukraine had initially opted for a neutral, or at least non-aligned, foreign policy. Yet, at its Bucharest summit of April 2008, NATO approved potential membership for Ukraine, along with Georgia:

NATO welcomes Ukraine's and Georgia's Euro-Atlantic aspirations for membership in NATO. We agreed today that these countries will become members of NATO. Both nations have made valuable contributions to Alliance operations.<sup>5</sup>

In December 2014, in the wake of the initial military operation by the Russian Federation relative to Ukraine, 303 out of 450 members of the Ukrainian parliament voted to remove the provisions of the law on foreign relations that provided for non-alignment.<sup>6</sup> That law had been adopted under the predecessor government of Viktor Yanukovich, who had been displaced during the Maidan revolution. Moreover, the Constitution now noted the 'irreversibility of the European and Euro-Atlantic course of Ukraine' in its preamble.<sup>7</sup>

On the other hand, it seemed unlikely that NATO membership for Ukraine would be an immediate prospect. Membership in the alliance generally requires settled borders and an absence of armed conflict. This doctrine is meant to avoid importing on-going conflicts into the area of application of the NATO Treaty. In this instance, the interest of NATO to exclude a direct military confrontation with the Russian Federation would presumably exclude membership in the immediate future. Moreover, some NATO members might oppose membership as being openly provocative in relation to the Russian Federation. A decision to admit a new NATO member requires unanimity among the existing members.

If the future security of Ukraine cannot be secured (1) through a genuine peace agreement with the Russian Federation, (2) through credible and effective collective security in the shape of the UN or regional institutions, or (3) by way of collective defence as part of NATO, this would only leave (4) an *ad hoc* defensive arrangement for Ukraine as a possible option. This would be the idea of security guarantees negotiated with potential guarantor states.

#### **4. Emphasis on Collective Self-defence and Western Security Guarantees**

Following the reverse in the peace negotiations between Ukraine and the Russian Federation mediated by Turkey early in April 2022, this fourth option was pursued with greater vigour. Towards this end, likely guarantor states engaged in diplomatic consultations among themselves, and with Ukraine, about a possible guarantee arrangement. In advance of these meetings, Ukraine insisted that security guarantees would need to meet three non-negotiable criteria:

- Any outcome would need to be an actual, formal guarantee, rather than just a softer 'assurance' relating to the future security of Ukraine;
- Any outcome would need to take the form of a binding treaty, ratified by all participating states;

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<sup>5</sup> [https://www.nato.int/cps/en/natolive/official\\_texts\\_8443.htm](https://www.nato.int/cps/en/natolive/official_texts_8443.htm), para 24.

<sup>6</sup> <https://www.rferl.org/a/ukraine-parliament-abandons-neutrality/26758725.html>.

<sup>7</sup> However, Article 17 of the Constitution continues to preclude the installation of foreign military bases on Ukrainian soil.

- The guarantee would need to be on par with NATO's Article 5 commitment as an iron-clad and automatic undertaking to defend Ukraine in the future.

As was already noted, the abortive negotiations between Ukraine and the Russian Federation at the end of March 2022 had nearly resulted in agreement on a security guarantee that would have included the Russian Federation. From a Western perspective, the design of the proposal was fundamentally flawed and dangerous for Ukraine. It reflected the power-relationship between the two at a time when the Kremlin seemed poised to take Kyiv and establish control over the whole country. In terms of concept and approach, this initiative seemed to hark back to Soviet times, when Moscow was pushing for non-aggression Pacts and other purely verbal, and possibly meaningless reassurances.

Relieved that this phase appeared to have passed, several potential Western guarantor states started to launch consultations among themselves on what they might be able to offer to Ukraine. Ukraine was invited to participate in the process as it unfolded. However, the initial meetings proved disappointing for Ukraine. Its three key points, or red lines, were precisely the lines which the potential guarantor states were unwilling to cross in favour of Ukraine. Somewhat daringly, Ukraine walked out of the process.

## II. CONTESTED ISSUES IN RELATION TO SECURITY GUARANTEES

### 1. Formal Guarantees

On the first issue, the insistence on a formal guarantee rather than a looser ‘assurance,’ Ukraine pointed to the evident failure of the Budapest memorandum. The Memorandum was signed in 1994 by Russia, the UK, the USA and Ukraine, when Ukraine gave up the nuclear weapons inherited from the former Soviet Union. Contrary to myth, the document is in fact a binding treaty, duly registered with the United Nations. However, its obligations are limited.

In line with the UN Charter, the Memorandum confirms the obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine. The USA, UK and Russia added a solemn pledge that ‘none of their weapons will ever be used against Ukraine except in self-defence.’ But in contrast to NATO’s Article 5, there is no promise of collective defence. Instead, even if an aggression involving nuclear weapons takes place against Ukraine, the other three parties merely pledge to refer the matter to the UN Security Council. Of course, in the present episode, the Russian Federation was able to frustrate action in the Council concerning its own aggression through its veto. This rendered the supposed undertakings in the Memorandum effectively meaningless.

In view of this experience, Ukraine insisted on a formal guarantee that would commit the guarantor states to ensure the security of Ukraine from future aggression, especially also in the light of the absence of an effective collective security mechanism. Ukraine understood the concept of a guarantee in the tradition of 19<sup>th</sup> century diplomacy. The guarantors would take on a formal obligation to ensure the future security of Ukraine against potential further aggression from the Russian Federation—an obligation of result, rather than mere intent. The burden of delivering security for Ukraine would shift from Kyiv to the guarantor states, up to and including going to war towards that end.

However, the discussions between Ukraine and the potential guarantors made clear that several states were unwilling to give up the political space for determining how to respond to future security crises involving Ukraine. Instead of a formal guarantee, they preferred to refer to ‘assurances,’ ‘joint undertakings,’ or other, weaker terms. For Ukraine, this smacked of backtracking and a return to the ambiguity that had surrounded the Budapest Memorandum.

### 2. Legally Binding

The second demand put forward by Ukraine concerned the need for a legally binding undertaking, that is to say, a formal treaty ratified by all the participating states. This requirement was also difficult or impossible to meet. The USA, for instance, has virtually abandoned concluding formal treaties on sensitive issues of defence, given the difficulties in obtaining the advice and consent of the Senate. Instead, Washington has had to move towards executive agreements concluded at a lower level of government without the need for ratification, or to soft law declarations of policy that are either non-binding, or at best of ambiguous legal quality. The *Joint Comprehensive Plan of Action*, better known as the Iran nuclear deal, concluded on 14 July 2015, is one such example. It is a document containing no less than 159 pages of specific and detailed obligations demanding very specific

implementation by the parties. Allegations of non-compliance have been treated in the manner of allegations of breaches of treaty. But this instrument is not formally a treaty. Although it operates (or operated, given the US withdrawal) like a treaty, it is deliberately merely designated as a *Plan of Action* in view of the constraints experienced by the US.

Moreover, even if a formal treaty could be concluded by the participants, the requirement for ratification by all national parliaments of the states involved also seemed difficult to meet. Even in states other than the USA, ratification procedures can be difficult and involving. Requiring all states to ratify before the guarantee would enter into force, as Ukraine had proposed, would risk the entire project, should ratification be delayed or impossible in any one of the participating states.

### **3. Content of the Guarantee**

Finally, in addition to its designation and legal form, there was the question of the substantive quality, or weight, of the guarantee. This concerned the trigger event bringing the guarantee into operation and the question of an automatic response, including direct military assistance.

On the first item, it seemed clear that the trigger event would be an 'armed attack or act of aggression' as defined in international law. But how would the occurrence of the trigger event be determined? What would happen if Ukraine had provoked an armed action by the other side? Would the guarantee extend to territory more recently captured by the Russian Federation, or in contention between Ukraine and the Russian Federation?

More crucial though was Ukraine's unwavering demand that the substance of the guarantee would need to be as clear and unambiguous as the provision of Article 5 of the NATO Treaty. Article 5 provides:

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.

From the perspective of Ukraine, this undertaking commits all members to the military defence of the territory of any other member. As Article 5 notes, the parties 'will' assist the state under attack. But in actual fact, this provision leaves it to each NATO member itself to determine what action 'it deems necessary' in assisting the defending state, although it could be argued that such action should include a military dimension. Hence, even the NATO treaty does not include a formal requirement determining a specific kind of response that must be taken automatically by all NATO members if one of them suffers an armed attack, such as the automatic imposition of a no-fly zone over the air space of the state under attack, as Ukraine had demanded. There is no commitment to any particular type of forcible response, or its scale or level of intensity. Every state determines individually what response 'it deems necessary.'

Instead, the strength of the NATO Treaty lies in the long-established and unquestioned commitment of its members to effective collective action at the political level. Even if there is no strict legal obligation to undertake any particular military response, it is beyond question that all will contribute to whatever the effective defence of a NATO member may require, generally according to plans agreed and approved by all members in advance. The credibility of NATO does not rest with the legal character of its treaty, but with the historically proven high level of political commitment of its members, and the actual defensive capacity, planning and preparation, that is in place.

On the other hand, in this instance, a legally binding guarantee of automatic, direct military action in response to renewed aggression was simply unacceptable to the potential guarantors. If they had been unwilling to become involved in a direct military confrontation with the Russian Federation in the present war, for fear of uncontrollable escalation in a conflict with a major nuclear power, then these concerns would also apply to any future conflict. They would not give up the exercise of political judgement in relation to a future act of aggression by offering an automatic guarantee of military action.

### **III. THE YERMAK/RASMUSSEN REPORT**

#### **1. Formation of the Yermak/Rasmussen Group**

One might have expected that Ukraine would have worked with its key allies to find compromise solutions that would have amounted to a credible assurance of Ukraine's future security. However, in the discussions with the potential guarantors, Ukraine insisted on compliance with its three red lines. From its perspective, compromise approaches or ambiguous language in drafting the terms of the assurances or guarantee were out of the question. This attitude was based on the experience with the Budapest Memorandum, which had proven entirely ineffective, and also on the fear of a domestic backlash. The public, it was feared, would never accept any outcome that fell short of the three requirements set by the Government of Ukraine.

Ukraine then ended the discussions with the potential guarantors and opted for the alternative approach of appointing an international advisory group to address the issue.<sup>8</sup> The group was composed of senior, high-level political figures, some of them retired, mainly drawn from the likely guarantor states. The group was headed by Andriy Yermak, the powerful chief of President Zelensky's office, and Anders Fogh Rasmussen, former Prime Minister of Denmark and one-time NATO Secretary-General.<sup>9</sup>

As was noted at the outset, the report of the working group was issued on 13 September 2022. Rather than re-enforcing Ukraine's demands, the report is in fact fairly modest and quite realistic in its recommendations. It appears to depart a little from the red lines established by Ukraine before. While the aim of setting up the group may have been to help

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<sup>8</sup> <https://rasmussenglobal.com/media/anders-fogh-rasmussen-and-andriy-yermak-to-co-chair-international-working-group-on-security-guarantees-for-ukraine>.

<sup>9</sup> The other members were: Kevin Rudd, Australia; Lord Hague, UK; Michèle A Flournoy, USA; Norbert Rötgen, Germany; Giampiero Massolo, Italy; Anna Fotyga, Poland; Adam Eberhardt, Poland; Marie Dumoulin, France; Andrii Kostin, Ukraine; Roxana Cristescu, Ukraine.

press the potential guarantors into accepting Ukraine's demands, the actual outcome may thus be the opposite. The Yermak/Rasmussen vision falls within the red lines of the potential guarantors, rather than of Ukraine, the supposed beneficiary of the guarantee. Ukraine carries the hard tasks of ensuring its future security, with the guarantors shouldering the expensive burden of supporting these tasks.

The report, also attributed to Mr Yermak, the uniquely influential head of President Zelensky's staff, was strongly endorsed by President Zelensky himself. Hence, it may mark a shift in the position of Ukraine, rather than offering a tool to move the positions of the guarantors.

## **2. Basic Approach**

The report opens with a 'Preamble' which confirms that Ukraine's security is to be based on arrangements for effective self-defence in the event of a further armed attack. Ultimately, this is to be safeguarded by NATO membership, along with membership in the EU.

The earlier prospect of accepting permanent neutrality and potentially limitations of Ukraine's armaments in exchange for a peace settlement with the Russian Federation is ruled out. This raises the question of the potential compatibility of the security arrangements envisioned in the report with a possible, eventual peace settlement with the Russian Federation. Quite clearly, Ukraine appears to bank on winning the peace, rather than negotiating it. It will presumably resist any negotiated outcome that would be inconsistent with the vision expressed in the report.

In fact, according to the report Ukraine foresees recapturing all of its territory, returning it to full control over its borders as was the case before 2014. Hence, the question of the territorial definition of the territory to be covered by a security guarantee does not really arise in the report. There would be no occupied territory left. Accordingly, the guarantee would apply to all of its territory. Previous Ukrainian proposals had expressly removed contested or occupied territories from the application of the guarantee.

The report virtually abandons the earlier ambitions of Ukraine to place itself at the heart of a New European Security Architecture, although it claims that the guarantees for its defence proposed in the report could lay the foundations for such a system. However, there is no further reference to any such grander designs. Instead, the report foresees a core group of guarantors (US, UK, Canada, Poland, Italy, Germany, France, Australia, Turkey, Nordic and Baltic States, Central European States), plus a number of other states willing to support Ukraine in specific areas (Ramstein format).

In essence, the report focuses on three elements of a security guarantee: preparations for defence, economic sanctions, and collective self-defence in case of renewed aggression.

## **3. Hedgehog**

Much emphasis is placed in the report on preparations for self-defence. As is the case at present, this places the principal burden of *carrying out* defensive action, should it come to that in the future, on the Ukrainian side. On the other hand, the burden of *enabling* Ukraine



to defend itself is placed very much on Ukraine's external partners. Indeed, the report expressly refers to the core guarantors as the 'enablers of Ukraine's self-defence.'

This notion avoids deadlock between Ukraine and the potential guarantors. It confirms that the emphasis of the guarantee lies in assisting Ukraine in preparing for an effective defence, as opposed to the expectation that the guarantors themselves would undertake to mount that defence. On the other hand, this concept is quite different from the original demand that Western Allies should underwrite the future security of Ukraine through a threat of direct military involvement in case of future aggression.

Defensive preparations are meant to be far-reaching and to cover four levels of support:

***Ukraine's Own Capacity to Arm:*** The report proposes far-reaching support for the development of an indigenous military-industrial capacity for Ukraine. Presumably this relates to munitions, transport and communications, some types of vehicles and perhaps some other forms of equipment and consumables. This is meant to ensure sustainability of an effective military capacity over the long term. Evidently, this would be a rather long-term aim, and one requiring very considerable investment. On the other hand, it might point towards gradually weaning Ukraine off some aspects of Western military assistance.

***Arming Ukraine:*** Going beyond more basic armaments that Ukraine might provide itself over time, there is provision for the transfer of more advanced weaponry 'to NATO standard.' The rebalancing, from active, cooperative defence, to support for the defence of Ukraine through investment in its own capacity is highlighted in relation to air defence. The report moves away from the requirement that NATO or NATO states should automatically impose a no-fly zone over Ukraine in case of renewed aggression. Instead, the emphasis lies on enabling Ukraine to clear its skies itself, through delivery of an adequate air defence capability, along with missile defence.

Indeed, the report suggests 'massive' support for aerial and area defence, and presumably other major items, such as C3I, armour, missiles and precise, longer-range artillery. Expectations may need to be realistic in terms of what can be provided. Yet, the willingness of Ukraine to continue shouldering the principal burden of its own defence, including also through a significant expansion of its armed forces by way of active conscription and the maintenance of a large force of reservists, may need to be borne in mind when considering how to respond to such requests.

***Training and Preparing:*** There is also provision for training of Ukrainian forces, in Ukraine and abroad, including specialist training relating to advanced weapons, tactics, communications and intelligence. These elements are to be integrated and transformed into battlefield preparedness through joint exercises held in Ukraine and abroad. Again, part of this design is already being implemented by and in a range of NATO states, although the suggestion is that this will be ramped up considerably.

***Other Contributions Short of Fighting:*** In addition, the report foresees cooperation in terms of military planning, cyber defence, intelligence-sharing and perhaps other steps that might continue and be expanded in the event of future conflict.

#### 4. Sanctions

The report proposes to maintain sanctions in place until a full withdrawal has taken place, appropriate guarantees against repetition of the aggression have been received, and reparations have been paid. These requirements sound appropriate, but it is difficult to foresee how they might be translated from demand into agreement with the Russian Federation. Perhaps somewhat inconsistently with other assumptions that underpin the report, this prospect does anticipate some sort of agreement with the Russian Federation at the conclusion of the conflict.

Where the prospect of the re-imposition of sanctions is concerned, the report picks up on the idea of a more or less automatic 'snapback' in case of renewed aggression. This could be provided for relatively easily, as present sanctions have been adopted outside of the framework of the UN. Hence, the present coalition of the willing could agree conditions and modalities for the rapid re-imposition of sanctions, perhaps with the addition of some elements of automaticity. No cumbersome voting procedures, as in the UN Security Council, apply.

The report also refers to additional sanctions mechanisms, such as restrictions on transport and communication, asset seizures and other steps. In devising the guarantee mechanism, it could be useful to review the efficacy of sanctions in this present episode, and to review the legal and other difficulties that have arisen. It could then be possible to lay the groundwork for even more effective sanctions packages that could be adopted by guarantors and other supportive states at very short notice.

#### 5. Military Action

The report foresees 'iron-clad' security guarantees. Previously, one might have thought that this would encompass a clear and automatic commitment of the core guarantor states to the military defence of Ukraine, including direct military involvement. As the previous discussions with the potential guarantors had shown, however, this would have been a step too far for many of them. Hence, the emphasis in the report on enabling the defence of Ukraine, rather than undertaking it, effectively overcomes the deadlock on this point.

In the report, the military element is addressed in a slightly contradictory way. On the one hand, the guarantee is to spell out 'commitments by guarantors to use all elements of their national and collective power to take appropriate measures—which may include diplomatic, economic and military measures ... .' Hence, there is a reference to military measures. Still, the text does not require that this would necessarily encompass direct military intervention, in addition to other forms of military support. Also, this 'may' rather than 'shall' include military measures.

Moreover, such assistance is aimed at 'assisting Ukraine to stop the aggression ... and defend itself *by itself* [Emphasis added] against any threat.' Presumably the words 'defend itself by itself' were added by the drafters to avoid the sense among the potential guarantors that actual military intervention by third states is being foreseen.

This impression is strengthened by other changes to the previous position of Ukraine. Initially, Ukraine expressly requested specific military steps in case of further aggression, including the imposition of a no-fly zone by the guarantors. Now, there is a more general commitment of the guarantors to Ukraine's self-defence, principally in the shape of facilitating Ukraine's own defensive efforts.

This interpretation is supported in another section of the report. Rather than obliging the guarantors to undertake specified direct military action, they are merely exhorted to refrain from 'excluding any form of support to assure Ukraine's self-defence.' This negative phrasing leaves space for strategic ambiguity, making it difficult for a future aggressor to calculate in advance what form a response from among the guarantors might take. Nothing is definitely ruled in by way of required military action on part of the guarantors. Then, again, nothing is ruled out.

The calculation of risks for the aggressor might also be affected by other factors, such as the presence of foreign military advisors and other personnel in Ukraine. There would also be room for pre-planning in relation to specific forms of rapid military assistance that might be rendered in the case of future aggression, short of direct military involvement. Additional equipment might be pre-positioned, or pre-positioned stores and equipment held by NATO or individual members states could be double-hatted and made available for rapid delivery to Ukraine. This would encompass the types of equipment and consumables already in use by the Ukrainian forces and used in joint training programmes.

The development of formal protocols for action short of direct military involvements, such as rapid supply and resupply, actioning of intelligence cooperation in a battlefield environment, support in cyber-defence, etc, could offer additional reassurance to Ukraine.

## **6. Trigger Event and Trigger Mechanism**

The report adopts the suggestion that the trigger event for the security guarantee should be the occurrence of an armed attack or act of aggression. These terms are well-defined in international law and are indeed the most appropriate ones in this context.

The report proposes that the trigger mechanism for the application of economic and possible military measures should be kept internal to the core guarantors where their action is concerned, and also internal to the broader (Ramstein) format, where additional action, for instance in the economic sphere, is concerned. This would avoid having to rely on a determination by external collective bodies, such as the UN Security Council or the UN General Assembly, that an armed attack or act of aggression has occurred.

The report notes that any action on behalf of Ukraine should be undertaken at its request. This is entirely in line with the requirements for collective self-defence under Article 51 of the UN Charter. There is provision for a rapid consultation process between Ukraine and the guarantors, perhaps to take place within 24 hours among the core group and 72 hours among the larger group of supporters.

It might be useful to add some thoughts to the modalities of consultation or perhaps even decision-making within the core group and the broader group. Collective decisions should be encouraged where consensus or near-consensus can be reached. But, as the report suggests, individual states would of course remain free to extend their cooperation with Ukraine beyond any measures collectively agreed among the participating states.

On the issue of the territorial reach of the undertakings given by the Parties, the purported annexation of Ukrainian territory since the publication of the report presumably does not bring about significant change. The reach of the undertaking would in any event be limited to the territories under the effective control of Ukraine at the time of the entry into force of the Compact.

## **7. The Legal Form of the Compact**

The report still demands guarantees that are legally and politically binding. The drafting is not entirely clear on this point. That very fact represents a step away from the previously very clear and unambiguous (and non-negotiable) demand for a guarantee package taking the form of a treaty, inclusive of formal ratification by the national parliaments of all participating states.

The report notes that the guarantees need to be binding, but then adds that they would be ‘brought together under a joint strategic partnership document—called the Security Compact.’ The report adds that this would ‘effectively be a binding pact amongst them.’ The words ‘effectively’ and ‘pact’, rather than treaty, seem to qualify the idea of the Compact as a formal legally binding instrument, as does the ambiguous *sui generis* designation of ‘Compact’ by itself.

Hence, the compromise would likely be that the umbrella document, or framework in the form of the Compact declaration, is in fact a political document, although this would not be emphasised by Ukraine. However, its potentially weaker legal character would be balanced by legally binding bilateral agreements between Ukraine and those of its partners willing and able to conclude such agreements. As the report notes: ‘certain guarantor states may sign bilateral agreements covering specific issues related to security guarantees between Ukraine and the guarantor states.’ These might be agreements on future military assistance, military-industrial cooperation, assistance in reconstruction, etc.

There is a further reference in the report to commitments of the signatories of the bilateral agreements ‘at the executive level and commitments by respective legislatures.’ This seems to suggest that the bilateral agreements can take various forms, from informal exchanges of letters to joint declarations, MoUs, executive agreements up to the level of formal treaties. The latter might even be subject to parliamentary ratification, should that be so provided by both parties.

While all this is not entirely clear in the report, and may have been subject to some discussion amongst its drafters, this lack of clarity opens up space for creative solutions. In fact, the one such solution apparently proposed by the report—a political roof of high value in the form of the overall ‘Compact’ document of ambiguous legal status, supplemented by a series of

bilateral agreements of varied legal character, seems to point to a compromise that could preserve the positions of all.

#### **IV. CONCLUSION**

The Yermak/Rasmussen Report offers a way out of a number of areas of deadlock in relations between Ukraine and the potential members of the core group of guarantors. It does so at the expense of the demands initially made by Ukraine, and hence ultimately at the expense of the strength and credibility of any security guarantee arrangement that may be agreed in the end. On the other hand, there would have been little point in persisting in making demands that will simply not be met, even by Ukraine's closest friends.

As a way out of the earlier deadlock, the report shifts the debate from an obligation for the guarantor states to defend Ukraine in the future to an obligation to support Ukraine in preparing for its own defence in the future. This is to be a long-term commitment, and likely a very expensive one.

On the legal form of the guarantee, it appears that the commitments made by Ukraine and the core guarantors are to be contained in an overall 'Compact,' holding the whole edifice of specific commitments together. This would have the status of a high-level, highly authoritative joint declaration, signed by Ukraine and the guarantors amidst some ceremony. The designation of 'Compact' would help obscure a clear determination of its legal status. Again, as was the case in relation to the Budapest 'Memorandum,' this designation represents a step back from Ukraine's original hopes.

However, the design proposed in the report makes up for this, at least in part. The Compact is to be supported by a network of more formal, legally binding agreements on defence cooperation, training, supply of equipment and technologies, etc. These can be multilateral or bilateral agreements, again in a variable geometry according to the issue in question and the preferences of the states concerned (Joint Declarations, exchanges of letters, MoUs, executive agreements or even treaties requiring ratification).

The report provides for a system of variable geometry, involving a core group of guarantors, plus additional supporters according to the Ramstein formula. This is in line with Western expectations.

The focus of the guarantee on enabling Ukraine's defence, rather than undertaking it, may make it easier for the potential guarantors to accept the term 'guarantee,' as opposed to 'assurances' or some other term so strongly resisted by Ukraine. The term 'Compact for the Permanent Security of Ukraine and its People' could also offer an alternative, if the word guarantee cannot be used.

Going beyond form, some of the substantive expectations reflected in the report may be a touch ambitious. This may relate to the breadth and depth of ensuring Ukraine's preparedness for future defence, down to the creation of its own military-industrial complex, and the provisioning of a veritable dome of air and missile defences over Ukraine. However, this is a matter of scale, and not of principle.

The emphasis of the Compact is placed on preparedness for a future conflict, and hence on deterrence. The core guarantors should be willing and able to devise a comprehensive proposal along the lines suggested in the report on what support they can offer in relation to provisioning of equipment, training and other matters. Ukraine can then judge whether its resulting military posture would provide effective deterrence against future aggression.

Similarly, it should be possible to develop the scheme for the rapid re-imposition of sanctions proposed in the report and to present this in outline to Ukraine for discussion.

On military cooperation, the report appears to back away from the demand to offer a carbon copy of Article 5 of the NATO Treaty. Instead of pledging direct military action, the report suggests more modestly that no option should be excluded. Some level of ambiguity on this issue, and in the wording to be developed in relation to it, may assist in deterring further aggression. Again, this is less than Ukraine had hoped for, but most likely all that its Western partners are likely to offer.

Overall, therefore, the concept of the guarantee is helpfully broadened from an obligation of military intervention to a cooperative system to support defensive preparations and, should it come to that, to support the defence of Ukraine. This is supplemented with the idea of a sanctions snapback, and broader support for reconstruction and economic aid for Ukraine.

The report claims the co-authorship of Mr Yermak and has been endorsed by the President of Ukraine. It may still be expected that the Ukrainian side will want to defend some of its earlier ideas. However, the Western allies may perhaps consider simply taking the report as the basic position of Ukraine in a new round of discussions, and proceed from there.

To help sweeten that pill, key states could consider developing more specific proposals for some of the issue areas covered in the report and its broader vision (defence cooperation, integrated air defences, joint training, etc), and engage Ukraine on these in detail. In this way they would demonstrate commitment to the overall scheme by discussing and advancing its individual elements. This will also assist in developing a sense of realism amongst the supporters of Ukraine in terms of the tasks that are coming their way, in terms of financing, transfer of weaponry and technology, training, and many other dimensions.

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