



Legal Alert

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LEGAL ANALYSIS OF THE CURRENT SITUATION

A few words about Russian aggression on Ukraine from the perspective of international law

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Recently, there has been a lot of misunderstanding with respect to the Russian aggression on Ukrainian territory and its international law implications.

This notice is intended to unequivocally present a legal analysis of the current situation.

1. The Russian intervention in the Crimea region constitutes an unlawful act of aggression in violation of the United Nations Charter and Customary International Law.

There is no doubt that the following acts of Russian or Russian-backed troops qualify as aggression under international law:

- The occupation of parts of Ukrainian territory
- The blockade of Ukrainian ports by Russian ships
- The support of military bands participating in the occupation of a part of Ukrainian territory.

These acts constitute acts of aggression in light of the UN General Assembly Resolution No. 3314(XXIX) of 1974 on the definition of aggression. Whilst the International Court of Justice in the Nicaragua Case requested an effective link between the armed bands and the state responsible for their actions in order to establish an act of aggression, there is strong evidence that such effective control exists.

Consequently, these acts constitute a blatant violation of Article 2(4) of the United Nations Charter which prohibits the use of force and threat of use of force in international relations.

2. Russia cannot justify their aggression on the basis of the doctrine of consent.

In international law, consent is treated as a circumstance precluding the wrongfulness of certain acts, including acts of aggression (See: ILC Articles on State Responsibility of 2001). Also, in the context of alleged aggression, the ICJ recognized, in the Armed Activities Case, that valid consent is capable of precluding the wrongfulness of such acts.

However, no such valid consent occurred with respect to the Russian aggression on Ukraine. Firstly, such consent must be granted by a legitimate and effective government. Mr. Yanukovich does not fulfill any of these requirements. On the one hand, he has lost the recognition of most States which explicitly recognized the new government. On the other hand, after he fled to Russia, Mr. Yanukovich has not had control of a single piece of Ukrainian territory, thus failing to exercise effective control.



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In the abovementioned Armed Activities Case, the effectiveness of the government requesting armed assistance was the prerequisite of the valid consent.

Secondly, international law does not allow for the preclusion of wrongfulness to be classed as consent which was "vitiated by coercion or some other factor". Bearing in mind the pressure from Russia and criminal charges against him, Mr. Yanukovich's consent cannot be treated as valid.

3. Russia cannot justify its aggression by the necessity doctrine.

From the outset of the aggression, Russia seems to justify its aggression by claiming that it is forced to intervene in Crimea to protect the Russian-speaking population.

This argument fails on the following grounds:

- Russia has not presented a single strand of evidence showing that the Russian-speaking population of Crimea faces any serious danger as to its rights as a minority. The current government seems to be aware that the Russian-speaking population of Crimea deserve treatment which is consistent with the right to (internal) self-determination. No acts of violence have occurred either.
- Russia is not entitled to invoke the doctrine of responsibility to protect, as the main prerequisite for application of the doctrine, namely the impossibility of the local government to protect the population from grave breaches of their human rights, is not met.

4. Crimea does not have a right to secession.

On March 6, 2014, the Crimean Parliament adopted a resolution confirming its desire to join the Russian Federation after a referendum which is due to take place on March 16, 2014. The questions asked in the referendum concern the will of the Russian population to actually join Russia, i.e. to secede from Ukraine.

However, under the current state of international law, Crimea does not have a right to secede from Ukraine.

International law allows for secession only in exceptional circumstances, including decolonization or a long-term oppression of occupation. For instance, Kosovo was granted recognition due to the UN's acknowledgement of its right to self-determination back in 1999, when ethnic cleansing of the Albanian population in Serbia took place. No such situation has occurred in the case of Crimea.

Crimea is also forbidden from requesting independence/joining Russia under domestic law.

5. Conclusion.

Notwithstanding the moral condemnation of the Russian aggression on Ukraine, it is reasonable to acknowledge that there is no international legal justification for what is going on in Crimea and that sanctions which could be possibly adopted by the US or EU find proper legal grounds in international law.

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