

**THE OPINION BY THE LEGAL
ADVISORY COMMITTEE
TO THE MINISTER OF FOREIGN AFFAIRS
OF THE REPUBLIC OF POLAND
ON THE ANNEXATION OF THE CRIMEAN
PENINSULA TO THE RUSSIAN FEDERATION
IN LIGHT OF INTERNATIONAL LAW**

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adopted the following Opinion:

Abstract: *In light of international law, the incorporation of the Crimean Peninsula (Crimea), which forms part of Ukraine's territory, into the Russian Federation qualifies as annexation, i.e. the illegal acquisition of the territory of another state by the threat or use of force. In this respect, Crimea remains an occupied territory under international law. The annexation of Crimea by the Russian Federation has violated many treaties and fundamental principles of international law, namely the principle of territorial integrity of states, non-intervention into the domestic affairs of another state, and the prohibition of the threat or use of force against another state. Consequently, the Russian Federation has violated Ukraine's rights which enjoy international protection. Moreover, due to the special legal status of the principles of international law that have been violated, the Russian Federation has breached its commitments under law to the entire international community. This community has an international legal obligation not to recognize the illegal situation created by the illegal use of force in the form of armed aggression, and its consequences.*

I. Incorporation of Crimea into the Russian Federation is an annexation

1. As a result of the collapse of the Union of Soviet Socialist Republics, the Crimean Peninsula (Crimea), which had been part of the Ukrainian Socialist Soviet Republic since 1954, became part of the newly founded Ukrainian State, Ukraine, in 1991. Crimea was granted the legal status of an Autonomous Republic of Crimea in Ukraine. The city of Sevastopol preserved its separate legal status.

Ukraine's territorial integrity was directly reaffirmed by the Budapest Memorandum on Security Assurances of 1994 which was adopted in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons of 1968. In the Memorandum, the United States of America, the United Kingdom, and the Russian Federation reaffirmed their "commitment to refrain from the threat or the use of force against the territorial integrity or independence of Ukraine and also that none of the weapons in their possession will be used against Ukraine, unless in an act of self-defense or otherwise consistent with the United Nations Charter" (paragraph 2 of the Memorandum).

2. Under Russia's pressure, a referendum was conducted in Crimea on 16 March 2014 that was not recognized by the authorities of Ukraine. The majority of voters in Crimea allegedly voted to secede from Ukraine and to join the Russian Federation. On 17 March 2014, the Crimean authorities which Ukraine did not recognize (since the Parliament of the Autonomous Republic of Crimea was dissolved by Ukraine's Supreme Council on 15 March 2014), proclaimed a state called the Republic of Crimea following a declaration of independence on 11 March 2014. They also applied to the authorities of the Russian Federation to incorporate the Republic of Crimea into the Russian Federation. On 18 March 2014, an agreement was signed between the Russian Federation and Crimea (Agreement

on the Accession of the Republic of Crimea to the Russian Federation) which provides for the accession of Crimea and the city of Sevastopol to the Russian Federation.

3. As a result of the above developments, the Russian Federation incorporated the territory of Crimea. This incorporation should be qualified as annexation, i.e., the illegal acquisition of the territory of another state by the threat or use of force. This conclusively transpires from the fact that the Russian Federation has breached a number of norms of international law, including principles of international law which constitute universally applied norms that are the bedrock of the international legal order.

By annexing Crimea, the Russian Federation has violated the principle of non-intervention into the domestic affairs of another state, the prohibition to threaten or use force, and the prohibition to violate the territorial integrity of another state. These principles are enshrined in the UN Charter of 1945 and form part of customary international law. By its annexation of Crimea done in violation of the prohibition of the use of force Russia has committed aggression, thus breaching a peremptory norm of general international law (*ius cogens*).

4. In light of the above, declaring actions taken by the Russian Federation to constitute illegal use of force against Ukraine, i.e., an act of aggression, conclusively determines the legal qualification of the incorporation of Crimea into the Russian Federation as an annexation.

Moreover, some acts by the authorities of the Russian Federation dating before 18 March 2014, as well as the subsequent and persistent conduct of that state involving demands for concrete settlement of the status of Crimea, other regions of Ukraine, or in a wider sense – the adoption of specific decisions regarding the political system, in and of themselves constitute a violation of the principle of non-intervention into the domestic affairs of a sovereign subject of international law; thus they violate the status of Ukraine as a sovereign state that is protected under international law.

II. Actions by the Russian Federation directed at Ukraine are an act of aggression

5. Actions by the Russian Federation taken at the end of February and in the first half of March 2014 using armed forces deployed in the territory of Ukraine qualify as acts of direct aggression against Ukraine pursuant to UN General Assembly Resolution no. 3314 of 1974 which is now regarded as customary law. It defines an act of aggression as “the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations Charter.” (Article 1 of the Annex).

According to Article 3 of the Annex to the Resolution, the following qualify as acts of aggression: “the blockade of the ports or coasts of a State by the armed forces

of another State” (subparagraph c) and “the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement” (subparagraph e). The above definitions correspond exactly to the activities undertaken by Russia vis-à-vis Ukraine. It is also indisputable that the activities undertaken by the Russian Federation constituted a violation of the Ukrainian-Russian agreement on the status and conditions of stationing of the Black Sea Fleet of the Russian Federation in the territory of Ukraine dated 28 May 1997.

6. The Russian Federation also bears responsibility for the so-called act of indirect aggression. Pursuant to Article 3(g) of the annex to Resolution no. 3314, an act of aggression is “the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.” Consequently, the Russian Federation bears responsibility for actions carried out in Crimea from the end of February 2014 by armed irregulars called “Crimea’s self-defense units” or the so-called “green men”.

Armed activities carried out by the above-mentioned irregulars, whose legal qualification is that they are non-state actors, can be attributed to the Russian Federation in line with the principles of attribution of responsibility to a state for actions carried out by non-state actors as defined in the Articles on Responsibility of States for Internationally Wrongful Acts adopted in 2001 by the UN International Law Commission which are generally recognized as reflecting applicable customary law. Pursuant to Article 8 of the Articles, the activity of a person or group of persons is considered an act of State under international law, provided such person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct. The responsibility of the Russian Federation for the activity of irregulars is now undisputed in light of a public statement made by the President of the Russian Federation, Vladimir Putin, during a teleconference in Moscow on 17 March 2014. Therein he admitted that these groups were formed out of the soldiers of the Russian Federation’s armed forces - which qualifies their activity as activity carried out by the Russian Federation itself. Moreover, pursuant to Article 11 of the Articles, a State bears international responsibility for an activity that it acknowledges and adopts as its own.

III. Protection of the rights of citizens does not provide a legal justification for the acts directed by the Russian Federation at Ukraine

7. Russia illegally used force against Ukraine in Crimea. These operations cannot be considered, as Russia tries to argue, as armed activities carried out in order to defend one’s own citizens.

Essentially, the use of force in order to protect one's own citizens boils down to the right of a state to engage in armed operations in the territory of another state in defense of its own citizens. This is not a universally recognized right. There is position which finds some support in the doctrine and practice of states that the use of force in order to protect one's own citizens constitutes a type of self-defense, or an additional exception from the prohibition of the use of force in customary law. However, irrespective of the above, it is necessary to demonstrate in each situation a real and serious threat to the lives of the citizens. The state where such intervention takes place must be responsible for the wrongful acts or otherwise refuse or be unable to ensure adequate protection. Concurrently, it should be demonstrated that peaceful measures have turned out to be insufficient or unfeasible.

It has become evident that none of these premises have been fulfilled in relation to the situation of the citizens of the Russian Federation in Crimea, as well as those in other parts of Ukraine. We should also bear in mind that from the perspective of international law Russian domestic legal regulations providing for the obligation to protect Russia's citizens abroad are irrelevant.

The use of force in order to protect one's own citizens does not apply to people who are not citizens of a specific state but only share a common ethnicity, language, or culture with such state. Consequently, the Russian Federation's justification of its use of armed force for the protection of Russian-speaking population outside its borders, including the Russian minority in Ukraine, finds no legal ground in modern international law.

The same is true for the emerging doctrine of responsibility to protect as developed in modern international law – which evidently does not apply to the situation in Ukraine. The doctrine imposes a responsibility on the international community to take collective action if the state fails to fulfil its obligation to protect the population inhabiting its territory against the most serious international crimes (war crimes, crimes against humanity, genocide).

It must be emphasized that Ukraine has not committed any serious violations against the population inhabiting its territory; specifically with regard to Crimea.

IV. Intervention by invitation provides no legal grounds to operations by the Russian Federation against Ukraine

8. Russia cannot make a legal case for its operations against Ukraine on the grounds of so-called intervention by invitation. Such intervention may be regarded as the legal use of armed force, provided that armed force is used with the consent of the authorities of the state on whose territory another state is engaged in military operations. Intervention by invitation does not lead to a violation of the prohibition of the use of armed force because armed operations of one state are undertaken with the consent of the other state and as such do not violate its sovereignty. The admissibility of intervention by invitation relies on a freely and unequivocally expressed invitation by legal and

internationally recognized supreme authorities of a state in which the intervention is to take place. Such authorities also have to exercise effective control over the state. Invocation by the intervening state of invitation by local, autonomous, or other lower-level government authorities is inadmissible.

9. In light of the above, the appeal on 1 March 2014 by prime minister of the Autonomous Republic of Crimea to the authorities of the Russian Federation to “ensure peace and public order in Crimea” remains ineffective under international law and as such does not provide sufficient legal grounds for the Russian Federation’s engagement in armed activities in Crimea.

The construction of intervention by invitation is also inapplicable with regard to the alleged appeal by Ukraine’s former president Viktor Yanukovich. Firstly, it is unclear in what form and scope such an appeal was made. Even though it was invoked by the Russian representative to the United Nations at the extraordinary UN Security Council meeting on 3 March 2014, it has never been made public. Secondly – without making a legal assessment of the changes of Ukraine’s supreme authorities pursuant to the constitutional law of that state made in mid-March 2014 – Viktor Yanukovich was not empowered to issue a legally effective invitation to the authorities of the Russian Federation to use armed force because at that time he no longer exercised effective power in Ukraine and remained outside its borders inside Russia. Thirdly, under no circumstances, the use of armed force at the invitation of the authorities of another state can lead to the intervening state taking control over part of the territory of the state in which it has intervened and to the annexation of its territory.

10. The Russian Federation has committed an act of aggression in Crimea against Ukraine and thus has violated the fundamental principles of international law, including its preemptory norms. The legal qualification of the operations by the Russian Federation in Crimea as aggression and, consequently, recognition of the incorporation of Crimea to the Russian Federation as an act of annexation have been confirmed by the positions taken by many states and international organizations - including the Council of Europe’s Parliamentary Assembly’s resolutions no. 1990 (2014) dated 10 April 2014, or the European Parliament resolution no. 2014/2627 dated 13 April 2014.

V. The right to self-determination and secession are not legal grounds for separating Crimea from Ukraine

11. Representatives of the authorities of the Russian Federation, including its President and foreign minister, are trying to justify the illegal annexation of Crimea to the Russian Federation as secession done pursuant to the right of nations to self-determination. This justification holds no ground in modern international law.

In the process of decolonization, the content of the principle of self-determination of nations was the right of peoples inhabiting a colonial territory to freely determine its political status going as far as creating its own state. Outside the colonial context, the content of the principle of self-determination is different because it is applied to events that occur within the boundaries of states whose status as sovereign territorial entities is protected by another principle – the principle of territorial integrity. No act of international law provides grounds, outside the colonial context, for a unilateral secession as an element of the principle of self-determination of nations. Secession by a national community inhabiting a multinational state is, as a rule, legally admissible only with the consent of the authorities of the state (take, for example, the secessions of Montenegro and South Sudan). States established as a result of peaceful secession enjoy universal recognition by members of the international community and eventually become members of the United Nations themselves.

12. The lack of consent of the pre-existing state for secession of a part of the territory inhabited by a nation that invokes the right to self-determination raises legal controversy. To a large extent, the scope of such controversy depends on whether a third state is involved in a secessionist movement within a multinational state. The involvement of a third state undermines the legality of secessionist operations because it violates the principles of non-interference and territorial integrity. This has been expressly confirmed by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations of 24 October 1970, which, in the final paragraph regarding the principles of equal rights and self-determination of peoples, reaffirms the duty of each and every state “to refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.” From the standpoint of international law, territorial entities created with the support of third states are not states, but so-called *de facto* regimes. If armed force was used or was threatened to be used against a state-territorial sovereign, then, under international law, these regimes are occupied territories (e.g. the so-called Republic of Northern Cyprus, South Ossetia, Abkhazia, and Crimea).

13. The forced annexation of Crimea by Russia cannot be justified on the basis of the right of self-determination in view of the lack of Ukraine’s consent allowing for Crimea to secede from Ukraine and due to the Russian Federation’s military engagement in Ukraine’s territorial disintegration. The secessionist movement in Crimea was openly supported by the Russian Federation, which has violated fundamental principles of general international law: the prohibition of the threat or use of force, the prohibition to intervene into the internal affairs of another state, and the prohibition to violate the territorial integrity of another state. The Russian Federation was also directly involved in the referendum on the status of Crimea. An unequivocal legal assessment of this referendum was provided by the UN Resolution of 27 March 2014, on the territorial

integrity of Ukraine, which in subparagraph 5 states that the referendum conducted on 16 March 2014, in the Autonomous Republic of Crimea and in the city of Sevastopol has no validity and therefore cannot constitute grounds for changing the status of the Autonomous Republic of Crimea and the city of Sevastopol.

14. Actions by the Russian Federation that violate well-grounded principles of general international law do not allow for qualifying Crimea's forced separation from Ukraine as the exercise of the right of nations to self-determination. From the viewpoint of international law, what happened in Crimea was an annexation, i.e. the illegal acquisition of part of a territory to which another state holds a legal title. This is the current qualification of the international legal status of Crimea.

VI. Crimea – territory occupied by Russian Federation

15. The unlawfulness of acts committed by the Russian Federation in Crimea leading to Ukraine's loss of effective territorial control over the Peninsula gives rise to the conclusion that, under international law, Crimea remains an integral part of Ukraine's territory under Russian occupation.

16. The situation that occurred in March 2014 in the Autonomous Republic of Crimea and in the city of Sevastopol fully corresponds to the provision of Chapter III ("Occupied Territories") Title III of the Fourth Convention relative to the Protection of Civilian Persons in Time of War adopted in Geneva on 12 August 1949, and Chapter III of the Regulation concerning the laws and customs of war on land annexed to the IV Convention adopted in The Hague on 18 October 1907. In light of these regulations, a territory is considered occupied if it is under effective control of foreign armed forces, while its occupation starts with "the authority of the legitimate power having in fact passed into the hands of the occupant" (Article 43 of the Hague Regulations).

War-time occupation exists irrespective of the issue of the legality of the use of force and irrespective of the proclamation of martial law, the occurrence of armed resistance and the declaration of the occupation itself. Two factors constitute war-time occupation: 1) effective military and administrative control over the territory of another state; 2) the lack of consent of the territorial head to the presence of armed forces in its territory.

In view of the lack of legal grounds that would justify the presence and operations of armed forces of the Russian Federation in Crimea as part of intervention by invitation and the defense of one's own citizens, in accordance with international law Crimea is currently under the occupation of Russia.

17. The above qualification leads to far-reaching legal consequences. Firstly, the occupation of Crimea, as any war-time occupation, is a transitory condition which, in

itself, does not change the legal title to the occupied territory (*ex factis ius non oritur*). Secondly, the status of Crimea's occupation determines an unequivocal assessment of subsequent operations by the Russian Federation. International law prohibits the occupant to change, on account of the transitory nature of the occupation, the legal status of the occupied territory. Primarily, it prohibits its incorporation, and demands that the occupant observes the applicable law in the occupied territory and to preserve the status quo in such territory. Legal regulations issued by the occupant are only to serve the purpose of administering the occupied territory. The operations by the Russian Federation in Crimea, the final stage of which became the annexation of the Peninsula, unequivocally represent a serious breach of established norms of international law. Being completely illegal, they do not change the status of Crimea which, in light of international law, remains an integral part of Ukraine under occupation of the Russian Federation.

VII. Duties of members of the international community in the face of annexation of Crimea

18. The operations by the Russian Federation directed at Ukraine in Crimea are a breach of peremptory norms of international law (*iuris cogentis*) resulting in legal obligations *erga omnes*. The position of members of the international community vis-à-vis these breaches is clearly determined by law: they are under both negative and positive obligations.

19. The fundamental negative obligation is the prohibition to recognise factual situations that occurred as a result of a breach of peremptory norms. Modern international customary law imposes an obligation on states not to recognise illegal situations. This institution goes back to the so called Stimson Doctrine expressed by the US government in connection with the annexation of Manchuria. After WW II it found its confirmation in the practice of the main bodies of the United Nations in the form of a position expressed by the Security Council on South Rhodesia, the Republic of North Cyprus or the Serbian Republic, and most recently in the form of the above-mentioned UN General Assembly Resolution of 27 March 2014, on the territorial integrity of Ukraine.

20. The customary nature of the obligation not to recognise illegal situations was reaffirmed and specified more precisely in the Articles on Responsibility of States for Internationally Wrongful Acts of 2001. Article 41(2) of this Act reaffirms the prohibition to recognise as lawful a situation created by a serious breach of an obligation arising under a peremptory norm of general international law, as well as a prohibition to render aid or assistance in maintaining that situation.

21. In view of the Russian Federation's flagrant violation of its obligations arising under peremptory norms of general international law, states have a duty not to recognize

the annexation of Crimea. Recognition of Crimea as part of the Russian Federation would be in itself a violation of international law, being a form of support for a state that breaches peremptory norms and an attempt to legalize an unlawful situation. Any recognition of illegal situations, of which the annexation of Crimea is one, by itself results in an international responsibility on the part of the recognizing state. The duty not to recognize the annexation of Crimea is reaffirmed by point 2 of the UN General Assembly resolution of 27 March 2014, on the territorial integrity of Ukraine; it calls on states to refrain from actions that would undermine Ukraine's national unity and territorial integrity, including an adjustment of its borders.

22. With respect to positive obligations, Article 41(1) of Articles on Responsibility of States for Internationally Wrongful Acts of 2001 provides that States shall cooperate to bring to an end through lawful means any serious breach by a State of an obligation arising under a peremptory norm of general international law. One such measure available to members of the international community and capable of putting an end to serious violations of international law, such as the annexation of Crimea, is a collective condemnation of the violations in international organizations (for example, UN General Assembly Resolution of 27 March 2014, Council of Europe's Parliamentary Assembly's Resolution of 10 April 2014, European Parliament's Resolution of 13 April 2014). Another measure is to support Ukraine's legal measures in international organizations and bodies responsible for the settlement of international disputes. These actions could ultimately lead to a cessation of unlawful situation and, consequently, to regaining effective control by Ukraine over its territory of Crimea.

Both negative and positive obligations may also result from bilateral international agreements, as exemplified by the Treaty between the Republic of Poland and Ukraine on Good Neighborliness, Friendly Relations and Cooperation of 18 May 1992. Pursuant to its Article 4(3) "In the event of armed attack by a third country or third countries on one of the Parties, the other Party shall refrain from any form of military assistance or political support to such country or countries during the armed conflict and shall act to settle this conflict in accordance with the principles and procedures of the United Nations Charter and the documents of the Conference of Security and Co-operation in Europe."

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