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Russian Actions in Crimea: Consequences from the Security and International Law Perspective

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Russia assumed control over most of Crimea, and on 6 March the local parliament took the decision to join the Russian Federation. Even assuming that a direct clash between the Ukrainian and Russian forces in Crimea can be avoided, Russian actions will have long-term negative consequences for European security. They also constitute a breach of the basic rules of international law. Apart from deciding on an immediate NATO response, allies should conduct an overall review of the relationship with Russia and Ukraine. They should also act resolutely to counter the Russian arguments about the legality of its deeds.

Russia assumed control of Crimea without use of deadly force. The Russian units secured strategic positions on the peninsula, blocked the Ukrainian garrisons and took control of the main communication corridors. At the same time, Russia has been careful to keep up the appearance of avoiding direct military intervention (by, for example, removing markings on vehicles, and using "volunteer" forces), arguing that the takeover of Crimea has been orchestrated by the autonomous Crimean parliament, and conducted by locally-organised units.

The Legal Dimension of Russia's Intervention. The decision approving the use of Russian forces in Crimea, adopted by the Federation Council at the request of President Putin, and simultaneous actions that led to the *de facto* occupation of Crimea by the Russian army, contradict Russia's international obligations. The prohibition of the use of force prescribed in Art. 2 (4) of the UN Charter obliges all UN members to refrain from the threat or use of force against the territorial integrity or independence of other states. Exceptions to this basic principle are limited to instances when the use of force is authorised by the UNSC under Chapter VII of the UN Charter, when the state itself agrees to it, or on the basis of Art. 51 of the UN Charter in the context of self-defence in the event of an armed attack.

Russia's actions are also contrary to, among other agreements, the Helsinki Final Act of 1975, and the Agreement of Friendship and Cooperation between the Russian Federation and Ukraine (1997). Furthermore, these actions disregard the guarantees that Russia gave to Ukraine in the Budapest Memorandum of 1994, which was agreed upon in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons. Furthermore, Russia's occupation of Crimea breached the agreement on the Status and Conditions of the Presence of the Russian Black Sea Fleet on the Territory of Ukraine, signed on 8 August 1997 and extended in 2010.

Russia maintains that its actions on the territory of Ukraine are necessary to protect Russian citizens and Russian armed forces stationed in Ukraine. State practice does not clearly exclude the possibility that a state may protect its citizens in the event of an imminent threat in the territory of another state that is unwilling or unable to protect them. Indeed, it can be argued that such actions are justified when they are taken in the event of actual danger which cannot be repelled by other means, and when measures taken are proportionate to the threat. There is no evidence that Russian citizens have been in danger at the hands of Ukrainian authorities or other forces.

Moreover, Russia argues that it intervened in Crimea at the request of President Yanukovych. This justification is, however, largely disputable. It is questionable whether Viktor Yanukovych still is and could have acted as the legitimate representative of the Ukrainian state at the time Russian forces were taking control of Crimea. Regardless of the circumstances under which the new authorities in Kyiv were constituted, they seem to have gained recognition from a large section of the international community.

The initial decision of the autonomous parliament in Crimea, to secede and join the Russian Federation, will be the subject of a referendum on 16 March. To take its full effect the decision is yet to be approved by the Russian authorities. Regardless of the questions as to the legality of the decision on secession and on holding a referendum, it is worth noting that it does not provide any legal basis for the intervention of Russian forces in Crimea.

Likely Scenarios. Eruption of clashes between the "volunteer" and regular Russian forces on the one side, and the Ukrainian army and law-enforcement units on the other, remains a possibility. An incident at one site, such as an attempt to break though the blockade, could cause an escalation at other stand-off points. That seems to be against Russian interests, as it would mean losing control over the situation, and would force the Western states and Ukrainian authorities to take a more uncompromising stance against Moscow. In the long-term,, Russian prospects for a meaningful political role in Ukraine would be further diminished if their claim of merely protecting the Russian-speaking population were to collapse. Therefore, pressuring Ukrainian units into disarmament, or agreeing their safe passage out of Crimea, may be the preferred option for Russia.

Russia could be willing to cooperate with its international partners in negotiations to "stabilise" the situation and add an aura of legitimacy to its actions. Russia would also want to block any action by Ukraine to regain the initiative on the ground. The 6 March decisions of the parliament in Crimea make it extremely difficult for Moscow to reach these objectives. It cannot be ruled out that Russia might nevertheless announce that an intervention in Ukraine was not necessary, as order is being kept by local forces until Crimea's status is settled.

Recommendations for NATO and Poland. Setting the West's goals as achieving a "frozen conflict" situation may be tempting as a way to de-escalate the tensions, but it would strike a serious blow to the foundations of the European security system and undermine Ukraine's European aspirations. Fundamental adjustments of the NATO policy towards Russia are necessary. Decisions announced by the NATO Secretary General on 5 March, including the suspension of preparations for a NATO–Russia mission in the Mediterranean, holding off a number of working-level meetings, and starting a review of NATO-Russia cooperation, should be treated only as first steps. Russia's action has destabilised European security and seriously undermined trust in Russia as a responsible and predictable partner of the West. Therefore, NATO should take action in three areas, supporting Ukraine, reassuring Central European members regarding collective defence, and downgrading relations with Russia.

As a NATO partner, Ukraine is not covered by the Washington Treaty's security guarantees, but the alliance should not limit itself to verbal support for its territorial integrity. The NATO–Ukraine Commission and its working groups can be used to intensify cooperation and consultations. NATO should also react positively to any requests from Ukrainian authorities to exchange intelligence on the strength and movements of Russian forces inside Ukraine and in the vicinity of its borders. NATO's credibility would be enhanced if it declared publically that the Military Committee has been tasked to plan for an increased presence of NATO forces in the Black Sea region.

To provide reassurance to its members, NATO leaders should confirm the validity of security guarantees stemming from the Washington Treaty. Poland should push for a review of contingency plans and for an increase in the number and size of Article 5-related exercises. Both the planning and the exercises should take into account the increased willingness to use force in international crises that Russia has demonstrated, as well as operational lessons learned from its incursion into Crimea. As alliance territory is not directly under threat at the moment, it seems premature to suggest introducing additional forces, including NATO Response Force elements, into the territories of some Member States for deterrence purposes.

The freshly announced review of NATO–Russia cooperation should be guided by the premise that the target is to suspend as many activities as possible. Joint initiatives aimed at cooperating against common challenges, such as terrorism or piracy, should not be exempt from scrutiny. NATO states should urgently analyse the prospects of reducing reliance on transport corridors through Russian territory used for the purposes of the Afghanistan mission. While an overall arms embargo would be probably difficult to accept for all NATO members, Poland should encourage them to carry out a critical review of their bilateral military cooperation with Russia and their policy regarding export and import of weapons and equipment. It is necessary that an in-depth debate within NATO begins in the coming months, not only about limiting the range of interactions with Russia, but also about an overall downgrading of relations with Russia (and conditions for resumption of the partnership).

NATO members should strive to ensure that the international community rejects attempts by Russian authorities to justify the use of force and violation of Ukraine's territorial sovereignty. The Security Council, on which Russia has a veto, cannot be expected to take any action in this case. However, reports and legal opinions based on in-depth factual and legal analyses of Russia's intervention in Ukraine, prepared by international law experts, may serve as a useful tool to censure Russian actions. International organisations, particularly the UN, the OSCE and the Council of Europe, should impartially address information on alleged violations of the rights of the Russian-speaking population in Ukraine, as well as the rights of Ukrainian citizens after the invasion of Russian forces.