

## **Ukraine: A Regional Crisis With Global Impact**

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### **I. Background**

The crisis in Ukraine originated in President Viktor Yanukovich's decision to abandon a far-reaching Association Agreement with the European Union in November 2013. Tens of thousands of people took to the streets and protests stretched over several months, culminating in an eruption of violence in February 2014. Deadly clashes between anti-government protesters and the police in Kiev resulted in the country's bloodiest week in decades. Within 48 hours, 77 people were killed and over 600 wounded.

The EU reacted to the developments by issuing sanctions. President Yanukovich was forced to wade in promising early elections, but his concessions failed to contain the unrest. His government collapsed and the opposition took control of the country. The Russian parliament approved President Vladimir Putin's emergency request to use force in Ukraine to protect Russian interest in Crimea. On March 16th – in a highly controversial secession referendum – 97 per cent

of voters supported leaving the Ukraine to join Russia. The West dismissed the result as illegal and illegitimate and imposed a gamut of sanctions. On March 21st, the Kremlin completed the annexation of Crimea signing the peninsula into the Russian Federation. The same day, Ukraine's interim Prime Minister finally signed the Association Agreement with the European Union.

### **II. A Violation of International Law**

#### *Breach of Article 2(4) Charter of the United Nations*

Russia's invasion of Crimea can be characterised as a direct violation of international law. Article 2 (4) of the Charter of the United Nations strictly prohibits the threat or the use of force against the territorial integrity or political independence of a sovereign state. The Charter provides only two exceptions: I) individual or collective self-defence pursuant to Article 51 of the Charter; or II) the use of force authorised by the UN Security Council under Chapter VII of the Charter.

Although no military force has been used by Russia during its incursion into Crimea, Russia's actions clearly constitute a breach of Article 2 (4) given that there was an implied ongoing threat that force would be used, if necessary, by the Russian state. This is substantiated by the existence of a large number of Russian military personnel and weaponry on the border of Crimea prior to the referendum being carried out.

Furthermore, even in the absence of directly implied threats by Russia to use force against Ukraine, the process of annexation, even if it appears to have been carried out peacefully, must always carry with it the threat that force would be used should the situation escalate and thus must be said to constitute a violation of Article 2 (4) of the UN Charter.

Even if the situation was not determined to be a breach of Article 2 (4) of the UN Charter by Russia it would still constitute a breach of the prohibition on intervention in a state's internal affairs as established in customary international law and would allow the victim state to take necessary and proportionate countermeasures (reprisals not involving the use of force) against the interfering state. It cannot be denied that Russia has interfered with Ukraine's internal affairs by encouraging and facilitating a referendum in Crimea and bringing about its unilateral secession. Ukraine is therefore entitled to take necessary and proportionate countermeasures against the Russian state.

Finally, Russia's aggression is also a clear breach of the Budapest Memorandum on Security Assurances of 1994. The Memorandum was signed by the Russian Federation, the United States of America and the United Kingdom and enshrined the political independence of Ukraine, Belarus and Kazakhstan.

*The Protection of Russian Nationals and RtoP*

Russia has sought to justify its actions in Crimea and counter the claims made by the international community that its intervention was unlawful with reference to the need to protect its citizens in Crimea. Russia has claimed that its nationals are threatened and therefore require protection.

The legality of one state intervening in another state to protect its citizens residing extra-territorially is subject to debate. There are precedents for such action occurring including Israel's hostage rescue staged in Uganda in 1976 ("the Entebbe Incident"), the America intervention in Panama and Russia's intervention in Georgia. There is however a general consensus that there is no right under international law to intervene to protect one's citizens without the consent of the state on whose territory the intervention is or will occur. The protection of citizens abroad is usually limited to providing consular assistance.

However, the facts of the case do not support Russia's rationale for intervention in any event. There is no evidence that the safety of Russian citizens has been compromised or even threatened in Crimea. Furthermore, it must be the case that any action taken to protect its citizens must be limited and proportionate to achieve that aim and it cannot be said that Russia's annexation of Crimea was necessary to achieve the aim of protecting its citizens.

There has also been much rhetoric used by Russian officials about the "responsibility to

protect” its citizens. This could amount to evidence of Russia seeking to justify its intervention on humanitarian grounds and engage the doctrine of the Responsibility to Protect, although there has not yet been an overt reliance upon it, in a strictly legal sense. Russia’s intervention in Crimea would not however constitute a legitimate use of the protocol and has nothing to do with humanitarian imperatives. RtoP is not a military protocol but one that works first and foremost with diplomatic instruments. For intervention to be warranted, citizens of a sovereign country must be subject to gross human rights violations on a large scale including being threatened with annihilation.

The use of force is regulated by four precautionary principles: right intention, last resort, proportional means and reasonable prospect in combination with just cause and right authority. While the primary responsibility rests with the state concerned, the international community has the obligation to step in, if the state in whose territory the assault takes place fails to act accordingly, either because it is incapable or unwilling to do so. Under these circumstances the UN’s principles of non-intervention and absolute state sovereignty yield to RtoP. RtoP dictates that military, economic, political and diplomatic sanctions must have failed before the use of force is permissible with approval of the UN Security Council. The crisis in Ukraine does not fulfil any of those criteria and the reference to the “responsibility to protect” by

Russia risks undermining the doctrine’s authority.

### *Intervention with Consent*

Russia has also argued that its intervention was lawful because it was approved by the leader of the Ukrainian state, President Viktor Yanukovich. Russia claims that Mr Yanukovich is still the leader of the state. This cannot however be correct because President Yanukovich was ousted by a democratic and constitutional process and, in any event, Mr Yanukovich does not retain complete and effective control of the state and therefore does not have the authority to provide the necessary consent to make the Russian intervention lawful.

### *Self-Determination*

The issue of self-determination is also relevant in this context. It has been suggested that the people of Crimea have a right to self-determination and therefore the right to hold a referendum and to join the Russian state. The principle of self-determination is well established in international law (Article 1 (2) of the UN Charter) and cannot be refuted although it can be said there is no absolute “right” to self-determination.

The ability to take advantage of the principle of self-determination is however only engaged when a state is oppressing its people, or its people within a distinct region, violating their human rights or preventing them from engaging in

political life. Self-determination and the process of secession should also only be done through a proper process of negotiation. It cannot be said that this is the case with Ukraine. There is no evidence that the people of Crimea were oppressed and the secession has taken place within a matter of weeks, and at the barrel of a gun, with no attempt at negotiation with Kiev. It is not even clear that the referendum was free and fair.

Furthermore, where peoples opt to engage in the process of self-determination this does not confer a right on another state to intervene, nor to assist in the process of secession. Although international law usually takes a neutral position on the issue of unilateral succession – it is neither allowed nor prohibited under international law, declarations of independence will be considered illegal where they are brought about by violation of a jus cogens norm of international law. Therefore, given that Crimea's succession involved a breach of Article 2 (4) of the UN Charter, a jus cogens norm of international law, by Russia, the referendum and subsequent succession must be illegal under international law (it cannot be considered to be unilateral succession) and states are under an obligation to withhold recognition of the decision of Crimea to join the Russian state.

### III. Political Context and Consequences

The resemblance to 1914 and 1938 are evident. Russia, like Germany in 1914, feels encircled by

potential adversaries. Moreover, Moscow is determined to protect ethnic Russians and Russian speakers outside of the Russian Federation. Similar arguments were made by the Nazis when they occupied parts of Czechoslovakia in 1938 – a move that was met by appeasement from other European powers.

Calls for sanctions have been opposed due to concerns about Europe's economic recovery and whilst the EU is running the risk of spiralling tit-for-tat sanctions, it is also verging on the pursuit of a strategy of appeasement that Putin will be all too eager to take advantage of.

The EU sanctioned 21 individuals with travel bans and the freezing of accounts and the US, Canada and Japan imposed similar sanctions. Unfortunately, the sanctions adopted so far are rather weak and are unlikely to change minds in the Kremlin. Considering that Russia has just marched into a sovereign state, seized parts of its territory under the false pretext of the Responsibility to Protect and redrawn its borders within a few weeks, the response seems to be nothing more than a drop in the bucket. The sanctions will not convince Russia to return Crimea to Ukraine, nor will they preclude any further expansionist plans by Putin.

Whilst countries such as Poland and the Baltic States call for hard-hitting sanctions, France, Germany and the UK are worried about their economic ties with Russia. In addition, south European member states are concerned about

their already weak economies. Subsequently, EU governments are reluctant to put any economic growth at risk. Following the pros and cons of the debate, one might wonder whether economic prosperity is more important than security and freedom. People in Eastern Europe might answer this question differently to bankers and financiers in the UK's capital, ship builders in France or representatives of Germany's energy dependent export industry.

The EU has survived its first domestic crisis – the Euro crisis – but Brussels is still in its infant years when it comes to foreign policy. Putin is aware of that and successfully taught Europe a lesson: soft power is all well and good, but what really matters at the end of the day is hard power, that is boots on the ground. Moscow has presented the EU with a fait accompli and Brussels seems to have no choice but to accept it as Europe would not want to risk a military conflict with Russia. After all, (Western) Europe and the US worked hard to avoid a war with the Soviet Union during the second half of the last century.

On the other side of the Atlantic, the Republicans decry Obama's foreign policy and his approach to Russia as naïve and lacking decisive action. Increasingly, we witness what the world might look like if Washington reduces its international involvement. Although US foreign policy has its flaws, its critics need to be aware which countries might fill the vacuum left by an American withdrawal from the international stage. Russia

might be one of them. Thus, Senator John McCain calls for more decisive action, including a military build-up of NATO forces in Eastern Europe. But after Afghanistan and Iraq, the US is tired of fighting and investing money into conflicts whilst many Americans feel the consequences of the debt crisis. Most importantly, the risk of a military conflict is high and this is not Iraq or Afghanistan. This is Russia.

It is obvious that the West in general and the EU in particular is placed between a rock and a hard place. If Europeans believe in values, such as freedom and democracy, the EU cannot stand by and watch Russia annexing territory on its very doorstep in Eastern Europe. However, Russia is the source of most of Europe's gas and oil imports – the source of economic wellbeing and prosperity. In a nutshell: this is about values versus money and Europe has to make a choice.

### *The Need for Sanctions*

If Europe is serious about values such as freedom and democracy, standing by is not an option. For Putin to take the EU seriously as a geostrategic actor, it requires a strong and unified response. The obvious responses are sanctions. However, economic sanctions are often described as being of limited success. The elite are hardly affected as the brunt is felt by the people on the street and Russians are unlikely to remove Putin from power as the Kremlin will make sure that his party is successful in the next elections. Notwithstanding, in the past sanctions have, for

example, forced Iran's regime to the negotiation table. The only alternative is appeasement, but the shadows of 1938 are still present and Eastern European countries that are home to Russian speaking minorities want to be assured that history will not be repeated.

Putin is unlikely to change his course of action without resistance and although there is no guarantee for success, sanctions are the only viable option. Europe imports 79 per cent of Russia's oil and 81 per cent of its natural gas (100 per cent if NATO member Turkey is included). No doubt, Moscow is well aware that Europe does not want to jeopardize its recovering economy and the threat of limiting oil and gas exports will be sufficient to send a shockwave through Europe's stock markets. This is Putin's trump card.

Russia has switched off gas supplies to Eastern Europe before. However, it will think twice before switching off supplies to the EU. Beyond oil and gas, Russia's economy lacks diversity and strength. Revenues from oil and gas exports accounted for more than half of Russia's budget in 2012 and it cannot simply be diverted to other potential customers such as China due to a lack of transport infrastructure. Reduced gas and oil exports will hit Moscow's finance coffers hard as there is no possibility to compensate for these losses. Therefore, Russia is unlikely to stop its exports to Europe.

The EU is the recipient of 45 percent of Russia's

overall exports. In return, less than 7 percent of EU exports go to Russia. If oil and gas exports are excluded from the sanctions regime, the EU has alternative possibilities to send a message to Moscow. The export of machinery and transport equipment accounts for nearly half of all exports from the EU to Russia. In addition, three quarters of foreign direct investment in Russia is provided by the EU. This is where the EU can apply significant pressure. Most importantly, the EU can support members that are most likely to be affected by the sanctions whilst Russia has no one to turn to. It is clear, then, which of the two parties would be hit hardest by a reciprocal exchange of sanctions.

In addition to these short term measures, the EU needs to cooperate in earnest with more reliable energy suppliers. Renewable energies and fracking for shale gas would reduce Europe's dependency on less stable regions even further. The shale gas industry might be in the early stages of its development, but any attempts by Russia to pressurise its customers will not only result in the EU, but also other regions, investing more resources into energy diversification and seeking other, more reliable, suppliers.

The Kremlin needs to ask itself why Eastern Europeans turned their back on Russia and cooperated with the West rather than aligning themselves with Moscow after the fall of the Iron Curtain. The suppression of human rights in general and the specific lack of freedom and

democracy in Russia's zone of influence during the Cold War were likely to be factors. Unfortunately, Russia still seems to be unable to cooperate with its neighbours and responds with coercion instead. If Europe wants to send a strong message it needs to accept economic pain. That won't be easy to digest for the EU's economy, but the only alternative is to stand by whilst Russia suppresses its neighbours. The pain caused by sanctions is likely to be lower than the pain Europe might experience should Putin not be stopped.

The EU has its origins in economic cooperation, but first and foremost it is a union of states that share equal values. These values should be placed above economic gains. If the EU is reluctant to stop aggression that is not only illegal, but also illegitimate, Putin is incentivised and likely to continue. The EU needs to choose: it is either a strong actor on the international stage and stands for freedom and democracy or it is a compliant and short-sighted mess which is, and will continue to be, subject to bullying and manipulation from Moscow.

#### **IV. Policy Recommendations**

The Human Security Centre suggests that the West imposes a variety of hard-hitting economic, financial, diplomatic, political and military sanctions following Russia's unlawful annexation and absorption of Crimea. It is of uttermost importance that we acknowledge that we have lost the short-term advantage and swiftly take

steps in the right direction to punish Russia in the medium – and long-term.

#### *List of Potential Sanctions and Counter-Measures*

Here follows a list of sanctions, categorised under specific objectives which, together, would form the basis of a robust strategic response to Russia

##### 1. Isolate Russia on the International Stage

In the first place it is important to isolate Russia on the international stage. This will contain further expansionism and attack Russia's confidence, which will make it both less willing and less able to maintain this current aggressive posture. Sanctions which will further this objective include boycotting the G8 gathering in Sochi; suspending Russia's G8 membership; halt Russia's OECD membership application.

However, it is important to recognise in the pursuit of this objective that Russia is used to being isolated and is unlikely to be shaken by such moves. Nevertheless, these sanctions should still be imposed, both for the symbolic impact and also to hamper Russian attempts to forge alliances with other major powers in the long-term.

In order to isolate Russia from the rest of the world as fully as possible, all possible measure should be undertaken to exclude Russia from international sporting and cultural events, including, but not limited to, the football World

Cup, Eurovision, the Olympics and Paralympics.

### 2. Extend the List of Individual Targeted by Sanctions

Currently, sanctions blacklists target “key ideologists and architects” of the Kremlin’s Ukraine policy and includes names of Putin’s inner circle. The US has so far put 11 individuals on the list and the EU published the names of 21 individuals targeted by the sanctions. For the sanctions to have real, tangible impact, it will be necessary to target higher ranking officials that can exert greater pressure on the Kremlin’s overall geopolitical strategy. As such these sanctions should apply to all of Putin’s most trusted inner circle and to any government official who has some influence over the Kremlin.

### 3. Freeze Assets and Deny Visas

The West should continue to freeze assets and deny visas to high ranking Russian politicians, officials and business people responsible for or involved in the crisis in Ukraine. Some sanctions have already been imposed but it is important to widen the circle of targets and most importantly target the right people with real influence and not just symbolic straw men who are likely unwilling and/or unable to have influence over Kremlin policy.

It is vital to note that Russians need to travel to the West for business much more than Westerners need to travel to Russia. This gives us

a distinct advantage as the damage done to businesses is not equal on both sides.

### 4. Sanction Gazprom and Rosneft

Sanctioning Russia’s energy companies will do significant economic damage and apply pressure to the regime in Moscow to change course in the short term. If the West also makes what is clearly a genuine effort to find alternative suppliers of gas and oil this also applies long term pressure as worry about impact from a future change in supplier sets in.

This would hurt Russia hard but would also have a negative effect on the economies of the European Union, with some member states highly dependent on Russian gas and oil.

To prevent crises such as we have seen in the Crimea, it is necessary for reason of national security to diversify European energy suppliers away from Russia, both to ensure our own energy security and also to deprive Moscow of the pressure point they can exploit in order to manipulate the rest of the continent.

### 5. Severely cut Trade Ties between Russia and the West

As noted before, Russia exports far more to the European Union than is exported in the opposite direction. Consequently, Russia should not be able to withstand the crippling impact this would have for longer than the West could.



The variety of positions within the European Union and different levels of engagement with Russia would make it difficult to find unified position but the sanctions could be country-specific, imposed in line with an agreed understanding of the type of impact needed to be made.

These sanctions are especially dependent on the position of the large European states such as Germany, France and the UK, who export much more than most of their fellow EU member states. Ideally, this would also happen in conjunction with similar trade restrictions imposed by the US.

Specific attention should be paid to military trade with Russia, as this has the double effect of harming both Russia's economy and also their military capabilities. An example of this would be to cancel the £1bn contract Russia has with France to build two Mistral battleships for the Russian navy.

### 6. A Unified West

Despite all internal disagreements and factions it is important that the West appears as a unified front against Russian aggression and finds a relatively common position, whilst also allowing the flexibility for variation on specific policies.

Member states will each have a different relationship with Russia in terms of specific agreements in place and different emphases placed different industries etc. As such, each

member state should tailor the sanctions they impose on Russia in order to have the most effective impact on the Russian economy. The key to this will be political will and the courage to take some risks in terms of inflicting minor damage on one's own economy, in order to cause much greater damage to Russia.

'Spread the pain' measures should be implemented across the EU, where those nations which are more reliant on Russian trade are compensated by those who are less reliant in order to ensure that those states whose economies are more at risk from restricting trade with Russia maintain their commitment to sanctions.

In order to reassure any states fearful of being the next target of Russian expansionism, all NATO countries should restate their willingness to honour any invocation of Article 5 (that an attack on one member state will be considered an attack on all) and come to the defence of a victimised state.

### 7. Reverse American Retreat from International Affairs

Although the Ukraine crisis was triggered by a variety of interests and considerations, it is crystal clear that an American retreat from world affairs has created a power vacuum, which is in the process of being filled by Russia. This is evident not only in the case of Ukraine but also in other conflicts such as Syria and its support for

the regime in Iran.

Russia is currently playing an overall destabilising role in the world and it is important for the US, in cooperation with European partners, to lead again and provide a counter-narrative to Russia's view of the world which is antithetical to our liberal values and the human rights we have fought so hard to entrench in so many places.

### 8. Use NATO Hard and Soft Power

NATO should cancel all short and long-term joint operations planned with Russia, Russia should not be allowed to gain any military advantages as a result of cooperation with NATO, however minor. NATO needs to deepen its engagement with former Soviet client states through the Partnership for Peace initiative, to shore them up in case of Russian aggression and to contain Russia's ambitions.

Ukraine's potential membership must remain on the table. Poland joined NATO before joining the European Union and a similar process could be applied to Ukraine as a response to Russian aggression.

### 9. Financial Support for the Ukraine

The EU must set out a timetable to release 11bn in financial assistance, linked to the IMF package currently being negotiated. Ukraine needs the financial support in order to maintain its government and economy to best fend off

Russia's influence. Ukraine is the most vital former Warsaw Pact country to Russia at present, due to its size, economy and the presence of several importing pipelines going through it. Moscow is likely to put most of its efforts into maximising its influence on Ukraine.

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