



14 February 2022

Minister of Foreign Affairs

For approval by

16 February 2022

Russia/Ukraine: Aotearoa New Zealand Response Measures

BRIEFING Decision Submission

PURPOSE To recommend immediate measures Aotearoa New Zealand could take in response to a Russian invasion of Ukraine; outline Russia's potential response; and identify further measures we might take in the event our initial response needs to be ramped up.

Tukunga tūtohua – Recommended referrals

Prime Minister	For concurrence by	17 February 2022
Minister for National Security and Intelligence	For concurrence by	17 February 2022
Minister of Finance	For information by	17 February 2022
Minister for Energy and Resources	For information by	17 February 2022
Minister Responsible for the NZSIS and GCSB	For information by	17 February 2022
Minister for Police	For information by	17 February 2022
Minister of Agriculture	For information by	17 February 2022
Minister for Trade and Export Growth	For information by	17 February 2022
Minister of Immigration	For concurrence by	17 February 2022
Minister Defence	For information by	17 February 2022
Minister of Transport	For information by	17 February 2022
Associate Minister of Foreign Affairs	For information by	17 February 2022
Minister of Customs	For concurrence by	17 February 2022
Minister of Disarmament and Arms Control	For concurrence by	17 February 2022

Mā te Tari Minita e whakakī – Minister's Office to complete

 Approved

 Noted

 Referred

 Needs amendment

 Declined

 Withdrawn

 Overtaken by events

 See Minister's notes

Comments

Russia/Ukraine: Aotearoa New Zealand Response Measures

Taipitopito whakapā – Contact details

NAME	ROLE	DIVISION	WORK PHONE
Janet Lowe	Lead Adviser	Europe Division	s9(2)(a)
Taha Macpherson	Divisional Manager	Europe Division	

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Pito matua – Key points

- Tension remains high over Russia's military build-up on its border with Ukraine. Russia is widely assessed to have the capability now to launch a full-scale military invasion at any time. Urgent diplomatic efforts to de-escalate the crisis are ongoing. So far there have been no significant breakthroughs, and the situation remains highly fluid and unpredictable.
- While the window for diplomatic engagement remains open, Aotearoa New Zealand's focus internationally is on expressing support for diplomatic efforts to achieve de-escalation.
- Invasion of Ukraine by Russia would be a violation of one of the most basic tenets of international law, which prohibits states from the use of force against the territorial integrity or political independence of another state.
- In the event of a Russian invasion, Aotearoa New Zealand will want to respond quickly to demonstrate our commitment to our core values, including democracy, human rights and the rule of law, when these are violated and to show support for Ukraine.
- Armed conflict will adversely impact Aotearoa New Zealand's interests in Europe and beyond, with spillover effects in our part of the world. Instability in Europe^{s6(e)(vi)}, supply chain security, and the ability of New Zealanders to travel freely in Europe.
- ^{s6(a)} will be following developments closely, and assessing the international response in the context of regional disputes in the Indo-Pacific.
- Military conflict could precipitate a humanitarian crisis which, in a worst-case-scenario, would lead to high civilian casualties and an estimated 3-5 million refugees.
- Many likeminded partners have threatened to impose tough new sanctions if Russia invades Ukraine, with the US leading the charge. Sanctions are expected to include: financial restrictions, asset freezes, export controls, travel bans, and restrictions on commercial activities.^{s6(a), s6(b)(i)}
- Aotearoa New Zealand does not have an autonomous sanctions regime so we can only impose sanctions against Russia if these are authorised by the United Nations Security Council (UNSC). However, there is no realistic prospect of this as Russia is a permanent member of the UNSC with veto power.
- Our bilateral relationship with Russia has been subdued since Russia annexed Crimea in 2014 which further limits the response measures at our disposal. In 2014 we suspended our FTA negotiations with Russia (a major step at the time), summoned the Russian ambassador to receive a diplomatic rebuke, and imposed travel bans on selected Russian and Ukrainian individuals.
- The range of measures that Aotearoa New Zealand could take in response to a Russian invasion include: diplomatic measures; travel bans; and export controls on military and dual use goods.^{s6(a)}, they send an important message about our commitment to upholding the international rules-based order, and solidarity with Ukraine.

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- Drawing on our Kete of Potential Diplomatic Actions and Associated Risks (Annex 1), officials recommend the following suite of immediate actions should Russia invade Ukraine (paragraph 16):
 - A strong ministerial statement;
 - Joining likeminded partners in condemning Russian military aggression and expressing support for Ukraine;
 - Formally summoning the Russian ambassador;
 - Suspension of foreign ministry consultations;
 - Travel bans;
 - Export control measures; and
 - Support measures for Ukraine.
- Some measures such as a ministerial statement and summoning the Russian ambassador can be actioned immediately; travel bans can be implemented quickly with Ministerial approval; and export control measures will require some further work and Ministerial consultation. Travel bans and export controls can be put in place quickly if you and relevant Ministers (Immigration and Customs) agree that officials should undertake the necessary preparatory work in advance. Officials seek agreement from relevant Ministers to prioritise this preparatory work in this submission.
- It is possible that Russia does not launch military action against Ukraine and, instead, intensifies “grey-zone” activities (subversive actions that stop short of armed conflict e.g. cyber attacks) to undermine Ukraine’s governance systems and weaken critical infrastructure. We will work with your office, DPMC and other relevant agencies in the event that a response to such activities seems warranted.
- s6(a), s6(d)
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- Adopting the immediate suite of measures recommended above leaves room to ramp up Aotearoa New Zealand’s response if required. Further options include: recalling our ambassador in Moscow for consultations, and declaring Russian diplomatic staff *persona non grata* (expulsions).

s6(e)(vi)

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s6(b)(i)

- Officials have begun exploring the potential scope of a humanitarian contribution in the event of a humanitarian crisis resulting from military conflict between Russia and Ukraine. Further advice will be provided on this.
- MFAT has prepared a separate paper for Ministers on the potential impacts of military conflict in Ukraine on the Aotearoa New Zealand economy.

Rob Taylor
For Secretary of Foreign Affairs and Trade

Tūtohu – Recommendations

It is recommended that you:

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|---|--|-----------------|
| 1 | Note that armed conflict in Ukraine will have a major detrimental impact on Aotearoa New Zealand's interests in Europe and beyond, and that invading Ukraine would be a clear breach of international law, and undermine our core values and interests; | Yes / No |
| 2 | Note that military conflict between Russia and Ukraine could precipitate a humanitarian crisis, and that officials are preparing separate advice on a potential Aotearoa New Zealand contribution to international humanitarian efforts should such a crisis eventuate; | Yes / No |
| 3 | <small>s6(a), s6(b)(i)</small> | Yes / No |
| 4 | Agree that if Russia invades Ukraine, Aotearoa New Zealand should respond quickly, to demonstrate our commitment to our core values and interests, and consistent support for Ukraine's sovereignty and territorial integrity; | Yes / No |

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- 5 **Note** that as Aotearoa New Zealand does not have an autonomous sanctions regime, we are unable to implement sanctions against Russia absent a United Nations Security Council resolution which is unrealistic given Russia's veto power; **Yes / No**
- 6 **Agree** the following suite of immediate actions in the event of a Russian invasion: **Yes / No**
- A strong ministerial statement;
 - Joining partners in publicly condemning Russian military aggression and expressing support for Ukraine;
 - Summoning the Russian ambassador;
 - Suspending foreign ministry consultations;
 - Travel bans targeting Russian individuals associated with violating Ukraine's sovereignty and territorial integrity;
 - Export control measures; and
 - Support measures for Ukraine.
- 7 **Note** that it is possible that Russia does not launch military action against Ukraine and, instead, intensifies "grey zone" activities (e.g. cyber attacks) that also warrant an Aotearoa New Zealand response. Officials will work with your office, DPMC and other relevant agencies in the event a response to such activities seems warranted. **Yes / No**
- 8 **Note** that Russia will respond negatively to whatever measures Aotearoa New Zealand takes in response to Russian military action in Ukraine, and that the scale of Russia's response will depend on the specific actions we take and the extent of our company in adopting them; **Yes / No**
- 9 s6(a), s6(d) **Yes / No**
- 10 s6(a) **Yes / No**
- 11 **Agree** in consultation with the Ministers of Immigration, Customs and Disarmament, that officials should prioritise preparatory work to ensure the Government is able to implement travel bans and export control measures quickly, and that officials should report back to Ministers as soon as this work is complete; **Yes / No**
- 12 **Note** that the proposed suite of immediate response measures leaves room to ramp up Aotearoa New Zealand's response, if necessary; **Yes / No**
- 13 **Note** that further response options include: recalling our Ambassador in Moscow for consultations, and declaring Russian diplomatic staff *persona non grata* (expulsions); **Yes / No**
- 14 s6(e)(vi) **Yes / No**

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- s6(e)(vi)
- ;
- 15 **Note** that measures such as broader trade restrictions and diplomatic expulsions would elicit a much more muscular Russian response and come with potentially high long-term costs for Aotearoa New Zealand; **Yes / No**
- 16 **Agree** that officials should provide advice on further potential measures, as required, following military action by Russia against Ukraine; **Yes / No**
- 17 s6(e)(vi) **Yes / No**
- 18 **Note** that a separate MFAT paper is being prepared for Ministers analysing the potential impacts of conflict between Russia and Ukraine on the Aotearoa New Zealand economy; **Yes / No**
- 19 **Refer** a copy of this submission to the Prime Minister, Minister for National Security and Intelligence, Minister of Immigration, Minister of Disarmament and Arms Control and Minister of Customs for their concurrence, and to the Minister Responsible for the NZSIS and GCSB, Minister of Finance, Minister of Defence, Minister of Agriculture, Minister for Trade and Export Growth, Minister of Transport, Minister for Energy and Resources, Minister of Police and Associate Minister of Foreign Affairs for their information. **Yes / No**

Hon Nanaia Mahuta
Minister of Foreign Affairs

Date: / /

Rt. Hon Jacinda Ardern
Prime Minister of New Zealand and Minister for National Security and Intelligence

Date: / /

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Hon Phil Twyford
Minister of Disarmament and Arms Control

Date: / /

Hon Kris Faafoi
Minister of Immigration

Date: / /

Hon Meka Whaitiri
Minister of Customs

Date: / /

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Pūrongo – Report

As foreshadowed in our submission of 28 January 2022 on Aotearoa New Zealand's response to the mounting crisis between Russia and Ukraine (not to all), we provide further advice on the measures that Aotearoa New Zealand could take in response to further Russian aggression against Ukraine, in particular any action that represents a clear violation of Ukraine's sovereignty or territorial integrity such as an invasion.

2 Referencing our Kete of Potential Diplomatic Actions and Associated Risks (**Annex 1**), this submission:

- (i) Outlines the context and reasons for an Aotearoa New Zealand response;
- (ii) Recommends a suite of immediate measures that Aotearoa New Zealand could take;
- (iii) ^{s6(a)} Identifies further possible measures in the event our initial response needs to be ramped up.
- (iv) Identifies further possible measures in the event our initial response needs to be ramped up.

Context and reasons for an immediate Aotearoa New Zealand response

3 Tensions continue to rise between Russia and Ukraine. Over 100,000 Russian troops are currently massed on the Ukrainian border following a military build-up that has been ongoing since late 2021. Intense diplomatic efforts continue aimed at de-escalating tensions. While the window for diplomatic engagement remains open, Aotearoa New Zealand remains committed to voicing our support for these efforts as a pathway to de-escalation. So far, however, there have been no significant breakthroughs, and the situation remains highly fluid and unpredictable.

4 Russia has repeatedly denied any intention to invade Ukraine, but is widely considered to have the capability now to launch a military incursion at any time, with little or no notice. The risk of a serious miscalculation leading to a further escalation of tensions is high. It is also possible that Russia may intensify "grey-zone" activities (e.g. cyber attacks) to undermine Ukraine's governance systems and weaken critical infrastructure.

5 As a small country that depends on the international rules-based system for our security and prosperity, we support the sovereign right of states to determine their own future, including their security relationships. In this context, Aotearoa New Zealand has been consistent in our support for Ukraine's sovereignty and territorial integrity.

6 A Russian invasion would be a clear violation of one of the most basic tenets of international law, which prohibits states from the use of force against the territorial integrity or political independence of another state. It would also seriously undermine the foundations of collective security provided for in the United Nations Charter.

7 Military conflict between Russia and Ukraine would also have a destabilising effect on the security and economic stability of Europe, and globally, at a time when geostrategic uncertainty is already high, the international rules-based system is under pressure, and the global economy remains fragile, compounded by COVID-19. Instability in Europe could impact our interests directly ^{s6(a), s6(e)(vi)}, supply chain security, and the ability of New Zealanders to travel freely in Europe.

8 Military conflict could also precipitate a humanitarian crisis which the Ukrainian Defence Minister has warned could lead to high civilian casualties and 3-5 million refugees.

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9 The strategic implications of military aggression by Russia against Ukraine could spill over beyond Europe. ^{s6(a)}

How our partners are planning to respond

10 As when Russia annexed Crimea in 2014, we expect likeminded partners to move swiftly to impose tough new sanctions on Russia if it invades Ukraine. These have been signalled strongly, by the US in particular, in the hopes of deterring Putin from invading.

11 A range of potential sanctions have been foreshadowed by our partners but the details are generally being held close to prevent Russia from taking pre-emptive mitigating measures. ^{s6(a), s6(b)(i)}

Aotearoa New Zealand's approach

13 Given the range of Aotearoa New Zealand interests that would be adversely impacted, it is important that Aotearoa New Zealand is able to respond quickly in the event of a Russian military invasion or incursion against Ukraine.

14 Aotearoa New Zealand presently does not have a legislative regime which allows for autonomous sanctions i.e. sanctions without a specific mandate from the United Nations Security Council (UNSC).

15 There is no prospect of UN sanctions being imposed on Russia as it is a permanent member of the UNSC with veto power. Beyond the UNSC, the UN General Assembly (UNGA) can play a role in building momentum for sanctions but any UNGA resolution proposing sanctions would fail in the UNSC because Russia would, again, exercise its veto.

Immediate response measures

16 There are nevertheless a range of measures that Aotearoa New Zealand could take in response to Russian military aggression. Having reviewed the options in our diplomatic kete (**Annex 1**), and identified some additional measures that Aotearoa New Zealand might take, officials recommend the following suite of measures be adopted immediately in the event that Russia invades Ukraine:

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(i) Political and diplomatic measures

- A strong Ministerial statement and public comments condemning Russia's actions and expressing solidarity with Ukraine;
- Joining likeminded partners in doing the same;
- Formally summoning the Russian ambassador;
- Suspension of foreign ministry consultations.

(ii) Travel bans

Additional travel bans on Russian individuals associated with the violation of Ukrainian sovereignty and territorial integrity i.e. expanding the travel bans that Aotearoa New Zealand put in place following Russia's 2014 annexation of Crimea.

- s6(b)(i)

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6 s6(a)

(iii) Export controls

Adopting a policy of prohibiting the export of weapons, dual use technology and military end-user goods to Russian military and security forces.

- *Aotearoa New Zealand can impose export controls in relation to weapons, dual use technology and military end-user goods to military and security forces.*

s6(a)

- *Under the Customs and Excise Act 2018, the Secretary of Foreign Affairs, in consultation with the Minister of Customs, may issue such a prohibition if the Secretary considers it necessary in the public interest. If you and the Minister of Customs agree, we recommend that officials work on a draft Gazette notice in advance;*
- *Exports to commercial entities would continue to be considered case-by-case.*
- *The Secretary of Foreign Affairs could also revoke any existing permits for controlled goods where the export has yet to take place.* s9(2)(b)(ii)

- *It is not recommended at this stage that the option to revoke existing contracts or to deny support for existing commercial users be pursued.* s9(2)(b)(ii)

- s6(b)(i)

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- s6(a)

(iv) Support for Ukraine

Highlight the practical and other support we are providing Ukraine in ministerial and other statements in solidarity with Ukraine and partners' actions. These could include some or all of the following:

- Announcing publicly that we are holding cyber consultations with Ukraine that would underscore our support for Ukraine's response to these threats, and our commitment to working with Ukraine to uphold the framework of responsible state behaviour online.
- Strengthening our engagement in the Crimea Platform, a forum aimed at improving the effectiveness of the international response to Russia's ongoing occupation of Crimea (Aotearoa New Zealand is a founding member as are our close partners);
- Deepening bilateral engagement on foreign policy issues by looking to hold regular foreign ministry consultations.
- A potential Aotearoa New Zealand contribution to any international humanitarian efforts.

s6(a), s6(b)(i)

17 Some of the above measures could be actioned immediately (a ministerial statement and summoning the Russian ambassador). Others such as travel bans and implementation of export control measures will require some further work and Ministerial consultation, but could be actioned quickly if you and the Ministers of Immigration and Customs agree to the recommendation in this submission that officials prioritise the preparatory work required to implement these measures in advance.

18 It is possible Russia may not launch military action against Ukraine but, instead, intensifies "grey-zone" activities such as cyber attacks to undermine Ukraine's governance systems and weaken critical infrastructure. Such actions, while falling short of military aggression, may also warrant an Aotearoa New Zealand response. We will work with your office, DPMC and other relevant agencies should a response to grey-zone activities seem warranted, drawing on the response measures outlined above.

Further measures Aotearoa New Zealand might take

19 Adopting the suite of measures proposed in paragraph 16 above leaves room to ramp up Aotearoa New Zealand's response if required. The extent of any further measures would be influenced by Russia's actions following any initial military incursion, the trajectory of the conflict, its humanitarian and other impacts on regional and international security, and the approach of our partners. Officials will monitor the situation closely and provide further advice to Ministers as required.

s6(a) Russia/Ukraine: Aotearoa New Zealand Response Measures

s6(a)

s6(a), s6(e)(i)

s6(a)

s6(a)

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s6(a)

Humanitarian support

24 As concerns rise over a possible Russian invasion of Ukraine, so too do concerns that this would precipitate a humanitarian crisis with high civilian casualties and (according to the Ukrainian Minister of Defence) potentially 3-5 million refugees. Officials are preparing separate advice on a potential Aotearoa New Zealand contribution to international humanitarian efforts should such a crisis eventuate.

Annex 1: Kete of Potential Diplomatic Actions and Associated Risks

Set out below, in ascending order of significance and severity, are a range of possible diplomatic options to respond to increased Russian hostility towards Ukraine, ranging from ongoing destabilisation to a possible territorial incursion. We propose to move up and down this scale, based on the level of Russian aggression. There are other potential non-diplomatic options that might be requested by partners in the event of a serious conflict (e.g. military). These are not considered below.

In the absence of a United Nations Security Council resolution, Aotearoa New Zealand is very limited in the type of sanctions we can impose within existing policy and legal frameworks.

	Potential Actions	Rationale	Possible bilateral consequences
1	Join partners in publicly expressing support for Ukraine, by adding Aotearoa New Zealand's name to collective statements, including in multilateral fora.	Clearly communicates our position to Russia and internationally, and demonstrates Aotearoa New Zealand acting in good company in support of its foreign policy principles and values.	s6(a)
2	Demarching Russian officials in Moscow; summoning the Russian Ambassador in Wellington; delivering formal protest via a Third Person Note. These actions could be made public via a statement or tweet.	Allows Aotearoa New Zealand to directly convey our concerns to Russia – clearly articulating our position, while potentially mitigating the risk of public retaliation.	s6(a)
3	Taking bilateral steps to express solidarity with Ukraine, by calling their Foreign Minister, or issuing a ministerial statement or tweet.	Demonstrates to Russia and internationally Aotearoa New Zealand's willingness to act unilaterally in defence of its foreign policy principles and values; and reaffirms our position of support for Ukraine's sovereignty and territorial integrity.	s6(a)
4	Taking specific actions to impose costs on Russia such as limiting bilateral contacts, introducing travel bans on individuals or exploring other domestic policy actions.	Demonstrates to Russia, and internationally, that Aotearoa New Zealand is willing to act unilaterally in defence of its foreign policy principles and values. Reaffirms, in strong terms, our position of support for Ukraine's sovereignty and territorial integrity.	s6(a)
			s6(a)

s6(a)