

**HOW DOES THE INTERNATIONAL COMMUNITY RECONCILE
THE PRINCIPLES OF TERRITORIAL INTEGRITY AND SELF-DETERMINATION?
THE CASE OF CRIMEA**

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This paper explores the ambiguous nature of two principles of international law – self-determination and territorial integrity – illustrating the controversial nuances of international law on a political level, nuances with which the Crimean crisis has been described. Multiple paradigms will be applied to interpret the juristic status of the quoted principles. The foundation of this research is the collision between Russia and the West over the legal interpretation of these two principles throughout history and particularly in the case of Crimea. From the very beginning, the legal interpretation of the situation in Crimea was that Russia's legal rhetoric was groundless and that her legal justification for the secession of Crimea was simply not plausible, and therefore could not be linked to either legal or moral theories. After exposing the fragility of these principles in international law, the paper then concludes by proposing an alternative approach that utilizes a different philosophical logic, thus further illustrating the hidden nature of such contradictions in politics.

Keywords: self-determination; territorial integrity; international law; Crimean crisis; Russia.

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1. Introduction

In March 2014, with Russia's support, Crimea's secession from mainland Ukraine alarmed the international community and ignited two contradictions of international law: 1) historical ambiguity – the principle of self-determination against the principle of territorial integrity); 2) historical confrontation – Russia and the West's legal battleground on the interpretation of these principles, which have been questioned from the early 20th century. This paper explores the historical evolution of this ambiguity and the confrontation between Russian and Western lawmakers and policymakers. It looks at the reconciliation of self-determination and territorial integrity, whilst demonstrating ambiguity and confrontation as seen in the case of Crimea.

Self-determination of people *versus* territorial integrity of states are controversial international issues when they are implemented. However, nations and states have been acquainted with these complicated norms for decades, and as a principle of international law, territorial integrity was included in the Treaty of Westphalian (1648), and the principle of self-determination enshrined in the UN Charter in 1945. Up until 1945 – illustrating the principle of self-determination in the UN Charter – territorial integrity was an uncomplicated norm of international law. When the principle of self-

determination gained juristic status, it triggered a legal inconsistency with the principle of territorial integrity in international law. The principle of self-determination has since been converted into practice, such as in the independence of Bangladesh, the secession of states from Yugoslavia, Nagorno Karabakh in Azerbaijan, Kosovo, Abkhazia, Ossetia in Georgia, etc. This juxtaposition became the main agenda of international negotiations and perplexed lawmakers and policymakers. The Crimean case resonates most amongst these examples, demonstrating the incompatibility of the principles.

The ambiguity of these principles is consistent with the historical confrontation that sprung from Lenin and Wilson's ideas of self-determination. Subsequently, during the Cold War, the Soviet Union-led socialist block and the United States-led Western capitalist block continued the contest as rival lawmakers in international law. When the Soviet Union fell, the Russians exited the legal ground as lawmakers, and for the first time since the collapse of the Soviet Union, Russia came up with its own legal interpretation of international law, as shown in this case study.

In today's legal battleground, Putin's Russia could see itself as lawmaker based on Lenin's idea of self-determination, while Wilson's liberal standpoint is an ideological origin for Western legal interpreters. Considering these historical ties, Ch. 2 acts as a timeline for this confrontation and investigates the ambiguity of the principles of self-determination and territorial integrity, a crucial cornerstone of knowledge that facilitates an understanding of the contemporary legal rhetoric between Russia and the West.

Chapter 3 explains the renewed theoretical deliberation upon the interpretation of the principle of self-determination. Contrary to historical evolution, the theoretical analysis omits the confrontation between Russia and the West. Rather, it is reviewed through various scholarly hypotheses, wherein the examination of self-determination is categorised in three concepts: Remedial Only, Primary and Just Cause theories.

Russia and the West's polarization on the interpretation of self-determination after the Soviet Union break-up did not disappear, however, the confrontation weakened. During that period, until Crimea, both Russia and the West encountered a series of conflicts in the case of Kosovo, Abkhazia and Ossetia, which led them to build up their legal grounds and create global alliances. However, this confrontation reached a pinnacle with Crimea.

In Ch. 4 the legal battleground up until Crimea will be described as a legal basis for Russia's justification of Crimea's secession. In the same way as through theoretical understanding, history is of paramount importance in this research. Russia's arguments about Crimea are mostly related to historical arguments that have to be highlighted for an understanding of Moscow's legal interpretation. In the legal assessment of Crimean secession, Russia's legal interpretation of the Crimean situation is mainly derived from President Vladimir Putin's speech on March 16, 2014, and speeches by other Russian ministers. Russia's interpretation has been dissected by scholars, lawyers, policymakers and analysts from the West. Following this, as a theoretical assessment, the Crimean case will be investigated according to the

three main concepts (Remedial Only, Just Cause, Primary theories), none of which work in Crimea's situation. The three theories did not help promote the situation because Crimea's secession was a long way from democracy, which will be discussed in more depth in later in this paper.

On the one hand, my investigation into the historical confrontation between Russia and the West on a legal basis will demonstrate that Russia's groundless argument essentially serves its political interests, with Crimea as the precedent for this. On the other hand, in concluding research on historical ambiguity, a thorough theoretical examination of the principle of self-determination *versus* territorial integrity stimulates a new theoretical approach based on the fuzzy logic¹ of mathematics.

2. Historical Evolution

2.1. Historical Development of Self-Determination and Territorial Integrity

Policy- and lawmakers have long grappled with differing interpretations of self-determination and territorial integrity, either as an enshrined postulate of international or customary law,² or as an ambiguous theory of international relations. Despite these norms having been accepted by peoples and states for a long time, and the extensive literature on the theoretical and legal status of self-determination and territorial integrity, much uncertainty remains among policy- and lawmakers about their political and legal meaning.

The core of the debate goes back to the Peace of Westphalia in 1648, signed after the settlement of the Thirty Years' War, in which the territorial integrity and sovereignty of states was enshrined and the state solidified as the dominant actor in international relations. On accepting these norms, states were able to demand dues for non-intervention from their citizens who then had protection from outside attack. The inviolability of territorial integrity and sovereignty thus became the deeper code of international relations between states. Philpott highlights the significance of sovereignty in the Peace of Westphalia, citing Leo Gross: 'Whatever evils occur within states, it is better to maintain the *modus vivendi*³ than permit the manifold,

¹ Fuzzy logic is a superset of conventional (Boolean) logic that has been extended to handle the concept of partial truth – truth values between 'completely true' and 'completely false.' See, e.g., Shahariz A. Aziz, *You Fuzzyin' with Me?*, <http://www.doc.ic.ac.uk/~nd/surprise_96/journal/vol1/sbaa/article1.html> (accessed Mar. 10, 2016).

² According to Article 38(1)(b) of the ICJ Statute (59 Stat. 1055, 33 U.N.T.S. 993), customary international law is one of the sources of international law. Customary international law can be established by showing (1) state practice and (2) *opinio juris*. See also *Customary International Law*, Cornell University Law School Legal Information Institute, <https://www.law.cornell.edu/wex/Customary_international_law> (accessed Mar. 10, 2016).

³ 'An arrangement or agreement allowing conflicting parties to coexist peacefully, either indefinitely or until a final settlement is reached.' (*Modus Vivendi*, in Oxford Dictionaries Languages Matters, <<http://www.oxforddictionaries.com/definition/english/modus-vivendi>> (accessed Mar. 10, 2016).

self-multiplying claims that can motivate, and serve as a pretext for, widespread intervention.⁴ The Peace of Westphalia cemented ‘the order cluster’ (sovereignty, non-intervention, and territorial integrity) of the state;⁵ the state possessed its rights and a total authority over its territories, expressing its commitment to non-intervention. Meanwhile, the treaty paved the way for the emergence of ‘the justice cluster’ (the rights of individuals and groups of self-determination) relations.⁶

The political theory of international relations – nationalism – was the ground for the evolution of the principle of self-determination both as a political and legal postulate. When the territoriality and borderlines of states and nations appeared in Westphalia, it helped to establish among thinking peoples, sundry minorities and groups a sense of their own national identities, cultures, languages and own territory which distinguished them from others. In political meaning, Miller argued: ‘The principle of nationality suggests that people who form a national community in a particular territory have a reasonable claim to political self-determination.’⁷ In the light of this tendency, nationalism advanced and accelerated the ascription of people to different national identities. As the distribution of world populations spread, nationalist feelings prompted different groups to determine their own interests without cooperation from outside. The realization of this idea and the self-regulation of territories was only passing through a phase of secession that undermined the territorial integrity of states.

Dov Ronen rightly classifies, in periods, four manifestations of self-determination:

- 1) mid-nineteenth-century European national self-determination;
- 2) late-nineteenth-century Marxist class self-determination;
- 3) post-WW I Wilsonian minorities’ self-determination;
- 4) post-WW II non-European / racial self-determination.⁸

Like Ronen, most scholars studying self-determination see the origin of the principle in the American Declaration of Independence (1776) and in Europe after the French Revolution (1789).⁹ This does not imply that self-determination emerged in international relations in the 18th century but, as Monica Duffy Toft states, that ‘empires were threatened

⁴ Daniel Philpott, *Should Self-Determination be Legalized?*, 12(3-4) *Terrorism and Political Violence* 120 (2000). doi:10.1080/09546550008427572

⁵ Neil MacFarlane, *Sovereignty and Self-Determination: Where are We?*, 68 *International Journal: Canada’s Journal of Global Policy Analysis* 609 (2013). doi:10.1177/0020702013511184

⁶ *Id.*

⁷ *Id.* at 614.

⁸ Enver Hasani, *Self-Determination, Territorial Integrity and International Stability: The Case of Yugoslavia* 44 (National Defence Academy 2003), available at <<http://dataspace.princeton.edu/jspui/bitstream/88435/dsp01sq87bt69z/1/hasa03.pdf>> (accessed Mar. 10, 2016).

⁹ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press 1995); Allen Buchanan, *Self-Determination and the Right to Secede*, 45 *J. Int’l Aff.* 347 (1992) [hereinafter Buchanan, *Self-Determination*].

by separatist movements; today, it is multi-ethnic states.¹⁰ In the past, this separatism within empires could be achieved only through wars, clashes that were illegitimate, while for the first time Americans and French legalized it by coining self-determination as a human right and enshrining it in their constitutions. These constitutional acts, particularly in France, were not so genuine as to relate to people's destinies but emphasized rather the political aims of governments. For instance, the French legalized the plebiscite right of people to cover up the annexation of Belgium and the Palatinate,¹¹ and this kind of exploitation of the principles of international law has never disappeared from practice.

2.2. Marxist-Leninist Conception of Self-Determination

Ronen, in his classification of self-determination, coined 'alien rule' as that by those who guard the territorial integrity of empires, and showed the main aims of 'claimants' who desire self-determination to secede from alien rule.¹² However, the interpretation of 'alien' and 'claimant' is completely different in the Marxist school. The conflict is not between minorities and majorities or nations and indigenous peoples, but the polar groups are the 'working class' or 'proletariat,' and the intention is not secession of territory but the merging of these groups of people under Communism.¹³ The Marxist concept of self-determination resonates more with the internal self-determination of the working class to determine their destiny. However, in the next stage of *communism*, self-determination was championed by Lenin, who stressed that the declaration of self-determination was a vital right of nations, and widened the interpretation of self-determination.

Going deeper, Cassese notes three cardinal components of self-determination for Lenin and other members of the Soviet political school:

- ethnic and national communities acquired the right to choose their destiny freely;
- after military friction between sovereign states, self-determination can be applied to assign territories between them;
- it was used in anti-colonial regimes that were set up by Europe and the US metropolis in Africa and Asia.¹⁴

Indeed, the components of self-determination that Lenin envisaged were most attractive as a theory, although largely useless in practice. They were in the interest of ideology and the state rather than being a justice cluster. As Neuberger noted,

¹⁰ Monica D. Toft, *Self-Determination, Secession, and Civil War*, 24(4) *Terrorism and Political Violence* 582 (2012). doi:10.1080/09546553.2012.700617

¹¹ Cassese, *supra* n. 9.

¹² Hasani, *supra* n. 8.

¹³ *Id.* at 45.

¹⁴ Cassese, *supra* n. 9.

self-determination for Lenin was only about 'political self-determination, political independence, and the formation of a national state.'¹⁵

Here was manifested the plebiscite or referendum as a means of expression of the people's vote, which was in line with reality and yet would seem alien and strange to its inheritor, present-day Russia. In reality, the supposed plebiscite or referendum was 'a political tool to bring the nationalities into the union,'¹⁶ namely the ideas of imperialism. In the 1920 invasion the merging of five republics (Ukraine, Belarus and three Caucasus countries: Georgia, Armenia, Azerbaijan) with mainland Russia and the establishing Soviet Union showed the assent and eagerness of these states' people after conducting a referendum. However, except for a small number of communists in these countries, no one was keen to lose their independence and the Soviet Union made a decision on behalf of the populations of these countries.

Further, Antonov assesses Lenin's thesis about the ethnic and national community as 'determining the extent of their autonomy' and rather serving the interests of 'Bolsheviks to gain support of the national minorities during the civil war.'¹⁷ The desire of Soviet Russia for imperialism, indeed never disappeared and in the case of Crimea Putin's speech, relating historical arguments, demonstrated that clearly. Putin's Russia repeated her own 'legal' referendum in Crimea as the Soviet Union did, while merging 15 republics around the empire so that Russia as the Soviet Union was organizer, supervisor and executer of the referendum.

Lenin's focus on rights to self-determination pertaining to anti-colonialism was well known, as it was the external weapon utilized for strategic foreign policy aims against the US and European countries. To be more precise, Lenin and his successors advocated their ideological and political purposes to preserve the rights of people. To exemplify that, even the name of 'Lenin's Theses on the Socialist Revolution and the Right of Nations to Self-Determination,' published in March 1916, permanently displays its ideological basis.¹⁸ Lenin championed socialism and claimed that this was the only political structure that promoted democracy and human rights, indirectly referring to self-determination.

Despite a discrepancy between the first and second components of the Leninist conception of self-determination, Soviet scholars generally contributed to the colonial content of self-determination in international law and achieved legal decree in the UN.

¹⁵ Benyamin Neuberger, *National Self-Determination: A Theoretical Discussion*, 29(3) Nationalities Papers: The Journal of Nationalism and Ethnicity 405 (2010). doi:10.1080/00905990120073672

¹⁶ Dajena Kumbaro, *The Kosovo Crisis in an International Law Perspective: Self-Determination, Territorial Integrity and the NATO Intervention* 33 (NATO Office of Information and Press 2001), available at <<http://www.nato.int/acad/fellow/99-01/kumbaro.pdf>> (accessed Mar. 10, 2016).

¹⁷ Mikhail Antonov, *Theoretical Issues of Sovereignty in Russia and Russian Law*, 37(1) Review of Central and East European Law 97 (2012). doi:10.1163/092598812X13274154886548

¹⁸ Cassese, *supra* n. 9, at 15.

2.3. Wilson's Liberal Interpretation of Self-Determination

Wilsonian understanding of self-determination was the closest parallel with today's understanding of it. Unlike the narrow framework of Lenin's self-determination, which is more dependent on anti-colonialism and its ideological discourse, Wilson propounded the 'universal implication' of self-determination for the first time, which reflected the rights of people to choose self-government (an internal form of self-determination) and subsequently, as an external version '[p]eoples were to be free to choose their sovereign.'¹⁹ Wilson's conception originated in liberal democratic theory, and hence interpretation of internal self-determination as self-government was not unusual for democracies, which symbolize freedom and liberty for individuals and the right to determine their own destiny. However, in its external meaning it was an extraordinary novelty and not compliant with the conventions of its time, and it still faces resentment in the world community today. Even Wilson's secretary of state, Lansing, was faced with a sizeable list of people who were firmly against it. Lansing described Wilsonian external self-determination as a 'dynamite, that is, a principle with enormous destabilising force when faced with practical realization.'²⁰ Lansing was confused about the meaning of self-determination and scared of breeding global ethnic and political conflicts.

Cassese agreed with Wilson's argument that if self-determination was used fairly it would redraw the borders of Europe correctly and remove the conflicts between ethnic minorities in Europe. The international community unanimously rejected Wilson's point about self-determination from inclusion in the Covenant of the League of Nations, which postponed the enshrining of self-determination as a principle for around three decades. Despite the failure of Wilson's attempt to persuade the League of Nations, he 'brought the concept into the international spotlight as never before.'²¹ Although it does not have any legal status, thousands of nations have claimed it in front of their governments, and subsequently it was turned into justification for political oppression such as Nazi abuse, 'as an excuse for German expansionism'²² and for the annexation of Austria in 1938.

Among all these attempts, there exists a common point – self-determination. It aimed to realise people's political or ideological desires rather than simply creating a judicial term for them. For instance, in spite of Wilson's consistency on the question of self-determination of minorities in the Ottoman and Austro-Hungarian Empires, he did not have the same persistence when it came to the self-determination of colonial people. In his speech, Wilson claimed that he was working in the interests of

¹⁹ Cassese, *supra* n. 9, at 19.

²⁰ Hasani, *supra* n. 8, at 81 (citing Derek Heater, *National Self-Determination: Woodrow Wilson and His Legacy* 53 (Macmillan 1994)).

²¹ Ryan Griffiths, *The Future of Self-Determination and Territorial Integrity in the Asian Century*, 27(3) *The Pacific Review* 458 (2014). doi:10.1080/09512748.2014.909525

²² Michael Freeman, *National Self-Determination, Peace and Human Rights*, 10(2) *Peace Review: A Journal of Social Justice* 158 (2007). doi:10.1080/10402659808426138

metropolitans as well as their rights to self-determination. Whilst rights of referendum were given to indigenous populations and minorities in Europe, Germans were deprived of that right. Like Germans, Bulgarians and Turks in the Ottoman Empire were not allowed self-determination because they were collaborators with Germany in World War I. In addition, Ottoman territories were given to the control of the Great Powers, due to the mandates system of the League of Nations.

However, Allen Lynch conversely claims in his article that Wilson's intention was 'genuine,' unlike that of the French, British or Soviets who instrumented it as a weapon in politics; Wilson was unaware of European ethnic groups²³ and as such could not calculate the perils of the principle of self-determination.

2.4. Manifestation of Self-Determination in International Law

As discussed earlier, in the pre-United Nations era self-determination was neither a principle nor a right fully recognized in international law. As opposed to France and Britain, many countries intended to achieve the legalization of self-determination as an international legal principle that they saw as a solution to territorial disputes.

Once self-determination gained legal status in the UN Charter, it was accepted at the San-Francisco Conference. Article 1(2) of the UN Charter proposed:

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

Furthermore, the United Nations refers to self-determination in Ch. 9, Art. 55, where it declares that peace and friendly relations should be based on equal rights and self-determination by people.²⁴ These are two verses of the UN Charter that directly refer to the self-determination of people. Apart from these, Chs. 11–13 indicate the administration of non-self-governing areas and concern about these territories, which narratives construe as the self-determination rights of people. However, these UN general articles were not adequate for dealing with forthcoming abstruse political situations related to self-determination, and as such they had to be partly supplemented by resolutions of the General Assembly or other decrees.

Due to its contents, these adopted resolutions on self-determination during the UN era can, according to Mahalingam,²⁵ be divided into three parts: internal,²⁶

²³ Allen Lynch, *Woodrow Wilson and the Principle of 'National Self-Determination': A Reconsideration*, 28 *Rev. Int'l Stud.* 419, 434 (2002). doi:10.1017/S0260210502004199

²⁴ *Id.*

²⁵ Ravi Mahalingam, *Self-Determination in the UN Era: A Response to Peter Sproat*, 9(1) *Terrorism and Political Violence* (2007). doi:10.1080/09546559708427391

²⁶ Cassese, *supra* n. 9, at 101: 'Internal self-determination means the right to authentic self-government, that is, the right for a people really and freely to choose its own political and economic regime.'

external,²⁷ and colonial²⁸ self-determination. Mahalingam claims that internal and external self-determination is rooted in Wilson's Fourteen Points, while the rights of colonial people to self-determination descend from Leninist Communism, with both proceeding in their own way during the Cold War. Whereas the external version of self-determination was not accepted unanimously, it was claimed that when the UN discussed self-determination it was assumed to be within the borders of the state. In the Universal Declaration of Human Rights (1948), self-determination was clearly not seen as a right or principle but only endorsed as internal self-determination. Hasani affirmed that in declaring 'to set common standards of achievement in human rights for all people of all nations' the 1948 Declaration of Human Rights did not openly sanction any external self-determination of people.²⁹

The same sentiments followed in the aftermath of the Declaration and paved the way for drafting twin International Covenants on Economic, Social and Cultural Rights and subsequently on Civil and Political Rights. In both Covenants, the article of self-determination included the following:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social, and cultural development.³⁰

Lawmakers define the term self-determination in Covenants both internally and externally. Article 1(1) of Covenants grants to peoples the right to determine their political destiny, such as by choosing their own governing system or legislators, and meanwhile to determine their economic, social and cultural development. These were all internal rights under the sovereignty and territorial integrity of states.

The rights of minority groups were also placed in the Covenant on Civil and Political Rights within the principle of territorial integrity. As such, Article 27 of the Covenant granted individuals from different ethnic, cultural, religious minorities the right to self-determination. Cassese states that it is not within the rights of minorities to determine their external status but that they were granted the right to determine their own cultural, religious and linguistic freedom so as to maintain their identities.³¹ Besides, it was also applied to individuals or groups, as in the 1948 Declaration, rather than referring to them collectively and territorially.

²⁷ Mahalingam 'takes to imply a purported right of secession' (Mahalingam, *supra* n. 25, at 126). Besides that, merging states and breakup empires can be included in external self-determination if these are determined by people.

²⁸ Indeed, it is also part of external self-determination but in comparison with external self-determination it is only belonged to the people of colonies.

²⁹ Hasani, *supra* n. 8, at 94.

³⁰ Mahalingam, *supra* n. 25, at 113.

³¹ Cassese, *supra* n. 9.

During the drafting of the Covenants between 1948 and 1966, there were endless disputes between Soviet Communists and the Liberal West on framing and defining the boundaries of self-determination. Owing to political objections, scholars from the Soviet Union called for the inclusion of self-determination rights for colonial people and minorities. Along with the Soviet Union, other socialist bloc countries advocated this view and claimed it 'was a precondition for the respect of individual rights'.³² An established Special Committee supervised the implementation of the UN resolution about human rights, including the self-determination of people. The views of scholars on the works of this committee are not clear. Until 1970, the activity of this committee for Hasani 'was sterile as a result of Soviet Union's use of this organ for Communist propaganda',³³ while Cassese rationally emphasizes the necessity of Soviet efforts to champion the right of self-determination for colonial peoples despite its extremely ideological nature. Third World and developing countries' approaches to self-determination were similar to that of the Soviet Union, and they were not surprisingly great advocates of colonial self-determination. With this broad supporting coalition, in 1960, the Soviet Union dictated debates over colonial self-determination that helped cement the Declaration on the Granting of Independence to Colonial Countries and Peoples that formally marked the end of colonialism and the beginning of independent movements.

The declaration was strengthened in the 1966 Human Rights Covenants in which colonials were described as dependents. The group of countries under the Soviet wing were trying to restrict the implementation of self-determination in colonial contexts. This framing was broken by the *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations*, which for the first time referred to self-determination outside the colonial context. Despite that, the principle of self-determination was once more versed there, and territorial integrity and sovereignty of states were also enshrined as an inviolable principle within the same declaration. This was repeatedly emphasized in the subsequent documents of international law. In the Helsinki Final Act in 1975 it was manifested as 'the participating States will respect the territorial integrity of each of the participating States',³⁴ and in that case the principle of self-determination is eligible.

In 1993, the Vienna Declaration and Programme of Action were adopted as a consensus between the members of General Assembly, which reassessed the self-determination of people. It was strongly emphasized that representation of the role of the government belonged to everyone, and if it was not provided by the

³² Cassese, *supra* n. 9, at 47.

³³ Hasani, *supra* n. 8, at 95.

³⁴ *Conference on Security and Co-operation in Europe: Final Act (Aug. 1, 1975) 5*, at <<https://www.osce.org/mc/39501?download=true>> (accessed Mar. 10, 2016).

government then people had to apply for an internal form of self-determination so as to represent their destiny before secession.

Consequently, as Marxsen stressed, people can be granted autonomy within that political entity, but this does not allow for complete political separation in all these decrees.³⁵ Discussing the legal status of self-determination, Philpott claims that with the exception of colonial self-determination, 'self-determination is not a right and is understood by most international lawyers to be subordinate to territorial integrity.'³⁶

The different dimension of self-determination was reflected in the above resolutions and declarations by the UN. However, in view of today's political world map, there are no colonial or non-self-governing territories in need of these documents. Rather, they form the basis of legal development and reformation of self-determination or territorial integrity.

After the Cold War, in the turmoil of mapping the new borders of the Soviet Union and Eastern Europe, a great many of the political fragilities were related to the principle of self-determination and the territorial integrity of the state. Ethnic and external self-determination replaced colonial and internal self-determination in the discourses of scholars and international documents respectively. Throughout the 1990^s all over the world, states confronted the dilemma of external self-determination of peoples such as Chechens, Armenians and Yugoslavians. At the beginning of the 21st century this was followed by Georgia, Kosovo and, today, Crimea.

Consequently, from the legal decrees it is obvious that all people have a primary right to internal self-determination. In external self-determination, only the rights of colonial people have been clearly manifested. Nevertheless, the question of who has rights to external self-determination and details about the territory are blurred in all decrees, and need to be reformed.

3. Theoretical Framework

3.1. Theories of Self-Determination

In spite of volumes of discourse about the legal and political status of self-determination and territorial integrity, as depicted above, these are not enough to clarify the political circumstances, and thus they always need to be newly interpreted by theorists. Apart from their interpretive functions, by furthering their understanding theorists also serve to understand and accelerate the evolution of international law. These interpretations did not develop in a linear fashion and led to a wave of new debates and discussions about the rights of self-determination.

³⁵ Christian Marxsen, *The Crimea Crisis – An International Law Perspective*, 74 Heidelberg J. Int'l L. 367, 385 (2014), available at <http://www.mpil.de/files/pdf4/Marxsen_2014_-_The_crimea_crisis_-_an_international_law_perspective.pdf> (accessed Mar. 10, 2016).

³⁶ Philpott, *supra* n. 4, at 124.

These theoretical discussions raise hugely important issues that the international community is currently facing today.

From the discussion above, it can be seen that there is no systematic solution to the dilemma of self-determination in either historical theories or practices. Nevertheless, the current theoretical approaches that will be examined below provide many solutions to the problem of self-determination.

There is a persistent lack of clarity, both in historical approaches and in comprehensive theories, around the term of self-determination, about who is 'self,' and to whom and under what condition this right of international law can be applied. Indeed, these are the main questions that scholars have grappled with for decades. As in the historical classification of self-determination, modern narratives also apply self-determination at internal and external levels.

Traditionally, discussions about the internal self-determination of people have remained muted and it has been adopted as broadly as being the primary right of entire nations. Except in its colonial context, all documents of international bodies relate to the internal dimension of self-determination. However, nowadays it can be argued that the world community needs a comprehensive and fresh redrafting of the principle of self-determination. In this regard, developing moral theories of self-determination is more crucial than ever before.

3.2. Remedy Theory or Just Cause Theory

As referred to in Buchanan's statement 'Remedial Right Only Theory,' or as coined by Norman or Locke, the Just Cause Theory is one of the justice-based moral conceptions of secession. The core objective of the theory is to justify the morality of secession in different ways. This theory of secession was formulated by Buchanan in 1991 in *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*.

Moore states that after publishing his theory, 'he began by pointing out that the issue of the morality of secession has received very little consideration from a normative standpoint' whilst today Buchanan's discourse provides the groundwork for subsequent debates on the theme.³⁷ However, there is a need to rejuvenate the debate in the context of current conditions.

Secession is generally a strong version of self-determination that for Buchanan and other international legal scholars should only be applied if there are no other solutions. As with external self-determination, Borgen points out that 'there is no right to such "remedial" secession.'³⁸ Buchanan further notes that international law stands on the fence in terms of secession, neither supporting it nor rejecting it. The

³⁷ Margaret Moore, 1. *Introduction: The Self-Determination Principle and the Ethics of Secession*, in *National Self-Determination and Secession* 1, 6 (Margaret Moore, ed.) (Oxford University Press 2003).

³⁸ Christopher J. Borgen, *Law, Rhetoric, Strategy: Russia and Self-Determination before and after Crimea*, 91 *Int'l L. Stud.* 216, 228 (2015), available at <<http://stockton.usnwc.edu/cgi/viewcontent.cgi?article=1262&context=ils>> (accessed Mar. 10, 2016) [hereinafter Borgen, *Law*].

International Court of Justice [hereinafter ICJ] gives a narrow justification for secession in two cases: 1) 'classic decolonization' and 2) 'the reclaiming of state territory that is subject to unjust military occupation.'³⁹ The decision of the ICJ is weighted as advisory opinion and has been exercised a few times in the international domain. Despite that, the decisions of the ICJ have caused international uproar, such as with Kosovo.

Scholars of moral theory propose and develop several assumptions on the grounds of external self-determination. Regarding secession, Buchanan argues that external self-determination should not be applied to all nations and that we must avoid classifying people as special religious or ethnic groups or as indigenous. In Buchanan's argument there is just one point that can defend the aspiration of nations to secede – arguments of justification. These are classified in his chapter as 'violation of human rights or structural violence,' 'discriminatory redistribution' and 'cultural self-preservation.'⁴⁰

The first and second are the most compelling arguments for justification, while, with regard to cultural self-preservation, Buchanan states that it may be implemented as a final step if no other resolutions are found. Among these arguments, violation of human rights is illustrated as a stepping-stone and the reason for the next two conditions. It is arguable that violation of the human rights of a group of people is perhaps the most valid reason to claim secession.

The author in the discriminatory redistributions section implies that when states deal with people from a territory in terms of distribution of 'taxation schemes,' 'regulatory policies,' or 'economic program' it ought to be implemented fairly and without any discrimination or any privileges for them.⁴¹ With regard to cultural self-preservation, Buchanan's belief was that secession can be a potential solution as it is dramatic and can be resolved in the frame of internal self-determination ('special minority group rights, a looser federalism, constitutional rights of groups of group veto or nullification').⁴² If these could not be carried out, secession might be conducted.

Additionally, a historical grievance is also noted in the range of justifications in Buchanan's analysis, but it is not compelling as above. Supporting Moore's discourse, he shows that 'historical grievance and distributive justice concerns are interrelated' and that 'multiple decolonization movements across the planet have been driven by the perception of historical discrimination.'⁴³ However, it is the author's opinion that historical discrimination is not a rational justification in today's political situation where every group of people may have a historical grievance: scholars and theorists should avoid boosting their ideas in this way in order to prevent mass-scale protests

³⁹ Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* 333 (Oxford University Press 2004) doi:10.1093/0198295359.001.0001 [hereinafter Buchanan, Justice].

⁴⁰ Moore, *supra* n. 37; Buchanan, *Self-Determination*, *supra* n. 9.

⁴¹ Buchanan, *Self-Determination*, *supra* n. 9, at 354.

⁴² *Id.* at 357.

⁴³ Buchanan, *Justice*, *supra* n. 39, at 223.

for secession. At the very least, historical grievances can form the basis of the internal dimension of self-determination, such as federal units and autonomy.

Along with Buchanan, other Just Cause theorists, such as Norman, Locke and Seymour, follow the same argument in terms of required justification for secession, whilst their frame of justification is different: 'some on prior occupation and seizure of territory; some on serious violations of human rights, including genocide';⁴⁴ while some of them, such as Seymour and Libarona, see the infringing of internal self-determination as a justification and criticize Buchanan's narrow approach to it.

Consequently, for their critics Remedial Rights Only or Just Cause theories put the burden on states and make it conditional for their sovereignty. From a positive angle, these coercive actions by people make states responsible for human rights, and besides 'it suggests a strong internal connection between the right to resist tyranny (exploitation, oppression, genocide, wrongful seizure of territory) and the right to self-determination.'⁴⁵

3.3. Primary and Choice Theory

In contrast with Remediation, Primary Right conception, as the name may suggest, asserts rights as primary in secession and repudiates any justification and proof for secession. What Buchanan tries to convey is that the 'theory of self-determination ought to be consistent with well-entrenched, morally progressive principles of international law' while its 'more permissible view' towards secession is unacceptable in terms of triumphing territorial integrity without any reason and as such is always considered a threat to the existence of states.⁴⁶ Going further, Allen Buchanan, in a nationalistic light, points out that it can result in indefinite fragmentation of the world community which would 'bring with it quite unacceptable moral costs, in the form for instance of the disruption, displacement, or even annihilation of communities that turn out to be territorially in the wrong place.' Additionally Philpott, by advocating that argument, claims that 'there is no reason that a Primary Right Theory of self-determination, even if defensible as just, must be converted into law or policy.'⁴⁷

However, Buchanan and Philpott neglected to consider the implementation of primary rights in the internal dimension of self-determination. Seymour directly demonstrates it, and contrary to Buchanan he claims that nations have a primary right to internal self-determination⁴⁸ and that if it is violated by elites, the determined group have the primary rights to secede.

⁴⁴ Moore, *supra* n. 39, at 7.

⁴⁵ *Id.*

⁴⁶ Philpott, *supra* n. 4, at 123.

⁴⁷ *Id.* at 114.

⁴⁸ Michel Seymour, *Secession as a Remedial Right*, 50(4) *Inquiry: An Interdisciplinary Journal of Philosophy* (2007). doi:10.1080/00201740701491191

Seymour's assertions on primary rights to secede were reflected more liberally in Harry Beran's proposal. Beran claims that 'states are voluntary associations' and that 'anyone may leave a state if he or she wishes to secede.'⁴⁹ Indeed his theory differs greatly from Remedial and Primary logics. Some scholars see Beran's theory as Primary Right theory to secede, as it is rationally related to secession, due to its unclear nature. Beran's primary right of people to secession was intended to show the individual right of people to choose their destiny, while it comes down to the determination of the territory where an individual lives, making his theory unclear and irrational.

Philpott names it Choice Theory rather than Primary theory because of its individualist feature. Primary theorists also claim that people do not need to have justification for secession and that they can easily express their desire for secession by 'referendum or plebiscite.'⁵⁰ Choice theorists comprehend secession as an individualistic choice rather than a collective one by a group or area. Moore and Horowitz, as in Beran's theory, see irrationality in Choice theory in its explaining of the territorial claim to secession. Consequently, despite these deep differences between current theories of self-determination, they all represent the common desire of an intended liberal form of secession through democratic referendum and plebiscite.

4. Data Analysis

4.1. Historical Grievance of Crimea in Terms of 'Self' and 'Territoriality'

Since the 1990⁵, the principle of self-determination has become a frequently debated subject in the international community. To be precise, it did not randomly appear but was explicitly connected with the fall of the Soviet Union and Yugoslavia that encompassed hundreds of nations and ethnic groups, reigniting the right to self-determination debate.

Judging it historically, the Soviet Union and its harsh political line was a major culprit in today's turmoil. Crimea is a prime example of this.

In terms of identifying self-people, the Crimean peninsula is perhaps the most perplexing example with its unstable proportions in the ethnic composition of the population throughout its history. Malyarenko and Galbreath find the causes of this in its 'politicising factors' and see it as a reason for current political disputes.⁵¹ Supporting this, Evison, narrating the Crimean crisis, emphasizes that the history of Crimea and its evolution of ethnicities led to the current crisis. Malyarenko and Galbreath account for this politicising factor of migration in the Soviet Union's mass deportation of Tatars, and the moving of Russians and Ukrainians to there.

⁴⁹ Freeman, *supra* n. 22, at 161.

⁵⁰ Moore, *supra* n. 39.

⁵¹ Tatyana Malyarenko & David J. Galbreath, *Crimea: Competing Self-Determination Movements and the Politics at the Centre*, 65(5) *Europe-Asia Studies* 917 (2013). doi:10.1080/09668136.2013.805964

Indeed, utilizing demographic structures of territory by exiling people is not a new phenomenon by the Soviet Union in the Crimea, but it was one point in a long-term plan inherited from the Russian Empire called 'Russification.' According to historians, the sharp change in the composition of Crimea's population was directly rooted in early Russian imperial policy. Fisher's work elucidates this clearly. By citing an extract from a letter by Catherine the Great to Potemkin, Fisher makes it clear that Catherine stated that whoever did not choose Russian citizenship was free to leave Crimea. It was undoubtedly a Russian tactic to relocate non-loyal masses away from the peninsula and move Russians or other loyal groups such as Armenians there. The Tsar was successful and in the census of 1774 Russian scholars such as Sumarokov calculated that a total of 300,000 people, in the computation by Mordvinov two-thirds of the Crimean population, had fled after the Treaty of *Küçük Kaynarca* (1774). Instead of absence places non-Muslims settled and in a few years the composition of the peninsula had changed sharply. To express this change, Fisher emphasized that 'English visitors to the Crimea . . . expressed astonishment at how quickly Russians with their serfs had taken over large areas of the peninsula.'⁵²

During the reign of the Stalin Crimean minority, Tatars, Greeks and Bulgarians in particular were all victims of his brutal deportation after World War II, and these areas became populated by Russians. Condemning the Soviet Union's brutality, Anton Bebler points out that 'they still have not been compensated for the losses of life and property.'⁵³

From Catherine the Great to her successors, all had aimed at the Russification of the Crimean peninsula and by the time of Stalin it was concluded with full Sovietization, which was defined by Fisher as 'no more no less than Russification.'⁵⁴

Consequently, the demographic structure made Russians the owners of the peninsula and in the last calculation in 2001, 'the Slavic (Russian and Ukrainian) population of Crimea is approximately 58.5% and 24.4% respectively.'⁵⁵ Politically, all of them are pro-Russian and proportionally they are more powerful than those in the group who are inclined towards the Ukraine. This implies that simply having different political views distinguishes them from each other, and that there is not any extreme discrimination in terms of ethnicity, culture or religion in Crimea today. Crimea's Russian-origin population links with the Russian Orthodox Church, while the minority Muslim Tatars adhere to Sunni Islam, which they acquired from the Ottoman Empire. These Muslims, compared to today's Sunnis in Turkey, are secular and as

⁵² Alan W. Fisher, *The Russian Annexation of the Crimea 1772–83* at 148 (Cambridge University Press 1970).

⁵³ Anton Bebler, *Crimea and the Russian-Ukrainian Conflict*, 15 *Romanian J. Eur. Aff.* 35, 38 (2015), available at <http://papers.ssrn.com/abstract_id=2576142> (accessed Mar. 11, 2016).

⁵⁴ Alan Fisher, *Between Russians, Ottoman and Turks: Crimea and Crimean Tatars* (= 33 *Analecta Isisiana*) 188 (Isis Press 1998).

⁵⁵ Malyarenko & Galbreath, *supra* n. 51, at 917.

such in Crimea, in religious terms, there is no great difference between Muslims and Christians. In addition, this secularity led them to become closely linked each other well in cultural terms.

Like its people, the territorial status of Crimea is tied to one type of regulation but has shifted several times. After the Middle Ages, when it was under the rule of the Ottoman Empire, Crimea achieved short-term independence in the 1773 Treaty of *Küçük Kaynarca* until 1783, when it was annexed by the Russian Empire. Russian domination lasted until 1954 when Khrushchev handed it as a gift to Ukraine. In 1921, Crimea gained autonomy from the Soviet Union and subsequently this was provided by Ukraine until 2014. Although in 1991 there was an attempt to either gain independence or merge with Russia, it was averted by Ukraine at the expense of giving wide autonomous status to Crimea. The people of Crimea's separatist determination, and Russia's plan to annex Crimea, grew after 1991 more and more. Bebler acknowledged that 'annexation of Crimea has likely been prepared and regularly updated since, at least, two decades ago.'⁵⁶

The Crimean Autonomous Republic with its strong Russian orientation was not satisfied with its political status under the administration of Ukraine, and in repeating its attempt at a secession government, especially, it tried to cavil to justification of secession. This historical moment, indeed, had come six years before in April 2008 in Bucharest when NATO suggested a MAP (Membership Action Plan) to Ukraine that was regarded as a milestone in Ukraine's movement from Russia to the West. However, the ousting of the pro-European leader of Ukraine, Timoshenko, and his replacement with pro-Russian Victor Yanukovich reduced the anger of Russia's supporters through his Russian-oriented policy and delayed the annexation of Crimea until 2014.

Towards the end of 2013, Yanukovich shifted his intensely Russian-oriented desire to balanced politics and smoothed his relations with EU countries. Indeed, the majority's desire for integration with the EU had forced him to improve his relations with the West. In practice, he was expected to sign the DCFTA⁵⁷ draft at the Vilnius Summit in November 2013, which was intended to diffuse the EU economically and politically whilst avoiding Russia. However, the hopes of the people of mainland Ukraine were dashed after Victor Yanukovich's rejection of it, and it led to thousands of people protesting in the Maidan movement and the eruption of civil war between pro-Russians and pro-Europeans. This turmoil was a historic moment for the elite and the Russian population of Crimea to secede from mainland Ukraine.

⁵⁶ Bebler, *supra* n. 53, at 39.

⁵⁷ Supreme Council of Crimea is the parliament of Crimea Autonomous Republic that was directly regulated by central Kiev, and besides having its own election of parliament, all decisions were accepted by mainland Ukraine. In 2014 March, declaring to hold referendum about the destiny of Crimean Peninsula were out of Supreme Council's order and as such plebiscite was illegal.

The Supreme Council⁵⁸ of Crimea censored the protesters of Euromaidan and announced that they would hold an illegal referendum on the future status of Crimea by inviting the Russian Government to confirm it. In reality, the invitation was a formality while the Russian ‘little green man’ was there, since the Euromaidan movement and later Putin ‘admitted deploying troops on the peninsula to “stand behind Crimea’s self-defence forces”⁵⁹. A month later, Russia declared its annexation of Crimea to the Russian Federal unit in the administrative form of the Crimean Autonomous Republic and the city of Sevastopol.

On March 16, 2014, two referendums were held in two different places: the Crimean Autonomous Republic and the city of Sevastopol. According to the result ‘96.77 percent of them [Crimean citizens] voted for its separation from Ukraine and for reuniting with Russia.’⁶⁰ Furthermore, according to Russian news agencies the 96.77 came from over 80 percent of the residents of Crimea. However, some people denied it and claimed that Russian authorities exaggerated it. According to the *Washington Post*, Evgeny Bobrov, a member of the Human Rights Council in Russia, posted on his blog that ‘only half voted for annexation – meaning only 15 percent of Crimean citizens voted for annexation.’⁶¹

4.2. Legal Assessment of Crimean Secession

“What happened in Crimea was the people invoking the right of self-determination,” he said. “You’ve got to read the UN Charter. Territorial integrity and sovereignty must be respected.”⁶²

This statement was made by Lavrov, the Russian Foreign Minister, at the Munich Security Conference after the invasion of Crimea. In contrast with Lavrov’s words, the term self-determination, involved in the UN Charter, the Declaration on Principles

⁵⁸ ‘The EU and Ukraine signed the Deep and Comprehensive Free Trade Area (DCFTA) on 27 June 2014 as part of their broader Association Agreement (AA)... To avoid further destabilisation of the country and in particular to guarantee Ukraine’s access to the CIS market under the Ukraine-Russia bilateral preferential regime, in September 2014 the EU postponed implementing the DCFTA until January 2016’ (Ukraine, European Commission, <<http://ec.europa.eu/trade/policy/countries-and-regions/countries/ukraine/>> (accessed Mar. 11, 2016)).

⁵⁹ *Putin Reveals Secrets of Russia’s Crimea Takeover Plot*, BBC News (Mar. 9, 2015), <<http://www.bbc.com/news/world-europe-31796226>> (accessed Mar. 11, 2016).

⁶⁰ Bebler, *supra* n. 53, at 42; see also *Crimea Parliament Declares Independence from Ukraine Ahead of Referendum*, RT (Mar. 11, 2014), <<http://www.rt.com/news/crimea-parliament-independence-ukraine-086/>> (accessed Mar. 11, 2016).

⁶¹ Ilya Somin, *Russian Government Agency Reveals Fraudulent Nature of the Crimean Referendum Results*, The Washington Post (May 6, 2014), <<https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/06/russian-government-agency-reveals-fraudulent-nature-of-the-crimean-referendum-results/>> (accessed Mar. 1, 2016).

⁶² Josh Rogin, *Europeans Laugh as Lavrov Talks Ukraine*, BloombergView (Feb. 7, 2015), <<http://www.bloombergview.com/articles/2015-02-08/lavrov-s-comedy-routine-on-ukraine-isn-t-funny-to-europe>> (accessed Mar. 11, 2016) (quoting Sergei Lavrov).

of International Law, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the International Covenant on Civil and Political Rights, the Helsinki Final Act and the Paris and Vienna Declarations, was not simply interpreted, but rather became a narrower, more debatable matter.

As discussed in previous chapters, outside its colonial meaning there is no verse in international decrees to justify territorial fragmentation directly. Territorial integrity and sovereignty of states are *jus cogens*⁶³ norms that are listed above all international and constitutional jurisprudences. In particular, the inviolability of the principle of territorial integrity appears in all international covenants and norms. According to the conditions that there was no other remedy for the situation, the area was occupied forcefully by a military group and that there is a consensus with the parent state, territorial integrity might be infringed. However, none of these were the case in the Crimean situation.

If it is true that neither the United States nor other African or South American nations had permission from the mainland states when they became independent, it can be reasonably assumed that the status of Crimea is not in compliance with the activity of colonial nations, but that it was part of Ukraine, and that after the independence of Ukraine it was recognized as an integral part of it. Whether or not it is supposed to be a colony or people have the right to secede according to a 1960 UN Declaration, Evison asserts that 'Ukraine can claim under *uti possidetis*⁶⁴ that Crimea is part of its sovereign territory⁶⁵ due to the rule of *uti possidetis*.

In Crimea, the violation of territorial integrity had begun with the passing of the referendum, which was not consistent either with the Ukrainian Constitution or with the 'high democratic standard.⁶⁶ In regard to the Ukrainian Constitution, '[a]ny changes to the territory of Ukraine shall be resolved exclusively by the all-Ukrainian referendum⁶⁷ and, as can be seen in history, it is rarely the case that parent states grant permission for the

⁶³ 'Jus cogens (or ius cogens) is a Latin phrase that literally means "compelling law." It designates norms from which no derogation is permitted by way of particular agreements' (Anne Lagerwall, *Jus Cogens*, Oxford Bibliographies (May 29, 2015), <<http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0124.xml>> (accessed Mar. 11, 2016) doi:10.1093/OBO/9780199796953-0124).

⁶⁴ Literal meaning of '*uti possidetis*,' from Latin, is 'as you possess' and 'the principle of *uti possidetis juris* mandated that the borders of former colonial entities became international borders of the state following decolonization' (Aleksandar Pavković & Peter Radan, *In Pursuit of Sovereignty and Self-Determination: Peoples, States and Secession in the International Order*, 3 *Macquarie L.J.* 1, 11 (2003), available at <<http://www.mq.edu.au/public/download/?id=16205>> (accessed Mar. 11, 2016)).

⁶⁵ Major Justin A. Evison, *MiGs and Monks in Crimea: Russia Flexes Cultural and Military Muscles, Revealing Dire Need for Balance of Uti Possidetis and Internationally Recognized Self-Determination*, 220 *Mil. L. Rev.* 90, 105 (2014), available at <http://papers.ssrn.com/abstract_id=2475549> (accessed Mar. 11, 2016).

⁶⁶ Bebler, *supra* n. 53, at 42.

⁶⁷ *Judgement of the Constitutional Court of Ukraine on All-Crimean Referendum* ¶ 4.4, Ministry of Foreign Affairs of Ukraine (Mar. 19, 2014), <<http://mfa.gov.ua/en/news-feeds/foreign-offices-news/20137-rishennya-konstytucijnogo-sudu-v-ukrajini-shhodo-referendumu-v-krimu>> (accessed Mar. 11, 2016).

secession of their own units. Unlike Quebec in Canada or Scotland in the UK, Ukraine has not allowed Crimea to determine its destiny separately in the Ukrainian Constitution. From that viewpoint, Marxsen perceives attempts by the Crimean population to have a referendum for secession from Ukraine as the first illegal act that violated Ukraine's integrity.⁶⁸

According to international law, the content of the Crimea referendum was not democratic and clear. It contained two options that did not offer people a *status quo* option, which is the main condition of a democratic referendum:

- 1) reunifying Crimea with Russia as a subject of the Russian Federation;
- 2) supporting the restoration of the 1992 Crimean constitution and the status of Crimea as part of Ukraine.⁶⁹

In the 1992 Constitution of Ukraine, Crimea's status was that of an autonomous republic, which is inconsistent with the *status quo*. Furthermore, regarding the referendum about self-determination, the international community also acknowledged the 'yes' or 'no' options in international practice.⁷⁰ To exemplify a model pattern, the Scottish referendum is flawless and clear, as shown in a particular instance whereby this question was asked: 'Should Scotland be an independent country? Yes / No.'⁷¹

Yet another instance of flouting international law was the time when Bebler stated that lack of time did not permit a real and substantive public debate over such a momentous issue as this.⁷² Regarding Bebler's statement, democratic plebiscite is not easily prepared in a few weeks or months, but rather requires long preparation, such as the Scotland referendum that was held in the September of the same year. It took decades for the Scottish to hold that referendum after achieving consensus with London.

Unlike Bebler, some scholars have identified intervention by Russia as infringement of territorial violability, rather than an attempt by the Crimean population to have a plebiscite. It shows, as Vidmar notes, that the referendum and declaration of independence in Crimea creates neither territorial illegality, nor territorial entitlement for Russia.⁷³ Territorial illegality was created by Russia's military involvement. Needless to say, it is easier to prove the illegality of the secession. Regarding Vidmar's assessment, it can be noted that Moscow's legal arguments about Crimea were mostly discussed with the principle of self-determination in mind rather than the justification of Russian

⁶⁸ Marxsen, *supra* n. 35, at 380.

⁶⁹ *Is Crimea's Referendum Legal?*, BBC News (Mar. 13, 2014), <<http://www.bbc.co.uk/news/world-europe-26546133>> (accessed Mar. 11, 2016).

⁷⁰ Marxsen, *supra* n. 35, at 382.

⁷¹ Jure Vidmar, *The Annexation of Crimea and the Boundaries of the Will of the People*, 16 German L.J. 365, 381 (2015), available at <https://static1.squarespace.com/static/56330ad3e4b0733dcc0c8495/t/56c8ce24b654f92cd6e49795/1456000550253/GLJ_Vol_16_No_03_Vidmar.pdf> (accessed Mar. 11, 2016).

⁷² Bebler, *supra* n. 53, at 42.

⁷³ Vidmar, *supra* n. 71, at 366.

intervention. The fact that Russian intervention was categorically illegal is a crucial point Moscow tries to avoid at all costs.

Along with the international consensus on the sovereignty and territorial integrity that guarantees the inviolability of states' frontiers, in the case of Ukraine and Russia this inviolability was more secure with adopted bilateral agreements between them after the collapse of the Soviet Union. According to Marxsen, Ukraine and Russia in a few bilateral agreements affirmed the inviolability of the borders between both states and provided that both parties such as the 1994 Budapest Memorandum, the 1997 Treaty on Friendship, Cooperation, and Partnership and the Kharkiv Accords about the Black Sea Fleet Status.⁷⁴ He concludes that these documents had to be seen as legal obligations between states in which Russia agreed 'to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine' which means that Russia was deprived of possessing vessels in the Black Sea, but nuclear weapons of Soviet Union (Ukraine's allotment was also included) were abandoned to Russia.⁷⁵ However, all of the obligations were infringed by the annexation of Crimea.

Consequently, in the case of Crimea, there is not even one point that can exonerate the secession on a legal basis, and international law has always maintained neutrality on external self-determination (secession). However, it is important to note that this neutrality can be shifted from point zero so long as the assessment of the morality of the secession is democratic and sufficiently fair. Beyond the legality, the question of secession is open to moral theorists and as such, as well as the question of legality, the extent to which the secession of Crimea suits the morality of international norms is another part of my research.

4.3. Theoretical Assessment of Crimea's Secession

As aforementioned in the previous chapter, current highly contested theories of self-determination are divided into three main areas: Remedial theory, Just Cause theory and Primary theory. It was demonstrated that even though they had different interpretations of secession, all practitioners of these theories share a common point of view: they all choose to consider the feasibility of secession under democratic circumstances and liberal values. Contrary to this feature, in the case of Crimea, the path of self-determination was undermined by Russia's intervention and the procedural legitimacy of the Crimean referendum.

Since 1991 Buchanan, a political philosopher at Duke University, has developed arguments on Remedial theory, and argues 'that provinces might justify seceding if they are discriminated against.'⁷⁶ Regarding Remedial Right theory, Buchanan concluded that it could not be applied to the Crimean dispute which does not

⁷⁴ Marxsen, *supra* n. 35, at 371.

⁷⁵ *Id.* at 370 (quoting Budapest Memorandum (¶ 2)).

⁷⁶ *Whether Secession in Crimea Would Be Legal*, The Economist (Mar. 12, 2014), <<http://www.economist.com/blogs/economist-explains/2014/03/economist-explains-10>> (accessed Mar. 11, 2016).

fall under any definition of a violation against the Crimean people. Going further, considering that the loss of Crimea would have a devastating effect and 'gravely harm' Ukraine in terms of economy, tourism, geostrategic location, Buchanan thinks that 'Ukraine has the right to force Crimea to stay.'⁷⁷

Contrary to this, Vladimir Putin, in his speech after the Crimean referendum, attempted to indicate the remedial argument for allowing Russia's intervention in the peninsula: 'The new so-called authorities began by introducing a draft law to revise the language policy, which was a direct infringement on the rights of ethnic minorities.'⁷⁸ Since there was any discrimination against the Crimea people, it would firstly have to be characterized as oppression against the government rather than to any ethnic group; secondly this oppression by Ukraine cannot be compared to the Milošević genocide involving the Kosovars. Hence, implementation of Remedial theory is clearly unfounded in the Crimean case.

In terms of criticizing Buchanan's non-general and conditional approaches to self-determination, among scholars of Modern Choice theory Catala is well-known for her explicit standpoint, whereas MacLaren sees right of secession in terms of Crimea as individual rights of individual. However, in the view of both theorists, the procedure of referendum and its compliance with legal standards are stressed as crucial factors, something Crimea was far from achieving. MacLaren coins the term 'democratic secessionism', which brings the rights of the individual to the forefront⁷⁹ and sees the possibility of territorial secession under the condition of democratic referendum. MacLaren then identifies this independent referendum as one of the legal essentials for external self-determination, whilst implying it in questions, 'i.e. what constitutes a clear question, a fair process, and a decisive majority – and who exactly is to set these terms?'⁸⁰

Whether regarding Choice theory as a relevant moral treatment for the secession of Crimea or not, it also fails to be implemented due to enshrining democratic referendum as a basic condition of conception. As Amandine Catala identifies 'any plausible moral case for secession previously requires a peaceable and transparent referendum,' and she stresses further that the Crimean referendum was 'neither peaceable nor transparent.'⁸¹

⁷⁷ *Whether Secession in Crimea Would Be Legal*, *supra* n. 76.

⁷⁸ *Address by President of the Russian Federation*, President of Russia (Mar. 18, 2014), <<http://en.kremlin.ru/events/president/news/20603>> (accessed Mar. 11, 2016).

⁷⁹ Zoran Oklopčic, *Introduction: The Crisis in Ukraine between the Law, Power, and Principle*, 16 *German L.J.* 350, 359 (2015), available at <https://static1.squarespace.com/static/56330ad3e4b0733dcc0c8495/t/56c8cde9b654f92cd6e49639/1456000490822/GLJ_Vol_16_No_03_Oklopčic+Intro.pdf> (accessed Mar. 11, 2016).

⁸⁰ Malcolm MacLaren, *'Trust the People?' Democratic Secessionism and Contemporary Practice*, 16 *German L.J.* 631, 635 (2015), available at <https://static1.squarespace.com/static/56330ad3e4b0733dcc0c8495/t/56c8cf24b654f92cd6e49639/1456000806545/GLJ_Vol_16_No_03_MacLaren.pdf> (accessed Mar. 11, 2016).

⁸¹ Amandine Catala, *Secession and Annexation: The Case of Crimea*, 16 *German L.J.* 581, 601–02 (2015), available at <https://static1.squarespace.com/static/56330ad3e4b0733dcc0c8495/t/56c8cef8b654f92cd6e49bd9/1456000762433/GLJ_Vol_16_No_03_Catala.pdf> (accessed Mar. 11, 2016).

Considering Primary theory, the Crimean people were able to utilize their primary rights to internal self-determination just as all Ukrainians do. Externally speaking, Primary Right theory should be emphasized despite its rather mild nature regarding secession, whereas in previous theories democratic plebiscitary is the main proviso.

These heated debates were not limited to the discussion between Russia and Ukraine, but after the annexation of Crimea they were carried over to the agenda of supranational bodies, especially the UN. The UN Resolution on the territorial integrity of Ukraine on March 27, 2014, was a controversial moment in the international community. 100 Member States of the General Assembly reaffirmed the territorial integrity of Ukraine: while Armenia, Belarus, Bolivia, Cuba, North Korea, Nicaragua, Russia, Sudan, Syria, Venezuela and Zimbabwe voted for rejection of the territorial integrity of Ukraine, 58 states abstained, and the remaining 24 states were absent during voting. It was once again proved that territorial integrity was an ambiguous term and that each state had its own interpretation of self-determination when it came to Crimea.

It can be clearly seen that the states that rejected the Resolution, those that abstained and those that were absent were supporters of annexation and explicitly influenced by Russia in terms of their interpretation of self-determination, while the rest of who were against it supported the doctrine of the West (EU and US).

5. Findings and Discussions

5.1. Polarization on the Interpretation of Self-Determination

'[T]here is a strong belief that Russia's action is violating international law . . . I know President Putin seems to have a different set of lawyers making a different set of interpretations, but I don't think that's fooling anybody.'⁸²

On March 4, 2014, US President Barack Obama's statement about the Crimean crisis explicitly indicated that the United States and Russia have their own legal rhetoric. This dissension is not unknown in international law but, as discussed in previous chapters, it sprung from the early 20th century confrontation between Wilson and Lenin. This was then continued by the Soviet Union and the West, especially in their interpretation of self-determination and territorial integrity. Inherited from Lenin, there was always suspicion and uncertainty about Western legal interpretation, and as such it encouraged Russian lawmakers to establish their own language of international law. Even establishing the UN in 1945 could not remove dissension or create common ground in international law. Borgen classifies these great powers as 'norm makers' and claims that by utilizing their own rhetorical language they can

⁸² Obama: 'Strong Belief' Russia Violating International Law, NBC News (Mar. 4, 2014), available at <<http://www.nbcnews.com/storyline/ukraine-crisis/obama-strong-belief-russia-violating-international-law-n44091>> (accessed Mar. 11, 2016).

easily 'change the rules of the game and, ultimately change law' according to their political interest.⁸³ The weaker states were drawn towards the hegemonic powers and, according to Borgen, called 'norm takers' who side with either one of the great powers, with whom they ultimately form a horizon of great power.⁸⁴

After the breakup of the Soviet Union, the feeling was that this confrontation had ended and the West's legal rhetoric had prevailed. However, Soviet nostalgia resurged and Soviet interpretation was then 'overtaken by a new assertiveness of Russian prerogatives and Russian conceptions of legality.'⁸⁵ Thus Russia, after the Soviet Union, could fill the vacuum and by keeping its matrix, attempted to juxtapose herself to the West as a lawmaker for those under her wing where the Soviet Union once dominated. Even in 2009, the Foreign Minister of Russia, Lavrov, asserted: 'Indeed, international law is our ideology in international affairs. To use Fyodor Tyutchev's phrase, we want "once and for all to establish the triumph of law, of historical legality over the revolutionary mode of action."⁸⁶

Many scholars approved of the notion of Russia as a rising power and of her willingness to interpret international law according to her liking. Even some scholars such as Burke-White, by citing from scholars on rising powers, emphasized: 'The present redistribution of power in the international political system has brought an end to that transatlantic moment in international law.'⁸⁷ As a result of this change, Russia and its new owners attempted to shape their own legal understanding of international law and to take on the international arena again, attempting to be a maker of international law right after the fall of the Soviet Union and to recover Soviet status again. Burke-White pointed out: 'In Crimea, Russia is, perhaps for the first time since the fall of the Soviet Union, asserting itself as a renewed hub for a particular interpretation of international law . . .'⁸⁸ Assessing Russia's legal activity pre-Crimea will assist in understanding Russia's Crimea trick. Even though Moscow's legal language pre-Kosovo and during Kosovo negated itself, Russia could carry on

⁸³ Christopher J. Borgen, *The Language of Law and the Practice of Politics: Great Powers and the Rhetoric of Self-Determination in the Cases of Kosovo and South Ossetia*, 10 Chi. J. Int'l L. 1, 30 (2009), available at <http://papers.ssrn.com/abstract_id=1472068> (accessed Mar. 11, 2016) [hereinafter Borgen, *The Language of Law*].

⁸⁴ *Id.* at 31.

⁸⁵ Borgen, *Law*, *supra* n. 38, at 237 (citing Tarja Långström, Transformation in Russia and International Law 169 (Martinus Nijhoff 2003)).

⁸⁶ *Russian Minister of Foreign Affairs Sergey Lavrov's Article 'Russian Foreign Policy and a New Quality of the Geopolitical Situation' for Diplomatic Yearbook 2008*, The Ministry of Foreign Affairs of the Russian Federation, <http://archive.mid.ru//brp_4.nsf/e78a48070f128a7b43256999005bcbb3/bc2150e49da6a04c325752e0036e93f?OpenDocument> (accessed Mar. 11, 2016); see also Borgen, *The Language of Law*, *supra* n. 83, at 26.

⁸⁷ William W. Burke-White, *Crimea and the International Legal Order*, 56(4) Survival: Global Politics and Strategy 66 (2014). doi:10.1080/00396338.2014.941548

⁸⁸ *Id.*

manoeuvring its legal aims. Pre-Kosovo independence, Russia supported (overtly or covertly) separatists under the banner of self-determination in Transnistria, Nagorno-Karabakh and South Ossetia and Abkhazia. However, in Kosovo, Moscow amended its legal rhetoric by initializing the vitality of territorial integrity and claimed inviolability of territory, whilst prevailing on the principle of self-determination. In Crimea, Moscow shifted its legal interpretation once more, by exploiting the ambiguity of the principle of self-determination as a *jus cogens*, and tried to justify its actions by referring to the UN Charter.

After its defeat in Kosovo, Russia claimed that EU countries who recognized the independence of Kosovo from Serbia were obliged to recognize the secession of South Ossetia and Abkhazia from Georgia. On the other hand, the West did not recognize this, which ignited Russian antagonism towards the EU's juridical conception and her desire to create her own legal framework. In Crimea, with Russia's declaration of its own hub in international law and an uncertainty about Western interpretations, this battle about the meaning of self-determination reached its peak. After Crimea, Russia's officials criticized European legal scholars and their domination. Even the Deputy Secretary for Russia's Security Council proposed that 'a global conference should be organized in order to rewrite international law.'⁸⁹

For all scholars, Russia's legal language is not simply intended to justify its oppression in Crimea, more 'to reassert its role as a leader in a multi-hub international legal order.'⁹⁰ Additionally, it served 'to create sufficient uncertainty in the international community'⁹¹ and to gather her supporters around her jurisdiction. The question of the integrity of Ukraine resulted in countries such as Armenia, Belarus, Bolivia, Cuba, North Korea, Nicaragua, Russia, Sudan, Syria, Venezuela and Zimbabwe voting for rejection of the territorial integrity of Ukraine, while 58 states abstained and the remaining 24 did not even attend the conference. This is a prime indicator of the true supporters of Russia. Looking at the result, there were 93 suspicions and uncertainties, which amounts to almost half of the world communities. These states were supporters of Russia's rationale of self-determination and denied the West's territorial integrity on the grounds of Ukraine's legal status; or at least, in the case of Crimea, they proved that they were not pro-West. It can thus be safely claimed that Russia has her own legal interpretation but, as Borgen asked, how successfully she utilized her legal language in Crimea should be discussed.

⁸⁹ Roy Allison et al., *The Ukraine Crisis: An International Law Perspective* 3, Chatham House (Jul. 11, 2014) <https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20140711UkraineLaw_0.pdf> (accessed Mar. 11, 2016).

⁹⁰ Burke-White, *supra* n. 87, at 67.

⁹¹ Roy Allison, *Russian 'Deniable' Intervention in Ukraine: How and Why Russia Broke the Rules*, 90(6) *International Affairs* 1297 (2014), available at <http://commonweb.unifr.ch/artsdean/pub/gestens/f/as/files/4760/39349_202339.pdf> (accessed Mar. 11, 2016). doi:10.1111/1468-2346.12170

5.2. Legal Battleground: Russia v. The West

There has never been a universal legal interpretation of international law, and in the case of Crimea the gap was especially large between Russia and the West. If for Russia intervention in Crimea is regarded as self-defence, for the West it was regarded as a violation of sovereignty. Whether the intervention of NATO in Kosovo was regarded as humanitarian or not, Russia accused the West of the violation of boundaries.

As seen above, such confrontation is directly derived from the most fragile principle of international law – self-determination and territorial integrity. In reality, the Crimean crisis was not a milestone in that confrontation but rather a continuation of Russia's legal struggle against the West. In Crimea Russia's version of the story, on a legal basis, was very different from the West's understanding of it.

Moiseienko was right in saying that, at that point, Russian academics and practitioners had largely remained in the shade. At least in the international arena and mostly in the legal arena, Vladimir Putin enforced legal interpretations.⁹² If it is true then it automatically verifies Allison's assertion that '[a]n assessment of Moscow's legal rhetoric, with a focus on Crimea, also improves our understanding of Russian policy ...'⁹³ Moreover, regarding the Russian version of Crimea, Putin's speech on March 18, as Burke notes, 'should be read as more than a mere justification of Russia's annexation of Crimea'⁹⁴ and in terms of justification of Crimea's secession and annexation, political enthusiasm can be felt much more than pragmatism. Russian scholar Sarkisov suggests that the 'Crimean Peninsula lived in our hearts but not in our minds.'⁹⁵ It implies that in the speech on March 18, Putin's allegations were more weighted in historical, cultural and political contents, while in legal terms Putin's intention was to distort legal reality and negate the Western legal interpretation.

Putin, in his speech about historical ties with the Crimean peninsula, pointed out that 'Crimea was originally part of Russian territory' and 'without consulting the citizens' it was gifted to Ukraine.⁹⁶ Meanwhile, by recalling the demographic structure of the Crimean Peninsula as '2.2 million people, of whom almost 1.5 million are Russians, 350,000 are Ukrainians who predominantly consider Russian their native language, and about 290,000–300,000 are Crimean Tatars, who ... also lean towards Russia'⁹⁷ he was monitoring the pro-Russian people of Crimea and their compliance in joining the area to Russia.

⁹² Anton Moiseienko, *Guest Post: What Do Russian Lawyers Say about Crimea?*, *Opinio Juris* (Sep. 24, 2014), <<http://opiniojuris.org/2014/09/24/guest-post-russian-lawyers-say-crimea/>> (accessed Mar. 11, 2016).

⁹³ Allison, *supra* n. 91, at 1259.

⁹⁴ Burke-White, *supra* n. 87, at 73.

⁹⁵ Konstantin Sarkisov, *Russia's Annexation of Crimea and Its Implications for East Asia: A Russian Perspective*, *PacNet* (Apr. 3, 2014), <<http://csis.org/files/publication/Pac1424A.pdf>> (accessed Mar. 11, 2016).

⁹⁶ Setsuko Kawahara, *Self-determination: People's Will or Strategic Interest*, 43 *Hitotsubashi J.L. & Pol.* 1, 14 (2015), available at <<https://hermes-ir.lib.hit-u.ac.jp/rs/bitstream/10086/27102/1/HJlaw043000010.pdf>> (accessed Mar. 11, 2016).

⁹⁷ *Address by President of the Russian Federation*, *supra* n. 78; see also Burke-White, *supra* n. 87, at 70.

The oddity lies in the fact that besides the Russian president, even his critics and other political figures in Russia backed the Crimea annexation. Maria Baronova protested against Putin; however, in the case of Crimea, she strongly criticized the West. Referring to the case of Kosovo in 1999, she felt that the West prevailed over Russia, and remarked that ‘watching that gave us a deep inferiority complex.’⁹⁸ Russia’s most prominent lawyer Mark Feygin who was, by that time, against Putin, also favored Putin’s annexation of Crimea and saw Crimea under Ukraine as ‘a historical injustice’ that was gifted to Ukraine as ‘some kind of toy.’⁹⁹ Even the former leader of the Soviet Union, Gorbachev, not only supported the invasion of Crimea but stated that ‘all of southern Ukraine . . . is Moscow’s rightful dominion’ because ‘its population is Russian, like Crimea.’¹⁰⁰ Furthermore, in a speech by the Russian Ambassador to the UN, Vitaly Churkin, identified Crimean annexation as repairing a ‘historical injustice.’¹⁰¹

Contrary to these historical arguments, international legal doctrines of territorial integrity and self-determination and scholars, such as Buchanan, do not give weight to historical grievances. From a legal point of view, the Russian legal machine had focused its justification on two basic tasks in Crimea: 1) advocating the principle of self-determination by Crimea’s population; and 2) defending its right to intervention in the peninsula in the name of the self-defence of its Russian population.

Regarding the second point (self-defence or intervention), self-defence appears in Art. 51 of the UN Charter: ‘Nothing in the present Charter shall impair the inherent right of collective or individual self-defence if an armed attack occurs against a Member of the United Nations . . .’ Also, Moscow based this on historical examples such as Afghanistan, Iraq and Libya, when the United States had intervened. Russia was thus able to act confidently in Crimea since its excuse for intervention was allegations in the name of self-defence, which ‘were indefensible on a factual basis.’¹⁰² The US action in Afghanistan, Iraq and Libya in contrast cannot be compared with Crimea as an argument. Firstly, there was not any form of peril or threat against the Russian citizens in Crimea, which the UN emphasized as a condition. Secondly, as dictated in the Charter, any conflict should be reported immediately to the Security Council or raised in the General Assembly of the UN. The US did so when it intervened in Afghanistan, Iraq and Libya. Olson discusses Russia’s intervention as it was not the first action that infringed on elements of UN charter, ‘but it is arguably the first to treat the UN as literally irrelevant to its actions.’¹⁰³

⁹⁸ Simon Shuster, *Morning After in Crimea*, 183(12) *Time International* 12 (2014).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Borgen, *Law, supra* n. 38, at 238, 256.

¹⁰² Allison et al., *supra* n. 89, at 3.

¹⁰³ Peter M. Olson, *Is International Law Effective? The Case of Russia and Ukraine*, 108 *Proceedings of the Annual Meeting (American Society of International Law)* 39, 42 (2014). doi:10.5305/proccannmeetasil.108.0037

This action also contradicts Putin's September comment to *The New York Times*: 'We need to use the United Nations Security Council and believe that preserving law and order in today's complex and turbulent world . . .'¹⁰⁴

Indeed, by ignoring the UN, Russia implicitly expressed its intention of reinterpreting its own law and as seen from above, exploited this for its own political ends.

Unlike self-defence, the principle of self-determination was not clearly set out in UN documents and this ambiguity laid the grounds for Moscow's rhetorical self-seeking policy in the interpretation of this principle. Despite what Remedial or Primary theorists have already concluded, in the case of Crimea there is no compliance with the elements of these theories in Russian moral jurisdiction, and as such secession of Crimea cannot be embraced in either theory.

As a primary right of self-determination, President Putin, defending Crimea's secession, stated that the 'Crimean situation, including the referendum, was a simple matter of self-determination'¹⁰⁵ and 'referred to the United Nations Charter, which speaks of the right of nations to self-determination.'¹⁰⁶ In the explanation of self-determination as a primary right, the President referred to an irrelevant precedent by comparing Ukraine's independence from the USSR with what the Crimean population did. For many reasons, they cannot be compared, at the very least because Ukraine was a unified republic within the Soviet Union, while Crimea is an integral part of the Ukraine due to the *uti possidetis* principle, which claims that Crimea was under the rule of Ukraine before the Soviet Union's dissolution. Confirming this, Evison claims: 'An examination of Krushchev's gift of Crimea to Ukraine, Ukrainian statehood, and domestic law all demonstrate the applicability of *uti possidetis* to Crimea.'¹⁰⁷

It is possible to argue that Russia's strongest vindication of Crimean secession is consistent with Kosovo, as seen in Remedial theory. Up until 2010, if international law was uncertain about the secession, it was broken down by an acceptance of Kosovo Advisory Opinion that plainly validated the independence of Kosovo from Serbia and stated that 'the declaration of independence of 17 February 2008 did not violate general international law'.¹⁰⁸ Despite the Russian judge rejecting that advisory opinion, Russia was definitely against that decree and in Crimea, Russians used the document as a reference:

¹⁰⁴ Vladimir V. Putin, *A Plea for Caution from Russia*, N.Y. Times (Sep. 11, 2013), <<http://www.nytimes.com/2013/09/12/opinion/putin-plea-for-caution-from-russia-on-syria.html>> (accessed Mar. 11, 2016) (quoted in Burke-White, *supra* n. 87, at 73).

¹⁰⁵ Olson, *supra* n. 103, at 40.

¹⁰⁶ *Address by President of the Russian Federation*, *supra* n. 78.

¹⁰⁷ Evison, *supra* n. 65, at 106.

¹⁰⁸ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo: Summary of the Advisory Opinion*, ICJ (Jul. 22, 2010), <<http://www.icj-cij.org/docket/files/141/16010.pdf>> (accessed Mar. 11, 2015).

We, the members of the parliament of the Autonomous Republic of Crimea and the Sevastopol City Council . . . taking into consideration the confirmation of the status of Kosovo by the United Nations International Court of Justice on July 22, 2010, which says that unilateral declaration of independence by a part of the country does not violate any international norms, make this decision.¹⁰⁹

Putin certified the declaration quoted from the ICJ, which he had rejected in the case of Kosovo, and asked: if 'Kosovo Albanians . . . were permitted to do' what 'Russians, Ukrainians and Crimean Tatars in Crimea are not . . . ?'¹¹⁰ Further to this, the President brought an accusation against Western countries of 'blunt cynicism,' 'calling the same thing white today and black tomorrow.'¹¹¹ Putin was accusing the US and Europe of opportunism and of dealing with Crimea in a different way from Kosovo when it was in effect the same situation.

The common view of Russian scholars about Kosovo was widely held, and Moscow sees implementation of that in Crimea as eligible and rational. Contrary to this, the West claims that secession of Kosovo under remedial rights is a special case and that religiously, ethnically and territorially different Albanians were threatened by the harsh regime of Belgrade. Hence, Kosovo cannot be a precedent for Crimea or any other secession but is rather *sui generis* and applies only to Albanians who were victims of the genocide by Milošević. In Crimea however, due to the OSCE Human Rights assessment mission in Ukraine, it was confirmed: 'No increase in the manifestation of intolerance or escalation of violence against the Russian-speaking population was observed . . .'¹¹² Russia traditionally asserts its political and historical argument regarding remedial claims, and Mamlyuk identifies how Russia sees Ukrainians as 'ultra-nationalists, whom Russia brands fascists or neo-Nazis' who would be a threat to Crimean Russians.¹¹³ Whether or not they claimed that Crimea would be annexed, Russians would have been threatened by what happened in Abkhazia and Ossetia, which has still not been recognized by any international bodies.

Finally, the President, by asserting the referendum and its result, claimed that 'the people of Crimea clearly and convincingly expressed their will and stated that they want to be with Russia.'¹¹⁴ As noted before, firstly the referendum was not democratic

¹⁰⁹ *Crimea Parliament Declares Independence, supra* n. 60.

¹¹⁰ *Address by President of the Russian Federation, supra* n. 78.

¹¹¹ *Id.*

¹¹² *Ukraine, Human Rights Assessment Mission: Report on the Human Rights and Minority Rights Situation, March-April 2014* at 9, OSCE (May 12, 2014), <<http://www.osce.org/odihr/118476?download=true>> (accessed Mar. 11, 2016).

¹¹³ Boris N. Mamlyuk, *The Ukraine Crisis, Cold War II, and International Law*, 16 *German L.J.* 479, 479 (2015), available at <https://static1.squarespace.com/static/56330ad3e4b0733dcc0c8495/t/56c8ceb1b654f92cd6e49a8d/1456000693603/GLJ_Vol_16_No_03_Mamlyuk.pdf> (accessed Mar. 11, 2016).

¹¹⁴ *Address by President of the Russian Federation, supra* n. 78; see also Burke-White, *supra* n. 87, at 70.

because of Russia's intervention. At best, if Russia had not intervened and the referendum was highly consistent with international law, could Crimea's secession be counted as credible? The answer is a resounding no. Neither the Quebecois nor the Scottish case can be compared with this situation. Secession ought to be approved solely as a last resort, and as Bebler affirmed: 1) it may need long-term discussion; and 2) it requires permission from Kiev, as was the case with Scotland and Canada and the permission they sought.

According to Russia's critics, Moscow's rhetoric on Crimea did not succeed and even disclosed its hypocrisy in terms of legal grounds. This was also seen in its approach. Hausler and McCorquodale criticize Putin's discourse: they argue that '[w]e . . . believe that preserving law and order in today's complex and turbulent world is one of the few ways to keep international relations from sliding into chaos. The law is still the law, and we must follow it whether we like it or not' was stated a few months ago, during the Syrian crisis.¹¹⁵ This prompted UK and US intervention in Syria, and Russia soon followed up with an illegal intervention in Crimea. These biased actions reveal Russia's 'blunt cynicism.'

In general, both Russia's primary use of self-determination by exemplifying Ukraine's secession from Soviet Union, and its remedial use of self-determination by resorting to Kosovo's secession from Yugoslavia, are groundless justifications for their actions in Crimea.

6. Concluding Remarks with Different Semantics

The initial confusion about the interpretation of self-determination and territorial integrity, and the legal battlegrounds between the West and Russia over Crimea, aside from their political interests, are consistent with their absolute understanding of these principles. For example, as noted before, for Lavrov, the principle of self-determination is directly interpreted as the secession of Crimea, whilst for the West the strong and inviolable territorial integrity of Ukraine is at stake. They both see these two principles in contradictory ways, and for the West if there is territorial integrity in Ukraine, the right of external secession cannot be a subject for discussion. Today's confusions are caused by that absolute comprehension of the reconciliation of self-determination and territorial integrity.

Primary theory is absolute (external self-determination or secession) in its context to the principle of self-determination, and it is not appropriate to address and reconcile it in regards to the confusion between self-determination and territorial integrity. Buchanan's vision, contrary to Primary theory, embraces different options available prior to secession and defines it as a form of last resort and a strong

¹¹⁵ Kristin Hausler & Robert McCorquodale, *Ukraine Insta-Symposium: Crimea, Ukraine and Russia: Self-Determination, Intervention and International Law*, *Opinio Juris* (Mar. 10, 2014), <<http://opiniojuris.org/2014/03/10/ukraine-insta-symposium-crimea-ukraine-russia-self-determination-intervention-international-law/>> (accessed Mar. 11, 2016) (quoting Putin, *supra* n. 104).

version of self-determination. Like Buchanan, Shany, discussing the right to self-determination in international law, asserted that 'the right of all peoples to self-determination was never understood as being absolute'¹¹⁶ in international decrees, and therefore self-determination or territorial integrity cannot be viewed separately as absolute. Similarly, Catala noted: 'Political self-determination is a matter of degree and does not necessarily require full political independence or sovereignty . . .'¹¹⁷ Catala exemplifies this degree of self-determination as a 'federalism' in larger states such as provinces of Canada or states of the United States.

Consequently, political interpreters suggest various theories on the reconciliation of self-determination and territorial integrity, noting that until the infringing of territorial integrity of states by secession, there are various other options that can be considered. Otherwise, this vagueness about self-determination and territorial integrity cannot be viewed as having an absolute meaning, which polarizes the opponents into different sides, resulting in confusion between them similar to Russia's strong support of Crimea's self-determination while the West backed the territorial integrity of Ukraine.

This is not a situation unique to Crimea or one that is related only to self-determination and territorial integrity; it is a matter of the 'binary logic' of philosophy, when one exists while the other does not, simultaneously. Binary logic was considered a principle of mathematics and Aristotle introduced it as two-valued logic in social sciences. In mathematical terms, the rule differentiates black and not black, B or not B, and there is no space between them. In political and philosophical meaning, the Greek philosophers defined it clearly in 'Rhetoric for Alexander.'¹¹⁸ In his logical arguments, Aristotle defined 'political issues' as 'declaring war or making peace, signing treaties or refusing, trusting or mistrusting a witness, whether or not to use torture to obtain trustworthy evidence, etc.'¹¹⁹ On the relation between self-determination and territorial integrity, binary logic suggests that there is either territorial integrity or self-determination and that there is no mid-point when implementing binary logic in these situations. Like red or not-red semantics, they contradict each other and cannot exist simultaneously in the same object.

In 1960, the 'fuzzy paradigm' was introduced by Lotfi Zadeh as an alternative that could explain the vagueness of the world, even though it was applied more in mathematics, life sciences and economics. The founder of fuzzy logic, Lotfi Zadeh, emphasized that every statement is a matter of degree and that there are values

¹¹⁶ Yuval Shany, *Does International Law Grant the People of Crimea and Donetsk a Right to Secede? Revisiting Self-Determination in Light of the 2014 Events in Ukraine*, 21(1) *The Brown Journal of World Affairs* 234 (2014).

¹¹⁷ Catala, *supra* n. 81, at 585.

¹¹⁸ Leonid I. Perlovsky, *The Mind vs. Logic: Aristotle and Zadeh*, 1(1) *Critical Review* (2007), available at <<http://www.leonid-perlovsky.com/new-materials/26,%20CR,%20FL%20A%20%20Z%20-%20reprint.pdf>> (accessed Mar. 11, 2016).

¹¹⁹ *Id.*

between 'completely true' and 'completely false' or between red or not red, and as such this interval was coined 'fuzzy logic'.¹²⁰ He further proved that 'any logical system can be fuzzified'.¹²¹ Taking this into consideration, fuzzy logic could be plausibly applied to solving current problems, decision-making, law-making, etc. and, contrary to Aristotle, fuzzy logic naturally provides more alternatives in each of these fields.

In the matter of self-determination and territorial integrity, Buchanan's, Catala's and Shany's arguments embrace fuzzy logic easily as there is no strong territorial integrity or self-determination. Both of them (self-determination and territorial integrity) can be applied at the same time and meet roughly in the middle by producing cultural and economic independence and autonomy or a new form of state confederation. Suggesting that Crimea would be satisfied with the highest federal unit within Ukraine such as confederation, it promotes internal self-governing or cultural independence until secession. By doing so, both territorial inviolability and the will of the Crimean people would be satisfied, and on a legal basis both the West and Russia would be satisfied by fuzzing that contradiction in international law and therefore politics.

7. Conclusion

Politics and international law have always been side by side, and where international law is flabby, the exploitation of its norms is more so. The principles of self-determination and territorial integrity is an area where politics examines the fragility of law. The principle of self-determination is the most controversial part of international law, because, firstly, it can be seen as violating the principle of territorial integrity. The study of the precedent of Crimea clearly demonstrated conflict and confrontation between Russia and the West. Secondly, evident is the lack of description of the principle of self-determination in international legal documents. This research demonstrated that with the rare exception of Kosovo Advisory Opinion, there is no evidence in international documents of external self-determination or secession. The 2010 Kosovo Advisory Opinion, as seen from the name, could not be defined as the principle, or *jus cogens* norm; rather it was advisory opinion and bears only upon the Kosovo case, which could not be generalized for the resolution of a series of conflicts. As Allison pointed out, 'international law is generally neutral on questions of territorial secession and external self-determination . . .'¹²²

It is silent, and this neutrality by international law has always been exploited by politics and has given ground for debates by political figures rather than by professional lawmakers. Thus, in external self-determination, secession could be identified as a political paradigm rather than a concept of international law. Referring

¹²⁰ Aziz, *supra* n. 1.

¹²¹ *Id.*

¹²² Allison, *supra* n. 91, at 1266.

to the Crimean crisis, an inability of international law to address the conflict from a legal prism was visible.

Enshrinement of the right to self-determination in French domestic law thus far has shown one unvarying dilemma: as the French utilized the right of self-determination for their political aims, today Russians use this for the secession of Crimea. Briefly, by utilizing its fragility, states used this page of international law as an instrument for their politics. The next unwavering aspect was that both in the early 20th century and in the Crimean crisis, the legal interpreters were Russian and Western scholars. Even their conceptions of the right of self-determination have stayed constant. Putin's legal interpretation mirrored Lenin's notion of self-determination, while the Wilsonian paradigm of self-determination combined the values of liberalism (right of people to self-governing, democratic referendums on self-determination) and was accepted as the inheritance of Western countries. The interpretation of self-determination was developed on two lines: Soviet *versus* Western understanding of self-determination due to the differing ideological and political orientations. In Crimea, this tendency did not disappear, and despite the single language of international law they interpreted the principle of self-determination through two different legal languages. Eventually, both the Lenin and Wilson lines of interpretation contributed to the legal basis of self-determination and territorial integrity, but they could not resolve the ambiguity of the principle, and as such the different theoretical propositions of self-determination set forth on demanding many secessionist conflicts, including that in Crimea. Applying the three most discussed (Remedial Right Only, Primary Right, Choice theories) concepts to the principle of self-determination, none of them enabled an addressing of the Crimean conflict, and proved that Russia's justification of Crimea was not only outside the legal decrees of international law, but could not be construed in the language of theories. Primary and Choice theories were far from working in the case of Crimea; only Buchanan's theory of Remedial Right worked as a justification for secession, seen in any violating act against the ethnic groups. However, the Crimean people had not been exposed to violation for their ethnic difference since 1954 (under the rule of central Kiev); rather, '[t]he human rights situation in Crimea has seriously deteriorated since the region's annexation by Russia in March,' the Council of Europe claimed.¹²³ The people who were terrorized were mainly the Tatars and Ukrainians of the Crimean peninsula. This fact demonstrates Russia's ethnic cleansing, at work since the early days of invasion, and permits us easily to imagine future conditions. In general, the deficiency of legal grounds allowed the ambiguity of the principle of self-determination, which created a vacuum for the state's exploitation and eventually resulted in the crisis of Crimea and similar territorial conflicts.

In conclusion, this research set out to resolve the dispute about the principle of self-determination and territorial integrity using 'fuzzy logic,' which suggests a mid-

¹²³ Gabriele Steinhauser, *Human Rights Worsen in Crimea, Report Says*, The Wall Street Journal (Oct. 27, 2014), <<http://www.wsj.com/articles/human-rights-worsen-in-crimea-report-says-1414416579>> (accessed Mar. 11, 2016).

way solution. Despite fuzzy being used as the logic of mathematical science, the meaning remains the same for social sciences – neither meaning absolute self-determination nor absolute territorial integrity – and finding the scope for both of these to be maintained.

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