
A POSSIBLE SOLUTION FOR SELF- DETERMINATION QUESTION IN CRIMEA

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(QQI)

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CANDIDATE DECLARATION

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I certify that the dissertation entitled: with title of “A Possible Solution for Self-Determination Question in Crimea” which I submitted for the degree of: L.L.M. International Law

is the result of my own work and that where reference is made to the work of other, due acknowledgement is given.

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I have had always a thought to work in this topic since my bachelor years in Law Faculty of Ankara University. But, Public International Law lectures of Thamil Venthan Ananthavinayagan during my master education in Griffith College and being my origin of my paternal ancestors Crimean mostly inspired me to work on this topic. During the research and work of my dissertation, contributions of my lecturer Thamil Venthan Ananthavinayagan and Bilal Cakacak who was the past L.L.M. student in Trinity College was so appreciable. Last but not least, guidance of my dissertation supervisor Stephen Brittain may be the most important contribution of my dissertation.



ABSTRACT

In this dissertation, first of all, I tried to expose the legal insight of the self-determination dispute in Crimea to find the legal facts about this case. Secondly, I tried to propose a possible solution mechanism to resolve this dispute. In the light of my proposal, I tried to discuss the structure of UN interim administration in terms of legality of this mechanism and its applicability in the case of Crimea. In the first chapter I tried to give broad information about the history of the case of Crimea. Then, in the second chapter, I tried to present the conflicting claims of parties of this dispute. Then in the second section of this chapter I tried to examine the general theory of self-determination to reveal the legal facts about this dispute. Then I drew a conclusion about the legal fact is that Crimea is the integral part of Ukraine and Russia's use of force was in violation of the UN Charter. On the other hand, before the annexation, Ukraine regime did not recognize broad autonomous rights to local people of Crimean Peninsula in terms of internal self-determination. Thus, it can be concluded that, Crimea should be the integral part of Ukraine but also, Ukraine has obligation to recognize broad autonomous rights to local people of Crimea including Russians and Tatars under the international law within its administrative regime. In the last chapter, I tried to evaluate the legality of the UN interim administration structure and its applicability to Crimea case. I drew a conclusion that notwithstanding the existence of doubts about the legality of this administration, it might be possible solution for resolving this dispute in that territory. In my dissertation, I used the methods of doctrinal analysis, comparative, historical and socio-legal research methodologies during the my research.

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INTRODUCTION

From past to present, Crimea always has been a hot point of conflicts in the Eastern Europe. In recent years, another conflict has arisen between Russia and Ukraine in this region. The status of this region plays a critical role in the international peace and political stability in Eastern Europe and Black Sea regions. This phenomena is also crucial for Public International Law. In my opinion, the self-determination question is one of the main points of the disputes and conflicts in Crimea. For this reason, I have chosen this topic for my dissertation. In my dissertation, Firstly, I tried to figure out the *de lege ferenda* in the region of Crimea which means the legal order should be applied within the realities of public international law. My findings about this issue are that Crimean Peninsula is integral part of Ukraine in terms of principle of respect to territorial integrity which is also specified in the UN Charter and Russia's use of force and annexation is in violation of the principle of prohibition of use of force which is also specified in the UN Charter. On the other hand, before the annexation, local peoples' including the Crimean Tatars and Russians autonomous rights were weak in terms of the internal self-determination under the regime of Ukraine. Therefore, I will try to advocate the territorial integrity of Ukraine but also Ukraine has obligation to strengthen the autonomous rights of local people of Crimea including Tatars and Russians in terms of internal self-determination within the order of *de lege ferenda*. In this framework, I will try to scrutinize and evaluate the historical background of peninsula and the dispute of Crimea in the first chapter. In the second chapter, I will try to examine the conflicting claims of main three actors(Russia, Ukraine, Tatars) in the dispute of Crimea and general theory of self-determination in terms of public international law to reach the reality of *de lege ferenda*. Secondly, I will try to find a solution mechanism to establish the order of *de lege ferenda* in the Crimea. This point is my central research question of my dissertation. In this framework, in the chapter three, I will try to discuss the establishment of an possible UN interim administration in the Crimea as a solution for resolving this dispute. In the first part of this chapter, I will try to present a discussion about the legality of authorization of this mechanism. Then, in the second part, I will try to discuss applicability and possibility of success of

this mechanism in the dispute of Crimea. Lastly, I will try to advocate that notwithstanding there are drawbacks and lacks of framework of this mechanism, this mechanism might achieve the goal of restoring the international peace and reconciliation between actors in the dispute of Crimea.

CHAPTER 1: HISTORICAL BACKGROUND

A) FROM EARLY AGES TO END OF SOVIET ERA

In fact, from past to present, ¹the history of Crimea is not Ukrainian or ²Russian History. The peninsula has always been a homeland for numerous peoples, such as the Scythians, the Greeks and the Tatars. ³Besides, before the Crimean Tatar Turks, Chronologically, Huns, Avars, Hazar Turks and since 11th century, Kuman/Kipchak Turks those were ancestors of Crimean Tatar Turks reigned in this region for centuries. ⁴The name *krym* is of Tatar origin, and means '*rock fortress*'. And the **Tatars**, they dominated the history of Crimea **for centuries**.⁵Therefore, the Crimean Tatars accept themselves as the native people of Crimea and the only people have the right to call Crimea their homeland. ⁶During the 13th century the Golden Horde established the khanate of Crimea, which was independent until 1475. It then came under the dominance of the Ottoman Empire, but still held a lot of privileges and freedoms. But Crimea was also always of interest to the Russian Empire, because of its strategic position at the Black Sea coast. In 1775 Catherine the Great was able to conquer the Ottomans on Crimea and the contract of Kainarji was set up, securing Russia the full

¹ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 112.

² Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 917.

³ Bahadır Bumin Ozarslan, 'The Status of Crimea and the Crimean Tatar Turks after the Cold War' (2014) 10(39) Uluslararası Hukuk ve Politika 98.

⁴ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 112.

⁵ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 120.

⁶ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 112.

power over the peninsula. Two concepts began to emerge in the region: on the one hand Crimea was the homeland of the Crimean Tatars and on the other hand it became a symbol of the power of the Russian Empire.⁷ In the 18th century, when Crimea became part of Russia, 500,000 people were living on Crimea, of which 450,000 Crimean Tatars. Until the beginning of the 20th century the percentage of Tatars declined from 80 to 34 per cent. At the end of the 19th century a national movement of the Crimean Tatars emerged and political parties were founded, of which 'Milli Firka' (National Movement) was the most prominent. It supported Russian Federalism and was also relatively close to socialist movements. The Kurultaj, the Parliament of the Crimean Tatars also set up a Crimean Constitution.

⁸The 20th century was characterized by changing governments and armed clashes between rivaling political and ethnic groups. In 1917 Bolsheviks gained power on the Crimea. They regarded the election of the Kurultaj, the Parliament of the Crimean Tatars, as a sign that the Tatars were ready to take over power on Crimea, while the Tatars refused to accept a Soviet government. When the Bolsheviks sent troops against the Rada in Kiev, armed conflicts arose. But Simferopol was not able to hold against the Red Army and as a consequence the Kurultaj was dissolved again. But the regime of Bolsheviks did not endure for a long time. In 1918 sailors of the Black Sea Fleet began to join the white troops and in the same year the German army arrived on Crimea. The Republic of Tauria was established, as there was hope that the Germans would respect a sovereign State. But this was not the case. As in Kiev, the Germans established a marionette government. When the Germans had to leave Crimea in November 1918, a new Russian government under Solomon S. Krym inaugurated to govern the Crimea. But already in May 1919, a communist government was established, this time including Crimean Tatars. Again this endured only for a few weeks. This government had to flee from the white troops of General Denikin. Denikin then established a government that was directed against the political organizations of the Tatars, forcing them to work from underground. Because of this the Crimean Tatars started to co-operate with the communists. However, in October 1920, when the communists were successful in recapturing power on Crimea, their government did

⁷ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 120.

⁸ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 112.

not involve Tatars. ⁹In 1921 the communist government in Moscow gave mission to Sultan-Galiev to the Crimean peninsula to report on the situation of the Tatars. His recommendations were decisive for the creation of the Autonomous Socialist Soviet Republic of Crimea as part of the RSFSR. But the affiliation to the Russian Federation was a problem for Crimea. The civil war resulted in a famine; the interest of the Moscow government in the situation of the Crimean Tatars was low. Although within the concept of korenisacija, the Tatars were represented in all political offices, another wave of Russians migrated to the peninsula, thus further diminishing the political power of the Tatars. When Stalin inaugurated, oppressions on Crimea started which were especially directed against the Tatar population, as they were accused of collaboration with the German troops. This resulted with mass deportations in May 1944. This persecution encompassed not only the Tatar population itself, but also all signs of Tatar culture which had to be removed. Crimea lost its autonomy and became an oblast within the RSFSR. In 1949 Sevastopol received special financial rights and was directly subordinated to Moscow. ¹⁰According to data of 1939, Crimea consisted of: Russians(49.6%), Ukrainians(13.7%), Tatars(19.4%) and Jews(5.8%). After the deportation of Crimean Tatars following the World War2 to Central Asia, the territory of Crimea was populated by Russians and Ukrainians. To illustrate the change, in the 1959 Soviet census, Crimea constituted :Russians(71.4%), Ukrainians(22.3%) and Jews(2.2%). ¹¹After the Tatars were deported(mainly to Uzbekistan)in 1944, it took them until 1989 to be allowed to return to Crimea. But already during the 1980s they started to move back to the peninsula, although illegally. The official Ukrainian policy was always in favour of the returning of Tatars.

¹²In 1954, on the occasion of the 300th anniversary of the contract of Perejaslav, the peninsula was taken out of the territory of the RSFSR and **became part of Ukraine**. At this time, 90% of the Crimean population were Russians. On 26 April 1954, in the

⁹ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 113.

¹⁰ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 918.

¹¹ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 120.

¹² Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 113.

Ukaz of the Supreme Soviet the decision to donate the peninsula to the Ukrainian SSR was ratified and the law 'On the transition of the Crimean Oblast from the RSFSR to the Ukrainian SSR' was issued. Ukraine received a territory that was mainly inhabited by Russians and a population which massively resisted the moving in of Ukrainian population.¹³ According to Putin's characterization, it was like a loaf of bread (It was, however, a rather valuable loaf, being the reward of the Communist Party of the Soviet Union to the Communist Party of the Ukraine for loyalty during the process of de-Stalinization.)

B) FROM POST-SOVIET ERA TO PRESENT

A) DEVELOPMENTS IN POST-SOVIET ERA

¹⁴ In September 1990, only two months after the declaration of sovereignty of Ukraine, the Supreme Soviet of Crimea asked its Russian and Ukrainian counterparts to reinstall the status of autonomy on Crimea. On 20 January 1991 a referendum took place on the peninsula; 93.2 per cent of the voters favoured the resurrection of the Autonomous Republic of Crimea as a member of the USSR and as a member of the Union Treaty.

¹⁵ In accordance with this result the Autonomous Republic of Crimea was established within the territory of Ukraine. It's worth noting that, unlike in 1921, the Autonomous Republic was not established within the framework of the Russian Federation, but within the USSR. In Autumn 1991 centrist positions dominated within the Parliament of Crimea and with the decline of the economic situation of Ukraine, the position of radical separatists was even more strengthened. This resulted in the declaration of independence of the Republic of Crimea on 4 September 1991.

¹³ Cornelia Navari, 'Territoriality, self-determination and Crimea after Badinter' (2014) 90(6) *International Affairs* 1313.

¹⁴ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) *International Journal on Minority and Group Rights* 113.

¹⁵ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) *International Journal on Minority and Group Rights* 114.

¹⁶On 1 December 1991, in the referendum on the independence of Ukraine, 54% of the voters were in favour of independence in Crimea. It was below the Ukrainian average. In 1992 a struggle about the separation of powers between the Crimean and Ukrainian authorities began.¹⁷ In January 1992 the question about the legitimacy of the donation of the peninsula to Ukraine in 1954 was on the agenda of the Russian Duma. The Ukrainian Parliament regarded this as an infringement of the November 1990 treaty between Ukraine and the Russian Federation and the CIS Agreement. Kiev also issued a warning to separatist movements in Crimea. But again in April Alexander Ruzkoj, the Vice-President of the Russian Federation openly favoured the secession of Crimea. Still it seemed hard for the Russian self-conception to accept Ukraine as a separate State. Russian history and identity always regarded Ukraine as part of the Russian Empire. Even more of a problem was that Ukraine subordinated the Soviet troops on its territory, including parts of the Black Sea Fleet to the Kiev authorities. For some Russian politicians the independence and the 'loss' of Crimea was hard to accept. In 1992 Zhirinovskiy compared the situation of Crimea with Kuwait: both should be returned to their 'legal owners'. In Spring 1993 Sergej Stankevich (the political advisor of president Yeltsin) suggested Western diplomats not to set up embassies in Kiev, as they would soon be degraded to mere consulates. For quite some time the Russian borders with Ukraine were not regarded as 'State' borders and the division of the Black Sea Fleet, the question of double citizenship, the division of international property and obligations of the USSR remained further controversial subjects. These were additional reasons why it took two years to ratify the 'big friendship-treaty' between Ukraine and Russia. Russia especially regarded this treaty as treason towards Russian interests.

¹⁸On 5 May 1992 the Parliament of Ukraine declared the independence of the peninsula and issued the Constitution of Crimea. This declaration was to be approved by a referendum in August. The Parliament of Ukraine answered with an ultimatum to

¹⁶ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 114.

¹⁷ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 115.

¹⁸ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 116.

take back the declaration of independence before 20 May. The situation calmed down as the chair of the Supreme Rada of Crimea decided to withdraw the declaration of national sovereignty since this sovereignty was already realized through the Constitution of Crimea. The question on the national independence of Crimea envisaged for the referendum was to be replaced by the question for the approval of the Crimean Constitution. The Ukrainian Parliament was asked to reconsider the law 'On the Status of the Autonomous Republic of Crimea' and the 'Law on the representative of the Ukrainian President on Crimea'. In May 1992 the referendum on Crimea was suspended until 10 June. Again the Russian position had a critical impact on the tensions as the Russian Parliament came to the conclusion that the donation of Crimea was not in accordance with the Constitution and the legislation of the USSR. On 30 June the Ukrainian Parliament approved far-reaching autonomous rights to Crimea and on 9 July Crimea issued a moratorium on the referendum.

¹⁹ The conflict between Kiev and Simferopol was at its height when in 1994 Crimea set up the office of President of Crimea. The presidential elections took place on 16 and 30 January 1994. But it was not the office itself that rose tensions with Kiev, but rather the successful candidate, Meshkov. The Verkhovna Rada in Kiev decided on an addendum to the Ukrainian Constitution, directed against arbitrary acts of the Crimean authorities. At this time Moscow changed its direction towards Crimea as Yeltsin declined to meet with Meshkov and the Russian Prime Minister Chernomyrdin stated that Russia has no claims on Crimea. On 24 February 1994 the Ukrainian Parliament issued a resolution, giving the authorities of Crimea a month to harmonize its legal acts with the Ukrainian Constitution and legislation. After his election Meshkov again came up with plans for a referendum on Crimea, which was opposed by Kravchuk. In April Meshkov's party won the Crimean Parliamentary elections. At the same time the referendum took place (but was called a consultative opinion poll). 90% of the voters agreed with the expansion of the autonomous rights of Crimea. What was clear from the results of the Crimean parliamentary elections and the referendum, and also from the Ukrainian parliamentary elections in April 1994, was that the

¹⁹ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 117.

Ukrainian population on Crimea did not really oppose the Russian demands for secession.

²⁰ In May 1994 the Crimean Constitution of 1992 was reinstalled. Kiev again set an ultimatum to suspend the Crimean Constitution and other laws of Crimea and informed the UN and the OSCE of the developments on the peninsula. After the expiration of the ultimatum Kiev suspended all legal acts of the Autonomous Republic of Crimea that contradicted the Constitution and the legislation of Ukraine. New discussions started, but the Crimean Parliament did not agree in giving away powers to Kiev. On 23 August 1994 Sevastopol was declared a Russian city and subordinate only to Russian legislation. Later in 1994 Meshkov tried to assume all political power in Crimea. He dismissed the Parliament after it argued for harmonizing the Crimean law 'On the president' with the Ukrainian Constitution and wanted to revise the Crimean Constitution. Ukraine stressed that the dismissal of the ²¹Crimean Parliament was a right exclusively reserved to the Ukrainian Parliament itself. Negotiations started between the Crimean Parliament, Meshkov and Ukrainian authorities, and on 22 September, Meshkov repealed the dismissal of the Verkhovna Rada of Crimea. On 29 September, the Crimean Parliament deprived Meshkov of all his rights, and by issuing the new law 'On the government of Crimea' the Prime Minister became the head of the government of the Autonomous Republic of Crimea. One week later Anatoly Franchuk, a friend of Kuchma (the meanwhile elected new president of Ukraine), was appointed Prime Minister. During this struggle for power Meshkov's party, the Block Rossija, broke apart. At the end of November the Crimean Parliament decided to harmonize all of its legislation with Ukrainian federal legislation. The Ukrainian National Bank was to stall all payments to authorities that would not obey these new provisions. In March 1995 the Ukrainian Parliament suspended all legal acts of Crimea that were in contradiction with the existing Ukrainian legislation. New tensions arose in 1995 when the Crimean authorities decided to insist on a constitutional referendum. A round table conference was organized by the OSCE in Locarno and once again a compromise was found. No referendum would take place on Crimea and the 'Law on

²⁰ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 118.

²¹ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 119.

the status of the Autonomous Republic of Crimea' was to be reconsidered by the Verkhovna Rada of Ukraine. Again it was Russia that contributed to the problems. Already in March a Russian consulate started to issue Russian passports in Simferopol. Again the question of double citizenship emerged. Although the consulate refrained from issuing documents it was not ready to give any information on how many persons had received Russian citizenship. Yeltsin stressed, that he would not sign a Treaty of Friendship with Ukraine until the rights of the Russian minority were sufficiently guaranteed.

²²In November 1995 the Crimean Parliament was successful in adopting a new Constitution. Crimea was to be a part of Ukraine and Sevastopol part of Crimea. The Crimean Tatars opposed this Constitution, as it contained no provisions guaranteeing their representation in Crimean administrative and legislative bodies. This Constitution was not approved by the Ukrainian Parliament, as there were still discussions about the inclusion of the Crimean autonomy within the Ukrainian Constitution.

²³ After 1996 the tensions eased and the Ukrainian Constitution of June 1996 contributed to the clarification of the legal situation. But still there were conflicts between the minorities on Crimea until the annexation. The representatives of the Russian majority of Crimea still gave declarations on the unity of the Russian people, but because the new Ukrainian legislation prohibited regional branches of political parties, the Crimean communist party is now no longer an independent organization and had to cut relations with the Russian communist party. In October 1998 the Parliament of Crimea set up a Constitution that was also accepted by the Verkhovna Rada in Kiev.

But this did not solve all problems on Crimea. In particular the Tatars face serious legal, practical and economic problems when returning to Crimea.

²² Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 119.

²³ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 119.

B) SOCIO-ECONOMICAL PAST OF CRIMEA AND ITS INFLUENCE ON SELF-DETERMINATION QUESTION IN POST-SOVIET ERA

In the issue of socio-economy,²⁴Malyarenko states; *“Since 1991 a perpetual problem in Crimea is the lack of comprehensive socio-economic and development strategies. During the Soviet era, Crimea was a ‘region – military base’, the centre of machine-building, shipbuilding, agriculture and food industries. The industry of tourism was constituted in a number of Soviet style state-owned unprofitable boarding houses and sanatoriums. In fact, little has changed in the region. The contemporary economy of Crimea is economically uncompetitive. Its formal structure consists of food and chemical industries aimed at the domestic market. At the same time, the rural industry of Crimea consists of a number of uncoordinated small farms, which do not amount to enough investments and credits for the purchase of equipment, vehicles and fertilizers. Chaotic socio-economic policy reforms, an unregulated land market and the prevalence of corrupt operations in obtaining licenses for construction projects and purchase-and-sale transactions lead to the appearance of a huge shadow sector that is the dominating base of the contemporary economy of the Crimea.”* It can be concluded that, economic problems which arose from the absence of sustainable economy policies exacerbated the ethnic conflicts.²⁵ Besides, after the 1989, while the official Ukrainian policy was always in favour of the returning Tatars, but problems arose since Crimean Tatars had difficulties integrating into Crimean society and this resulted in conflicts with the resident population. They were not allowed to settle in their ancestral territories, it was difficult for them to find employment and their economic situation was bad.

²⁶Although the ineffective socio-economic policy of the Ukrainian state towards the region underpins prolonged tension between Kiev and Simferopol, the conflict is fundamentally connected to the Crimea’s disagreement over the geo-politics of the Ukrainian state. For instance, we can observe this paradox in the proposal of the former

²⁴ Tetyana Malyarenko, David J Galbreath, `Crimea: Competing self-determination movements and the politics at the centre` (2013) 65(5) Europe-Asia Studies 928.

²⁵ Doris Wydra, `The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination` (2004) 10(2) International Journal on Minority and Group Rights 120.

²⁶ Tetyana Malyarenko, David J Galbreath, `Crimea: Competing self-determination movements and the politics at the centre` (2013) 65(5) Europe-Asia Studies 912.

president Viktor Yuschenko to join the NATO Membership Action Plan in 2005 and the resulting Crimean parliament's declaration of Crimea as a 'free from NATO zone', calls for the abolition of Ukraine-NATO military exercises on the peninsula. I will mention detail of this point in the following paragraphs.

C) DOUBLE-CITIZENSHIP AND PASSPORT POLICY OF UKRAINE AND ITS INFLUENCE ON SELF-DETERMINATION QUESTION

²⁷In 1994, Ukraine started to issue the passports to citizens, replaced old Soviet passports. Nevertheless, Soviet passports were valid till 2004, although the majority of Ukrainians had already changed their passports by the end of the 1990s. The residents of Eastern Ukraine, in particular, from Donetsk, Lugansk and Crimea, and those, who have relatives in Russia were forced to choose between Russian and Ukrainian citizenships. Many in fact applied for both citizenships in order to benefit from social security, education and health systems, to ensure free movement, employment and other rights and privileges accessible for citizens of both states. The collapse of the passport services and broken connections between the internal affairs of both countries played in favour of this individual led strategy. In brief, double citizenship existed illegally but not officially despite double citizenship was officially forbidden in Ukraine. The blurred passport policies about double citizenship was also a political card for both Ukraine and Russia in terms of self-determination question notably in Crimea.

D) DEVELOPMENTS IN LAST TWO DECADES

²⁸Under the Constitution of Ukraine adopted in 1996, Ukraine had an asymmetric unitary state system. The status of Crimea and the power of local authorities were unique in Ukraine. The decision to restore the Crimean autonomous region, which previously existed between 1921-1945 and was renewed in 1991 in a referendum,

²⁷ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 926.

²⁸ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 920.

avoided any radicalisation or violence which would have led to a further separation of Crimea in the 1990s. However, the restoration of the autonomous region did not resolve the contradictions in legal status nor Ukrainian suzerainty over of Crimea. Moreover, the way in which the referendum question was formulated within the USSR as opposed to an independent Ukraine is legally questionable according to Malyarenko.

²⁹The Declaration of State Sovereignty of Crimea, adopted on 4 September 1991 by the Extraordinary Session of the Crimean Parliament as well as the Constitution of the Autonomous Republic of Crimea in 1994, which fastened the status of the Crimean autonomous region as a part of the Ukrainian state, together created a framework for future questioning of the territorial belonging of the Crimea. Finally, in the General Agreement between Russia and Ukraine signed in 1994, Russia recognized the territorial integrity of Ukraine within the current borders, including the Crimea. In turn, Ukraine agreed, at the time, to maintain non-aligned status.

We should focus on a question: Before the annexation of Russia, did a separatist thought exist among the Crimean people in reality?³⁰ Before the annexation, there were two theories about this issue. On the one hand, open secessionist conflict between Crimea and Kiev died out in the mid-1990s, as a result of an accommodation between Kiev and Moscow fostered by the OSCE High Commissioner of National Minorities. On the other hand, during the last decade the share of the republic's residents, supporting the idea of annexation to Russia, has grown to over 50%, thus, the social base for the separatist movement in the Crimea in the last decade still exists. But, what is the reality?³¹ In the meantime, According to Malyarenko, relations between the different conflicting parties inside Crimea, as well as Kiev and other actors(i.e. Russia), were hardly identified as critical or close to violence. Radical intentions or attitudes that might have potentially led to violent conflict on the peninsula were not widely spread or shared. Moreover, the total number of residents in Crimea - potential supporters of separation - was decreasing from 2009 to date of annexation. According

²⁹ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 921.

³⁰ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 919.

³¹ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 920.

to Malyarenko, there were two reasons which underpinned this phenomenon: First, in that time, as Ukrainian foreign policy changed away from that of a contentious relationship with Russia, the salience of the Crimea issue reduced. For example, more recently Ukraine agreed to extend the hosting of Russia's Black Sea Fleet. Secondly and more importantly is the domestic factor where Crimea experienced a greater sense of regional difference from the rest of Ukraine. This difference has led to a growing sense of what it means to be Crimean rather than Russian or Ukrainian. Accordingly, she argues that, longstanding dissociation of Kiev from Crimea directly impacted public opinion in Crimea and decreased separatist attitudes overall. It can be concluded that, Ukraine's foreign policy toward Russia was crucial for approach of Crimean People toward separation.

³²Since the General Agreement between Russia and Ukraine, the possibilities for radicalisation and violence in Crimea have been well covered in academic publications and public policy reports on Ukraine. The conflict potential of Crimea is comparable with other Ukrainian regions. However, the geopolitical importance of Crimea makes the situation unique and particularly crucial for security and the balance of power in the Black Sea Region.

³³We identify several actors who seek power and access to resources in Crimea: a)the local elite (both Slavic and Tatar), b)the central government and elite in Kiev(both ruling elite and opposition), and c)external forces, primarily referring to Russia. In the meantime and foreseeable future none of the above actors is interested in the extension of a Crimean separatist movement that would potentially lead to the secession of the territory from Ukraine. Rather, this constellation has arrived at an equilibrium of peace until the annexation of Russia in 2014.

³⁴However, that equilibrium was not sustainable. Taking into account the collective grievances and dissatisfaction of the population with the results of socio-economic reforms, the escalation or de-escalation of conflict in the republic depends on the relations between local elites and Kiev, along with the intensity and close involvement

³² Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 921.

³³ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 921.

³⁴ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 921.

of the central government with a solution for the socio-economic problems facing the autonomous region. Besides, Two further factors could disrupt the existing status quo: (1) changes in the demographic structure of the republic's population over the medium to long term, and (2) the dramatic weakening of the Ukrainian state and the resulting consequences of mass unrest.

³⁵For the Crimean(Pro-Russian)(Non-Tatar)elite, annexation to Russia was not an attractive scenario, because, they were representatives of different business interests throughout Ukraine(for instance, extensions of the Donbass, Dnepropetrovsk, Kharkov and Kiev areas). Crimean business elites are essentially sheltered while they remain in Ukraine. In case of annexation, This annexation would have made local mini-oligarchs uncompetitive before the large powerful Russian business groups. As has been seen elsewhere, competition against Russian state-supported monopolies such as GAZPROM and Alfa-Bank could be fatal for Ukrainian business. Therefore, the Crimean economic elite and parliamentary representatives (like their counterparts in Donetsk and Kiev) were fairly concerned about any integration with Russia, starting from membership in the Customs Union of Russia, Belarus and Kazakhstan, much less a move towards annexation. Ukrainian business concerns were the reasons economic and political elites and their commercial backing, were keen to maintain a broad autonomous region of the Crimea that guarantees their monopoly over the use of the republic's resources. Ironically, the possibility of further integration with Russia used to be widely played up by politicians as a way to generate electoral support, in direct contrast to their business and political interests on a wider scale.

³⁶ If we examine the Tatar minority, They were not interested in separation of Crimea from Ukraine. ³⁷On the other hand, in 1991, Tatars elected a Parliament(Kurultaj), which was not recognized by Ukrainian authorities. They boycotted the referendum of 1991 and did not acknowledge the autonomous status of Crimea, since it is seen as under Russian autonomy. The Tatars issued the declaration of the 'National Independence of the Crimean Tatar people' and also set up a separate draft on the

³⁵ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 922.

³⁶ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 922.

³⁷ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 121.

Crimean Constitution guaranteeing the representation of Crimean Tatars in Crimean State bodies. Until the elections of 1994 they held 14 seats in the Crimean Parliament, but this disproportionate representation is no longer provided for. At the beginning of the 1990s the political organizations of the Crimean Tatars were mainly led by persons that were born on Crimea before the deportation. However, according to Wydra, now a new young generation arose and it is more radical and demands more autonomous rights for the Tatars.³⁸ According to the Main Department of Statistics in the Republic of Crimea, the Crimean Tatars are about 243,000 (12.1% of the region's population), that was less than half the number of Ukrainians at 492,200 (24.4%) and five times less than Russians at 1,180,000 (58.5%) (2011). Before the annexation, Ethnic Russians and Ukrainians showed the same attitude to important political events in the country and more often behaved politically as one actor according to Malyarenko. The exceptional status of the largest ethnic minority in the Crimea, (the Crimean Tatars) gave certain privileges to Crimean Tatar elite and creates a 'bridgehead' for negotiations with the authorities in the autonomous region and Kiev. For the Crimean Tatars, these advantages would have been immediately lost if Crimea had been to join Russia, especially with its growing intolerance of Muslim minorities. Whereas, This phenomenon realized by annexation of Russia in 2014.³⁹ Thus, thought of the Crimean elite was to maintain a broad system of self- governance of the region inside Ukraine, while claiming for further development of the rights and privileges of the Tatar community.⁴⁰ Before the annexation, Crimean Tatars faced radical and armed attacks and the majority of them live under poor economic conditions. *Propiska* (Police practice) system also affected the Tatars. Ukraine did not recognize the *Medjlis* as a legal representative of the Tatar people and did not finance it, but did provide money to the Committee on the Return of Deported People. Also, Ukraine was heading for good relations with Tatars and their organizations as the Tatars were seen as allies that opposed separatist movements. On the other hand, they think that the Committee on the Return of Deported People is not really effective and demand to set up an

³⁸ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 922.

³⁹ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 923.

⁴⁰ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 121.

independent government organization that is subordinated not only to the Crimean Parliament, but also to the Mejlis.

Before the annexation,⁴¹ the Tatar elite was comparatively more stable than the Slavic elite, including the structure of the Mejlis, its status, leaders, representatives of the Tatar community in the local councils, general interests, strategy and policy that has not changed since their return from Central Asia. This current stability of Tatar elite has both positive and negative implications. Stability, continuity and adopted mechanisms of conflict prevention are among the positive implications of these changes. However, According to Malyarenko's opinion, at the same time, whereas the Crimean Tatars themselves were not homogeneous on their social and economic status, there was a segment of the Tatar community (socially vulnerable and radicalized one), which claim for stronger and uncompromising position of the Mejlis in negotiations with the Slavic community, the local and the central authorities.

⁴² In terms of Russian security policy, Crimea's importance derived from its strategic position as the main naval port of the Black Sea Fleet. When Ukraine became independent the partition of the Black Sea Fleet was therefore of crucial importance for both States as was the status of the city of Sevastopol. The decisions of the commandship of the Russian part of the Black Sea Fleet also fuelled the conflict on the status of the peninsula. In 1992, the commandant of the Black Sea Fleet wanted to dislodge all Ukrainian military units from Sevastopol. The struggle over competencies between Kiev and Simferopol was to be ended by an agreement. But this law was never issued, as Simferopol and Kiev could not agree on formalities. The Crimean side was convinced that because the Crimean Parliament had already accepted the law, it was not up to Ukraine to decide whether to ratify it or not. Kiev argued, that this would have meant that the Crimean Parliament was on the same level with the Ukrainian Rada, which was not the case. The Rada of Ukraine changed some articles of the law and named it 'On the Status of the Autonomous Republic of Crimea'. The aim to

⁴¹ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 931.

⁴² Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 10(2) International Journal on Minority and Group Rights 116.

resolve the ongoing conflicts could not be reached; on the contrary, it even strengthened the secessionist tendencies.

⁴³Although The former Ukrainian president of Ukraine Viktor Yushchenko attempted to have the Russian Black Sea Fleet withdrawn from Sevastopol after 2017,⁴⁴ in the term of presidency of Viktor Yanukovich in Ukraine, Russia's thought was secession and annexation is not necessarily optimal. Because, Russia and Ukraine signed the Kharkov agreements, cementing guarantees for the Russian Black Sea Fleet in Sevastopol till 2042. Furthermore, Closer economic integration of Ukraine with Russia in the framework of the Customs Union would also restrict the geopolitical freedom of Ukraine. In this light, 'the Crimean question' appeared second order in comparison to closer integration. Although the 'unification of the Russian land' has been an obvious priority of the Medvedev-Putin tandem, the risks of destabilisation as a result of possible Russian involvement in a conflict in Crimea were clearly understandable before the annexation. Crimea as a part of Ukraine, which is largely pro-Russian and "manageable", was obviously preferable for Russia, than the creation of a further flash-point in the problematic and unstable Black Sea region before the annexation.

⁴⁵Before the annexation, basis of instability and the escalation of violence in the Crimea can be identified with two main agents of separatism: (1)the pro-Russian Slavic majority and (2)the Russian State that through a foreign policy of sponsored pro-Russian non-governmental organisations and political parties realised a strategy of separation of Crimea from Ukraine. Moreover, maybe the most important element is the Russian Black Sea Fleet based in Sevastopol. Russian Black Sea Fleet already had capability to interfere in possible armed conflict between Kiev and pro-Russian militias of the Crimea before the annexation. It can be concluded that, fate of Crimea has always been linked with Russian Black Sea Fleet.

⁴⁶In the term of Yushchenko, The former Ukrainian president of Ukraine Viktor Yushchenko attempted to have the Russian Black Sea Fleet withdrawn from Sevastopol

⁴³ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 925.

⁴⁴ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 924.

⁴⁵ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 924.

⁴⁶ Tetyana Malyarenko, David J Galbreath, 'Crimea: Competing self-determination movements and the politics at the centre' (2013) 65(5) Europe-Asia Studies 925.

after 2017. Ukraine officials attempted to toughen the rules and disciplinary regulations for Russian soldiers and sailors in Sevastopol. With the arrival of Victor Yanukovich to the Ukrainian presidency however, Ukraine went through an important transition, including changes in foreign policy priorities, domestic humanitarian and cultural policies, a review of the official interpretation of Ukraine's modern history and renunciation of 'Ukrainianisation'. These changes undoubtedly contribute to decreasing separatist attitudes that were raised during the 'Orange revolution'. The prolongation of agreement on the Russian Black Sea Fleet till 2042 cemented this tendency for de-escalation. According to opinion polls in May 2009, 32.3% of Crimean residents supported an idea of separation of Crimea from Ukraine. In May 2011, this rate fell to 24.4%. Furthermore, the number of residents who would support a plan for a Crimean Russian national autonomous region inside of Ukraine has also decreased (19.5% in 2009, 2.3% in 2011). Instead, the percentage of residents supporting a broad autonomous region inside Ukraine has increased to 30.9%.

⁴⁷Whereas, in November 2013, Yanukovich did not sign the EU-Ukraine partnership treaty. Afterwards, demonstrations began by opposition. After the reactions by opposition, government resigned. Then, pressures on Yanukovich increased for the reason of that Yanukovich considers the interests of Russia. Eventually, Yanukovich left the Ukraine and he has been overthrown. With 25 May elections, Petro Poroshenko inaugurated. As a result of that, the conflict arose between militias in favour of Russia and army of Ukraine. The unrest in Crimea arose in February 2014. Demonstrations began by protesters in favour of Russia against new administration in Kiev. Finally, armed troops which is called "forces of self-defence" by Putin captured the governmental institutions in Crimea.

⁴⁸On 27 February 2014, amid tensions in the region during the Ukrainian revolution, the Supreme Council of Crimea, voted to hold a referendum on the status of Crimea. That poll, originally intended for May, was pre-empted on 11 March by the joint Declaration of Independence of the Republic of Crimea by the Supreme Council of

⁴⁷ Ceren Gurseler, 'Kırım'ın "Self-Determinasyonu" Nasıl Yorumlanabilir?' (2014) 43 Journal of Black Sea Studies 89.

⁴⁸ Cornelia Navari, 'Territoriality, self-determination and Crimea after Badinter' (2014) 90(6) International Affairs 1315.

Crimea and the Sevastopol City Council. The legality of the declaration, made in the presence of armed irregulars who had surrounded the council building, has been disputed, but the resultant referendum of 16 March, though abruptly organized, results were reported as a 96% vote in favour of joining Russia. On 17 March the Supreme Council declared its independence from Ukraine, and Russia recognized Crimean independence the same day.

C) CONCLUSION

To sum up briefly, along with these material facts, Ukraine's approach on this issue that Crimea is integral part of the state of Ukraine and Russia's use of force was an annexation and this action was an intervention of territorial integrity of Ukraine. According to Russian state and Russian population of Crimea, Russia's use of force effectuated the Russian population's right to self-determination, especially in terms of external self-determination. Lastly, Crimean Tatars have always demanded autonomous rights in terms of internal self-determination. On the other hand, they see this use of force was an annexation and intervention of territorial integrity of Ukraine likewise the view of Ukraine. Besides, after the annexation, under the regime of Russia, They have faced deterioration of their rights in terms of internal self-determination. In the next chapter, I will try to give broader insight about the claims and approaches of actors about this issue.

CHAPTER 2: CONFLICTING ARGUMENTS OF ACTORS IN ACADEMIC ENVIRONMENT AND THE GENERAL THEORY OF SELF-DETERMINATION

In this chapter, in the first section, I will try to evaluate the claims and approaches of actors in terms of this dispute. Besides, I will try to give approaches of academic works which are opposite or in favour of the claims of actors. In the second section, I will try to expose the general theory of self-determination in public international law. Then, I will try to draw a conclusion about the settlement of the dispute and '*de lege ferenda*'

in Crimea by juxtaposing the claims, legal facts , approaches of actors and general theory of self-determination.

A) CONFLICTING CLAIMS AND APPROACHES OF ACTORS IN THE DISPUTE OF CRIMEA

A) UKRAINE

⁴⁹Since the independence, Ukraine has always been under the shadow of Russia. In that picture, Ukraine began to face between the 'East' and 'West', for the economic problems, for the difficulties of transformation and for a variety of problems such as corruption and the acceptance of its own statehood. But it is also a symbol for the conflicts between different ethnic groups and their quest for self-determination likewise in the Crimea.

⁵⁰It's worth noting that, in 1954, Crimea became part of Ukraine by issuing of law 'On the transition of the Crimean Oblast from the RSFSR to the Ukraine SSR'. In that point, two elements are critical: 1) This law was ratified with the *consent* of RSFSR. 2) At the time of taking over the territory by Ukraine, %90 of population of Crimea were Russians. Among academic works, there are many debates about the main reason and characteristic of this taking over. Some of them suggest; main reason of that transfer was the 300th anniversary of the contract of Perejaslav. Russian side claims that it was only a donation of Russian Federation, therefore Crimea was not actually a part of Ukraine. Because, Sevastopol had a special economic and administrative status within the RSFSR.⁵¹Besides, As I mentioned before in 1st chapter, according to Putin's view, this taking over was '*like a loaf of bread*'. In other words, it was reward to Communist Party of Ukraine for its loyalty in the process of de-Stalinization in that era.

⁴⁹ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 111.

⁵⁰ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 113.

⁵¹ Cornelia Navari, 'Territoriality, self-determination and Crimea after Badinter' (2014) 90(6) International Affairs 1313.

⁵²One key element is in favour of the claims of Ukraine: In the 1 December 1991 referendum on the independence of Ukraine; in the Crimea, 54% of voters were in favour of independence. It can be concluded that, majority of Crimean population supported the independence of Ukraine.

⁵³Furthermore, since the past, Ukraine has always regarded any interference of Russia as an infringement of the November 1990 treaty between Russia and Ukraine and CIS Agreement(For instance; in January 1992, when the question about the legitimacy of the donation of the Crimea to Ukraine in 1954 was on the agenda of the Russian Duma.)

⁵⁴If we examine the Constitution of Ukraine(1996), the general principles(Chapter1, Articles1-20) contain important provisions for the Autonomous Republic of Crimea. Article(2) stipulates that the sovereignty of Ukraine extends throughout its entire territory. This territory is indivisible. There is a single citizenship in Ukraine(Article4). The State language is Ukrainian, but the free development of Russian and languages of ethnic minorities is guaranteed.(Article10). The cultural and religious identity of indigenous people and national minorities will be promoted(Article11). The Autonomous Republic of Crimea is part of the administrative and territorial structure of Ukraine, besides oblasts, districts, cities, city-districts, settlements and villages(Article133). ⁵⁵The Autonomous Republic of Crimea is entitled to have its own constitution, which is adopted by Parliament of Crimea and has to be approved by the Parliament of Ukraine. Normative acts of Crimea and decisions of the Council of Ministers shall not contradict the Constitution or the laws of Ukraine. Laws of Crimea have to be adopted in accordance with the Constitution of Ukraine, the law of Ukraine, and the acts of the Ukrainian president and the Cabinet of Ministers(Article135).

⁵² Doris Wydra,` The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination` (2004) 114.

⁵³ Doris Wydra,` The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination` (2004) 115.

⁵⁴ Doris Wydra,` The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination` (2004) 124.

⁵⁵ Doris Wydra,` The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination` (2004) 125.

⁵⁶In the issue of secession, even if, international law permits people's right to secession, international law definitely prohibits secession when it results from a violation of a fundamental norm such as the prohibition of aggression. Case of Crimea is explicit sample of this phenomenon. This view is absolutely in favour of Ukraine. Military intervention of Russia toward Crimea damaged the main principle of UN Charter which is keeping the peaceful relations between equal states.

⁵⁷Tolstykh evaluates and establishes the main structure of self-determination in the basis of 3 ideas: Sovereignty, General Will, Human Rights. In the basis of sovereignty, he suggests that it is difficult to justify the secession of Crimea by the idea of sovereignty. Even if it is based on a referendum, declaration of independence does not create a state; only effectiveness matters. Crimea could be considered as a State only if it had achieved in effectively defending its independence in relation to the central Ukrainian government. However, according to him, this requires that the independence arises without any *intervention*. In the same way, it is difficult to justify this secession in the basis of human rights. R. McCorquodale states: “ *The situation in Ukraine is such that the new government is just starting to be in position to govern. It is trying to restore law and order. It has taken **no major military or other oppressive actions against the people of Crimea**. There are at this time no clear actions by it that would be sufficient to justify under international law any independence or merger with another state by the people of Crimea.*” For C. Marxsen; “ *The right of self-determination requires states to respect minority rights, but **does not grant** a sub-entity of states the right to **freely choose to which state a territory shall belong**.*” Conversely, according to Tolstykh, Crimean situation in the context of the general will leads to different conclusions, according to which the **coup** in Kiev resulted in the **breaking of the social contract and exclusion of Crimean population from political communication**. For instance, the coup removed from power the president who been elected in 2010 by 78.24% of voters in Crimea and 84.35% in Sevastopol. Being excluded from the political communication, the population of Crimea found itself in **natural state**, and **formed its own general will**, aiming at **reunifying with**

⁵⁶ Theodore Christakis, 'Self-Determination, Territorial Integrity and *Fait Accompli* in the Case of Crimea' (2015) 75 ZaoRV 90.

⁵⁷ Vladislav Tolstykh, 'Three Ideas of Self-Determination in International Law and the Reunification of Crimea with Russia' (2015) 75 ZaoRV/HJIL 134.

Russia.⁵⁸Besides, according to author, the behaviour of the Western states in Ukraine in the winter 2013/2014 may be considered as **interference** in the formation of the **general will** and therefore- as a **violation of the principle of non-intervention**.(solidarity with Ukrainian opposition and participation in its actions, holding meetings with representatives of the opposition, usage of the media to support the opposition and discredit the government). The intervention was one of the main factors that lead to the coup, the separation of Crimea and the confrontation between Russia and Ukraine. ⁵⁹It can be concluded that, in the constructing the legal positions of actors(Western States, Russia), West uses the idea of human rights and the idea of sovereignty, meanwhile Russia uses the idea of general will.

⁶⁰ Russia claimed that Russian population was under duress, hence, military intervention aimed to protect Russian nationals in the concept of self-defence. There is unwritten exception article 2(4) of the UN Charter in Customary International Law. However, this exemption only offer a very narrow justification for the use of force: 1) There must be proof of the life of nationals is in danger on territory of another state. 2) Another state must be unwilling to protect the foreign nationals which are in danger. In that case, Russia carries the burden of proof and has provided no concrete evidence that such violations have actually occurred. Thus, explanation of aim to protect the Russian nationals by the Russian Council's chairperson is irrelevant in terms of international law according to Marxsen.

⁶¹ What's more, according to Marxsen, organizing the referendum on Crimea's accession to Russia was illegal under the Ukrainian constitution. Article 2 of the constitution establishes that "Ukraine shall be a unitary state" and that the "territory of Ukraine with its present border is indivisible and inviolable." This is also approved in regard to Crimea by Chapter X of the constitution, which provides for the autonomous status of Crimea. Article 134 sets forth that Crimea is an "inseparable constituent part of Ukraine." The autonomous status allows to hold referendums in Crimea. On the other hand, these rights are **limited to local matters**. The constitution clarifies clear

⁵⁸ Vladislav Tolstykh, 'Three Ideas of Self-Determination in International Law and the Reunification of Crimea with Russia' (2015) 75 ZaoRV/HJIL 136.

⁵⁹ Vladislav Tolstykh, 'Three Ideas of Self-Determination in International Law and the Reunification of Crimea with Russia' (2015) 75 ZaoRV/HJIL 138.

⁶⁰ Christian Marxsen, 'The Crimea crisis- an international law perspective' (2014) 74 ZaoRV 374.

⁶¹ Christian Marxsen, 'The Crimea crisis- an international law perspective' (2014) 74 ZaoRV 380.

that **alterations** to the **territory** of Ukraine **require an all-Ukrainian referendum**. However, it's worth noting that, violation of Ukrainian law cannot be deemed as a violation of international law.

⁶²In the issue of the legality of the Declaration of Independence, Supreme Council of Crimea tried to legitimize its declaration by attributing the ICJ's advisory opinion on Kosovo's declaration of independence. However, according to Marxsen, first of all, Kosovo opinion only had a rather narrow scope. ICJ neither addressed the general question if and under which circumstances a right to secession might arise nor if a such a right existed in regard to Kosovo. Also, this was not covered by the General Assembly's question. The court limited the scope of its opinion to the question whether the declaration was in violation under international law. Second, according to author, Kosovo's unilateral declaration of independence did not violate norms of international law according to Court. Because, the underlying rationale is that the principle of territorial integrity only applies in the relations between states according to author. It does not bind actors that are themselves not sovereign states, such as internal secessionist movements according to ICJ. However, I do not agree with the second approach. Because, in my opinion, this approach is against the main purpose and spirit of UN Charter article 2 which proposes the keeping the peace around the world. In summary, author concludes that applying the principles of Kosovo opinion leads to illegality of Crimean declaration of independence.

⁶³In the issue of unilateral secession and remedial secession, Driest evaluates the unilateral secession from Ukraine as illegal. She states that beyond the context of decolonization, the right of self-determination **does not include a general right to unilateral secession** and demonstrates that **contemporary international law does not recognize a right to remedial secession**. She adds that such a right does exist in the Crimea case, the threshold in this regard is not met. Last but not least, she remarks that while the principle of **territorial integrity discourages unilateral secession**, it does **not** actually **prohibit** it. Nevertheless, there are some cases in which an attempt

⁶² Christian Marxsen, 'The Crimea crisis- an international law perspective' (2014) 74 ZaoRV 383.

⁶³ Simone F. van den Driest, 'Crimea's Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law' (2015) 62(3) Netherlands International Law Review 329.

at unilateral secession is regarded to be illegal in view of the circumstances.⁶⁴ In the issue of balance between territorial integrity and right to external self-determination, she states that Article 2(4) of the UN Charter, the Friendly Relations Declaration and various other international instruments, this fundamental principle is seen to **safeguard ‘the territorial framework of independent states’**. Therefore, states often have contended that beyond the de-colonization process, unilateral secession is incompatible with the territorial integrity of States. Last but not least, various soft law instruments like the Helsinki Final Act contain a reference to self-determination beyond the de-colonization as well, but, on the other hand these references usually include ‘safeguard clause’ emphasizing the **exercise** of the right to self-determination **should be limited to prevent threats to the territorial integrity of States**.

⁶⁵In addition, Both states pledged to ‘respect each other’s territorial integrity, and confirmed the inviolability of borders existing between them in 1997 Treaty on Friendship. Does Russia’s annexation and Crimea’s secession breach this treaty? If there is a breach of a treaty, it would bring the international responsibility of Russia in terms of the principle of *pacta sunt servanda* which is specified in Article 26 of Vienna Convention on the Law of Treaties.

⁶⁶Also, Driest points out that, groups which wishing to secede from the State formally often invoke a right to self-determination of people. While the Crimean authorities did not conspicuously do so in the declaration of independence. This is so crucial point to draw attention in favour of Ukraine.

⁶⁷In the issue of remedial secession, Driest advocates that Russia’s claim of remedial secession cannot be upheld on the basis of both legal and factual grounds. First, the doctrine of remedial secession is highly controversial and cannot be said to be part of

⁶⁴ Simone F. van den Driest, ‘Crimea’s Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law’ (2015) 62(3) Netherlands International Law Review 336.

⁶⁵ Simone F. van den Driest, ‘Crimea’s Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law’ (2015) 62(3) Netherlands International Law Review 332.

⁶⁶ Simone F. van den Driest, ‘Crimea’s Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law’ (2015) 62(3) Netherlands International Law Review 334.

⁶⁷ Simone F. van den Driest, ‘Crimea’s Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law’ (2015) 62(3) Netherlands International Law Review 351.

positive international law, be it customary law or otherwise. Second, even when assuming the existence of a right to remedial secession, it should be concluded that such right would not apply in the case of Crimea according to her. She states that , according to doctrinal literature, the right to **remedial secession** would only **emerge** under **exceptional circumstances** such as the denial of meaningful internal self-determination, the existence of serious human rights violations, and structural discriminatory treatment of the group. These samples are generally mentioned as prerequisites for such a right. Accordingly, according to Driest, it is clear that Crimea does not meet this high threshold. She claims that there are no indications that Crimea's status as an Autonomous Republic within Ukraine was inadequate for enabling the meaningful exercise of the right to internal self-determination. What's more, there have been no reports of gross human rights violations or structural discriminatory treatment of Crimean population by the Ukrainian authorities. In that point, she states: *"The approval of the draft bill of 23 February 2014, which aiming to define the Ukrainian language as the sole official State language within Ukraine, might have fuelled the fear of discriminatory treatment and oppression of the ethnic-Russians of Crimea and may even conflict with minority right standards. However, it cannot reasonably be said that this circumstance meets the high standard for an alleged right to remedial secession-let alone that it meets the even more radical standard that previously set by Russian Federation itself."* She concludes that it does not even come close to the 'extreme circumstances' under which the Russian Federation accepted a claim for remedial secession and Crimean authorities could not claim a right to remedial secession, not even *de lege feranda*.

⁶⁸Lastly, Driest mentions a good point. While 1997 Black Sea Agreement allows the deployment of Russian troops in Crimea, However, this treaty also stipulated that those troop are to respect Ukrainian law and sovereignty , and do not interfere in the internal affairs of Ukraine. This point is in favour of Ukraine.

⁶⁹What's more, Cwicsinskaja puts good questions about the transition period of independence and accession to Russia of Crimea in terms of Russian internal law.

⁶⁸ Simone F. van den Driest, 'Crimea's Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law' (2015) 62(3) Netherlands International Law Review 358.

⁶⁹ Natalia Cwicsinskaja, 'The Legality and Certain Legal Consequences of the "Accession" of Crimea to the Russian Federation' (2014) 34 Polish Yearbook of International Law 69.

First, Putin signed the executive order on the recognition of Republic of Crimea as a sovereign and independent state, referring the result of referendum. However, according to results, Crimea should be a part of Russia, which is not suitable with the status of “sovereign and independent state”. The issue of state independence was not even put to a vote during the Crimean referendum. Second, according to Russian law a foreign state takes the initiative for accession to Russian Federation and this particular foreign state has to sign an accession agreement. Thus, in order to comply with this order, and with Crimea being an integral part of the state of Ukraine, an initiative of this foreign state is initiative by Ukraine which would be required. On the other hand, Russia admitted the result of referendum means as independence of Crimea, Therefore, according to Russia, international agreement was signed with the state known as the Republic of Crimea. This is a disputable position, because, the question raised in the referendum did not refer to the issue of independence, but only attendance to Russia. Consequently, according to author, Crimean accession process were artificially created by Russia. Besides, she states that this position seems highlighted by the astonishing speed of the recognition of the Crimea as a sovereign state by Russia. That act took place the same day as adoption of the resolution “On the independence of Crimea”. Actually Russia did not have time to even verify effectiveness of power in Crimea.

⁷⁰ Last but not least, Cwicsinskaja points out that contemporary international law is moving the direction of requiring that all territorial realignments be democratically justified, preferably a direct democratic decision, i.e. by territorial referendum. It is necessary that such a referendum comply with basic democratic standards for holding the referendums. In that point, these standards can be found in such documents as Council of Europe Parliamentary Assembly Recommendation 1704 (2005) of 28 April 2005, and the Venice Commission, “Code of Good Practice on Referendums” of 20 January 2009. In these documents, the most significant legal standards are: peacefulness; universal, equal, free and secret suffrage; the framework conditions of freedom of media and neutrality of the authorities; and last, the presence of international referendum observers. In the case of Crimea, first of all, referendum have been arranged in an exceptionally short time, did not satisfy the above-mentioned

⁷⁰ Natalia Cwicsinskaja, ‘The Legality and Certain Legal Consequences of the “Accession” of Crimea to the Russian Federation’ (2014) 34 Polish Yearbook of International Law 74.

international standards. It was held in the under the control of undefined troops, which later proved to be Russian forces. Moreover, the referendum was characterised by a lack of transparency of the composition of voters as well as electoral commissions. Neither freedom of expression nor freedom of the press were guaranteed, and there was also an absence of internationally accepted observers. The Venice Commission declared that “ a number of circumstances make it questionable whether the referendum of 16 March 2014 could be held in compliance with international standards.”

B) RUSSIA

⁷¹It's worth noting that, when Ukraine became an independent state, for Russia it was hard to accept an independent Ukrainian State. Because, Russia has many geo-political interests in Ukraine: Russian population in Ukraine, Black Sea Fleet in Crimea etc. Beyond this fact, Russia has historical links with Ukraine because of Russian history.⁷²Also, when the Russia and Republic of Crimea signed the treaty of “ On the accession of the Autonomous Republic of Crimea and the creation as new subjects of the Russian Federation”, firstly, parties decided about the reunification, recalled the historic community of their people and took into account the existing connections between them. Thus, the public in Russia and Crimea perceives this act as a symbol of the restoration of **historical justice** and the realization of a historical title to **reunite the people of Crimea with their historical homeland-Russia**. Also, Putin pointed out the **historical community of the peoples of Crimea and Russia**. Also, author(Kapustin) defends this historical link thesis in spite of question marks from existence of ancient Turkic History of Crimea. Accordingly, he sees the division of Russia and Crimea was **artificial**.

⁷³Furthermore, Kapustin advocates that the main international legal basis for the conclusion of the Treaty on the accession of Crimea Russia lies in the principle of

⁷¹ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 111.

⁷² Anatoly Kapustin, 'Crimea's Self-Determination in the Light of Contemporary International Law' (2015) 75 ZaoRV/HJIL 113.

⁷³ Anatoly Kapustin, 'Crimea's Self-Determination in the Light of Contemporary International Law' (2015) 75 ZaoRV/HJIL 114.

equal rights and self-determination of peoples as enshrined in the UN Charter. According to him, all people have an inalienable right to freely and without external interference determine their political status and to follow their economic, social and cultural development and each State has duty to respect this right. He draws a conclusion that the right of self-determination of people of Crimea has been realized by free and voluntary will of the people in the Crimean referendum in 2014. Consequently, in that referendum Crimea decided to reunite with Russia. In summary, he emphasized the general will of the people of Crimea to legitimize this unification. He states that, Ukraine did not allow the people of Crimea to freely determine it will by means of internal democratic procedures(plebiscite, referendum). And he suggests that this can be interpreted in the spirit of Friendly Relations Declaration 1970 as depriving a people of the right to self-determination. He concludes that this coercion toward internal self-determination brings into play the right of external self-determination. In other words, he interpreted this independence and accession treaty as a “remedial secession”.

⁷⁴ If we go back to historical background, In the 20 January 1991 referendum, %93.2 of the voters favoured the Crimea as a member of *USSR* and as a member of the Union Treaty. In accordance with this result, the Autonomous Republic of Crimea was established within the territory of Ukraine. Unlike in 1921, the Autonomous Republic was not established within the framework of the Russian Federation, but within the USSR. ⁷⁵However, according to one Russian theory(Pikhovshek), the autonomy of Crimea never before existed on the territory of Ukraine, it was established and liquidated within the borders of the Russian Federation, thus , **no legal connection** between USSR within the Russian Federation and the Autonomous Republic of Crimea in Ukraine can be drawn.⁷⁶Also, Kapustin states that result of this referendum meant independence of Crimea from Russia and Ukraine and this solution was recognized by both of them, but has not been implemented due to the collapse of the USSR. Moreover, according to Kapustin, impediton of Supreme Council of Ukraine the declaration and act of independence of Supreme Council of Crimea in 5.5.1992

⁷⁴ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 113.

⁷⁵ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 114.

⁷⁶ Anatoly Kapustin, 'Crimea's Self-Determination in the Light of Contemporary International Law' (2015) 75 ZaoRV/HJIL 110.

was also impeding of people of Crimea's **right to external self-determination**.⁷⁷ He concluded that unilateral determination of the legal status of Crimea by the government of Ukraine brought significant restrictions on the rights of people.

⁷⁸in January 1992, when the question about the legitimacy of the donation of the Crimea to Ukraine in 1954 was on the agenda of the Russian Duma, it drew on the decree of the Soviet of the Russia Federation from the year 1948 to prove that Sevastopol had a special economic and administrative status within the RSFSR and had, thus, not become a part of Ukraine when Crimea was donated to Ukraine.

⁷⁹Besides, According to Kapustin, transfer of Crimea to Ukraine from Russian Federation in 1954 was a purely domestic administrative matter. And the transfer of Crimea to Ukraine did not take into account the will of the population living there, especially **no referendum was held** on the issue. Furthermore, he adds that according to Russian scholars, this transfer were undertaken by public authorities by RSFSR who were not competent to decide such questions. Therefore, they were in violation of constitutional law of RSFSR.

⁸⁰Christakis points out the contradictions of states within dilemma of choice between self-determination and territorial integrity. States exploit from this dilemma in favour of their political interests in international legal area. In other words, It provides states with the opportunity to "ride two horses at the same time". Hence, states could embrace "self-determination" of some groups and support in one way or another separatist claims compatible with their interest, while proclaiming that the principle of territorial integrity prevails at home or in the territory of friends and allies. In that point, Russia is in same contradiction especially in the case of Crimea. Especially in the 1990s, Russia was big champion of the principle of respect for territorial integrity of States (when it was fighting the separatist attempts in Chechnya and Tatarstan), suddenly began claiming that the principle of self-determination (external) of Russian speaking populations in Crimea prevails over the territorial integrity of Ukraine.

⁷⁷ Anatoly Kapustin, 'Crimea's Self-Determination in the Light of Contemporary International Law' (2015) 75 ZaoRV/HJIL 111.

⁷⁸ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 117.

⁷⁹ Anatoly Kapustin, 'Crimea's Self-Determination in the Light of Contemporary International Law' (2015) 75 ZaoRV/HJIL 109.

⁸⁰ Theodore Christakis, 'Self-Determination, Territorial Integrity and *Fait Accompli* in the Case of Crimea' (2015) 75 ZaoRV 75.

⁸¹These “double standards” policies were also used by Western Countries especially in the case of Kosovo.

⁸²Putin insisted several times that there were no “annexation” of Crimea by Russia, it was just an exercise of self-determination by the people of Crimea that Russia had to take into consideration. However, Christakis states that in principle there is no right to external self-determination outside of the **context of decolonization**. Besides, he points out that Russia also shared this view according to which there is no right to external self-determination in the post-colonial world. ⁸³Russia never suggested such an interpretation in its understanding of Article 1 of ICCPR. Conversely, reports show that Russia seemed to consider that self-determination outside the colonial context only has an “internal dimension”. Also the Russian delegate Kovalev affirmed that according to Russia it was impossible to interpret international instruments on self-determination in a way that could threaten the territorial integrity of States. Besides, if we examine the internal law of Russia, Constitution of 1993 is harshly against the view of unilateral secession. In the same way, Russian Constitution Court’s decisions concerning Tatarstan(1992) and Chechnya(1995) referred to international law and para. 7 of the Friendly Relations Declaration, to conclude that Article 66 of the Russian Constitution did not recognize a right to secession, was in accordance with universally recognized principles concerning the right of nations to self-determination. ⁸⁴During the same period Russia was also acting against unilateral secession at the international level. Russia and other CIS member countries signed “Memorandum on the Maintenance of Peace and Stability in the CIS”. In this document, CIS States declared that “they shall take measures to put a stop to any manifestation of separatism”. After the recognition of Kosovo by Western States, Russia’s official position to secession seemed to change. Russia put forward the theory of remedial secession first time in 2008. Because, Russia had to justify its decision to recognize Abkhazia and South Ossetia in that time. However, also remedial secession is irrelevant for case of Crimea.

⁸¹ Theodore Christakis, ‘Self-Determination, Territorial Integrity and *Fait Accompli* in the Case of Crimea’(2015) 75 ZaoRV 75.

⁸² Theodore Christakis, ‘Self-Determination, Territorial Integrity and *Fait Accompli* in the Case of Crimea’(2015) 75 ZaoRV 80.

⁸³ Theodore Christakis, ‘Self-Determination, Territorial Integrity and *Fait Accompli* in the Case of Crimea’(2015) 75 ZaoRV 86.

⁸⁴ Theodore Christakis, ‘Self-Determination, Territorial Integrity and *Fait Accompli* in the Case of Crimea’(2015) 75 ZaoRV 87.

Because, in that time, there was no oppression or armed attack by Ukraine against Russian population in Crimea.

⁸⁵Moreover, Russia also asserted historical arguments about self-determination of Crimea. However, does right of self-determination have retrospective effect? If the answer is yes, What date will we go back to? Because, Crimea was Russian only from 1783 to 1954. Before that, Crimea was vassal of Turkey for centuries. Beyond this fact Turkic peoples were in there for thousands of years. Thus, if we accept the retrospective effect of claiming right of external self-determination, Tatar Turks have more much right to claim external self-determination than Russians if we think the history.

⁸⁶Western States claimed that referendum in Crimea for declaring independence was unlawful. Actually it was not unlawful under international law. Because, no international treaty or practice of customary international law or soft and hard law document impede the right to secession. It was only unlawful under Ukrainian law. It violated the Ukrainian constitution. But this violation was not binding in international law. For these reason, this point is in favour of Russia.

⁸⁷With respect to prohibition on the use of force to acquire territory, Russia's official claim and Putin's adoption of strategic denial is that "*Russia's Armed Forces never entered Crimea; they were already in line with an international agreement.*" Significantly, he denied that the actions of the unidentified forces in Crimea, whereas they were evidently members of the Armed Forces of Russian Federation. Consequently, Russia tried to justify its military intervention, in other words, military aggression or use of force by way of this method.

⁸⁸Another claim and approach of Russia is that "*an affirmative right of military intervention to protect Russian nationals abroad.*" In that context, Russia asserts that millions of Russian people live in Ukraine and Russia has right to protect their interests in case of Ukraine's fail to protect their rights. Therefore, Ukraine failed to

⁸⁵ Theodore Christakis, 'Self-Determination, Territorial Integrity and *Fait Accompli* in the Case of Crimea' (2015) 75 ZaoRV 85.

⁸⁶ Theodore Christakis, 'Self-Determination, Territorial Integrity and *Fait Accompli* in the Case of Crimea' (2015) 75 ZaoRV 91.

⁸⁷ William W Burke-White, 'Crimea and the international legal order' (2014) 56(4) Survival 68.

⁸⁸ William W Burke-White, 'Crimea and the international legal order' (2014) 56(4) Survival 68.

protect Russian people's interests and Russia had right to military intervention to protect the Russian people's interest in Ukraine.

⁸⁹Besides, Putin claimed that, Russian population in Crimea was under the duress of Ukrainian government. And this government impeded the right of external self-determination of 1.5 Million Russians of 2.2 Million people of Crimea.⁹⁰In terms of international law, the rescue of national that are in danger on the territory of another state is partly regarded as self-defence under Article 51 of UN Charter or , alternatively, as an unwritten customary international law practice exception of the prohibition of the use of force as provided by Article 2(4) of UN Charter. On the other hand, main principle of right to self-defence is existence an armed attack against a state. Two question arises: First, Can we extend the content of the concept of state which specified in the article 2(4) to include nationals of a particular state which reside in another country's territory? If the answer is yes, Was there an armed attack on Russian population of Ukraine by Ukraine government? Those are debated questions.⁹¹Actually one point is in favour of Russia. Before the annexation, when the pro-European interim government came into office, government were planning to ban the Russian as an official language within Ukraine by approving a Draft Bill which would revoke the 2012 State Language Policy Bill. Nonetheless, there was not an organized armed attack by Ukrainian government.

⁹²Putin claims that "the Crimea referendum was fair and transparent, and the people of Crimea clearly and convincingly expressed their will and stated that they want to be with Russia". In reality, there are two blurred questions about that referendum: 1) Did Crimean people know that "what would they vote for?" and "What would outcomes of Referendum be?". Because, in reality, there was a little debate as to what was to be decided in the referendum and even had mere days before the vote allowed the people of Crimea enough time to digest that choice. Also, in the referendum only simply asked voters to choose whether to reunify 'Crimea with Russia as subject of the Russian Federation' or to restore '1992 Crimea constitution and the status of Crimea as part of

⁸⁹ William W Burke-White, 'Crimea and the international legal order' (2014) 56(4) *Survival* 70.

⁹⁰ Christian Marxsen, 'The Crimea crisis- an international law perspective' (2014) 74 *ZaoRV* 372.

⁹¹ Simone F. van den Driest, 'Crimea's Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law' (2015) 62(3) *Netherlands International Law Review* 332.

⁹² William W Burke-White, 'Crimea and the international legal order' (2014) 56(4) *Survival* 71.

Ukraine.’ In that picture, also referendum omitted the choices of remaining part of Ukraine under the current constitutional position. Because, this issue was about constitutional order of Ukraine, accordingly, this issue was relevant to all of people of Ukraine. 2) Did referendum take place without any duress of Russian Armed Forces? This is so blurred question.

⁹³In the issue of remedial secession of Crimea, Kapustin attributes the legitimacy of this remedial secession to **UN Charter of 1970 (the Friendly Relations Declaration 1970)**. Within the frame of relevant statement in this declaration, he states: “*While all other fundamental principles of international law set out the rights of obligations of states, the principle of self-determination of peoples proclaims not only rights and obligations of states **but also rights of non-state actors – namely of the peoples.***” Moreover, ⁹⁴ He adds that ICJ practices have acknowledged the right to self-determination of **peoples as valid under international law**. In the light of this argument, Kapustin tries to legitimize the unilateral secession of Crimea by asserting that **the principle of self - determination of peoples has become a widespread accepted norm of international law, in other words, a norm of customary international law**. According to him, this fundamental principle provides universally recognized rights of peoples to self-determination, giving the people the right to freely determine, without external interference, their destiny, **including the right to secede from the state**. ⁹⁵ According to this view, he asserts that Kosovo was not the only sample case of remedial secession, after the Kosovo, the separation of Abkhazia and Ossetia from Georgia in 2008 and now the Crimean case of 2014 may be deemed as **emerging international practice**. To sum up briefly, ⁹⁶ he asserts that Friendly Relations Declaration 1970 had gaps and uncertainties about the practice of right to self-determination. But, evolution of **right to self-determination of peoples** has become as a norm of customary international law by **international practices**.

⁹³ Anatoly Kapustin, ‘Crimea’s Self-Determination in the Light of Contemporary International Law’ (2015) 75 ZaoRV/HJIL 102.

⁹⁴ Anatoly Kapustin, ‘Crimea’s Self-Determination in the Light of Contemporary International Law’ (2015) 75 ZaoRV/HJIL 104.

⁹⁵ Anatoly Kapustin, ‘Crimea’s Self-Determination in the Light of Contemporary International Law’ (2015) 75 ZaoRV/HJIL 107.

⁹⁶ Anatoly Kapustin, ‘Crimea’s Self-Determination in the Light of Contemporary International Law’ (2015) 75 ZaoRV/HJIL 108.

Consequently, this norm filled the gaps and clarified the uncertainties in the declaration.

⁹⁷ Another claim of Russia is that, Yanukovych was the formal and legitimate president of Ukraine and before he fled, he invited to Russia to intervene. In that point, Russia pointed out that removal of him from office was not in accordance with the Ukrainian constitutional provisions.

C) CRIMEAN TATAR TURKS

⁹⁸ Crimean Tatar Turks have always seen themselves as indigenous people of Crimea.

⁹⁹ Since 1991, The *Qurultay* claims that Crimean Tatars as the only native people in the Crimea, Therefore, they think that they must have the exclusive right of self-determination and thus be entitled to define the political status of Crimea notwithstanding their minority position. In making this claim, the *Qurultay* refers to international law and the instruments concerning native peoples and their collective rights. Furthermore, Osipov states: *“Among the short-range demands for the Crimean Tatar leaders have been quotas for Crimean Tatar recruitment into the Crimea’s representative and administrative organs on all levels ranging from %33 to %50 of all positions. Since the Qurultay and its leaders evade any clear explanations of what form the Crimean Tatars rule over the population consisting of other ethnicities might take and by what means it can be established., this feeds suspicion and distrust among the local policy-makers and the population at large.”* However, a question arises. What is the demand of Tatars? Is it independent state of Crimea which would belong to Crimean Tatars? Or Autonomous rights within the authority of Ukraine. In other words, Internal or External Self-determination?¹⁰⁰ Another claim of the *Qurultay* is that it shall be regarded to the only one legitimate representative organ of Crimean Tatars with a special public status and entitlements. For this reason, the *Qurultay and Mejlis* have always **rejected** official incorporation as **non-governmental organizations**. The

⁹⁷ Christian Marxsen, ‘The Crimea crisis- an international law perspective’ (2014) 74 ZaoRV 375.

⁹⁸ Doris Wydra, ‘The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination’ (2004) 111.

⁹⁹ Alexander Osipov, ‘What do the Crimean Tatars face in Crimea’ (2014) 32 European Centre for Minority Issues 6.

¹⁰⁰ Alexander Osipov, ‘What do the Crimean Tatars face in Crimea’ (2014) 32 European Centre for Minority Issues 6.

authorities of Ukraine never accepted both claims until the full loss of the control over Crimea, but have in fact cooperated with Crimean Tatar movement since early 1990s. Actually, Ukraine has striven to use the Crimean Tatar movement, but has done very little to convince the Crimean Tatars that strategically they had substantive reasons to be loyal to the Ukraine. The social and educational programmes launched by Ukraine for the repatriates have been widely criticized as inadequate.

¹⁰¹When talking about autonomy of Crimea and about the possibilities of guaranteeing internal self-determination, one has to look at the special situation of the Crimean Tatars and their position within this autonomy. At the beginning, it has to be stated that the autonomy of Crimea is not an autonomy set up to realize the rights of the Tatar Turks, but rather of the Russians on Crimea. It was the Russian population that demanded this autonomy and it is structured by Russian interests. Actually, the official Ukrainian policy was always in favour of the returning of Tatars, but problems arose since the Tatars had difficulties integrating into Crimean society and this resulted in conflicts with resident population. They were not allowed to settle in their ancestral territories, it was difficult to find employment and their economic situation was bad.¹⁰² In 1991, they elected a Parliament(*Kurultaj*), which was not recognized by Ukrainian authorities. They boycotted the referendum of 1991 and did not acknowledge the autonomous status of Crimea, since it seen as under Russian autonomy. The Tatars issued the declaration of the ‘ National Independence of the Crimean Tatar people’ and also set up a separate draft on the Crimean Constitution guaranteeing the representation of Crimean Tatars in Crimean State bodies. Until the elections of 1994 they held 14 seats in the Crimean Parliament, but this disproportionate representation is no longer provided for. At the beginning of the 1990s the political organizations of the Crimean Tatars were mainly led by persons that were born on Crimea before the deportation. Afterwards, a younger generation emerged, which is more radical and demands more autonomous rights for the Tatars.

¹⁰¹ Doris Wydra, ‘ The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination’ (2004) 120.

¹⁰² Doris Wydra, ‘ The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination’ (2004) 121.

¹⁰³ Unlike the autonomy of 1921, the autonomy of 1991 was not set up for the protection of the Crimean Tatars but instead for the Russian majority of the peninsula. The Constitution of Crimea assumed that there was ‘ Crimean Population’, where ethnic belonging was secondary importance. Ukrainian was the State language and Russian was the *lingua franca*, while the language of the Crimean Tatars was mentioned only in relation to the cultural and educational aspects. The representation of minorities was not provided for in the Constitution (Article 10, 11, 13 Constitution of Crimea).

¹⁰⁴ Ukraine was also criticized by the Council of Europe for not guaranteeing the right to vote to the returning people and especially to the Tatars. Major was that Ukraine did not allow dual citizenship, persons returning from Uzbekistan had to prove that they had renounced their foreign citizenship. But, since 2001, the new law on citizenship allowed these people to apply Ukrainian citizenship through naturalization without renouncing foreign citizenship beforehand.

¹⁰⁵ However, as I mentioned before in the first chapter, until the annexation, Tatars were in bad conditions. For instance, they faced radical and armed attacks, they were affected by police system and majority of them were living poor economic conditions. Furthermore, Ukraine did not acknowledge the *Medjlis* as legal representative of Tatar population of Crimea and did not finance it. Until the annexation, a lot of Tatars refrained from turning to official institutions to ameliorate their situation.

¹⁰⁶ Besides, Malyarenko suggests that, before the annexation, two factors were efficient in the rising of tension of radicalisation of violence in Crimea: 1) The weakening of Ukrainian state through the criminalisation of state institutions, low public trust in the government, socio-economic inequality, institutional exclusion, and the spread of alternative societal structures which have developed into a survival culture. 2) Ukrainian government’s policy of land privatisation in Crimea. Under these conditions of a weak state and the uncertainty of property rights, the privatisation of

¹⁰³ Doris Wydra, ‘ The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination’ (2004) 128.

¹⁰⁴ Doris Wydra, ‘ The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination’ (2004) 121.

¹⁰⁵ Doris Wydra, ‘ The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination’ (2004) 121.

¹⁰⁶ Tetyana Malyarenko, David J Galbreath, ‘ Crimea: Competing self-determination movements and the politics at the centre’ (2013) 65(5) Europe-Asia Studies 10.

land could lead to a radicalisation, violence, enmity, and the mobilisation of social groups under ethnic slogans.

¹⁰⁷ In the 2014 referendum, all ethnic groups living in Crimea has been shown themselves as one self-determined people and overwhelmingly opted for a reunification with Russia. However, is it true in reality? Was there any coercion and duress on Tatars by political instruments of armed instruments of Russia. It is a crucial question.

¹⁰⁸ Driest puts a good question about whether the inhabitants of Crimea actually qualifies as the holders of the right to self-determination: a 'people'. Does the population of Crimea share certain objectively common features such as ethnic, linguistic, cultural that distinguish them from other groups to be 'people' as a preliminary condition to be subject to right to external self-determination? She states that some of the groups in Crimea(Ethnic Russians, Crimean Tatars) may well be considered as **ethnic minorities** within Ukraine, hence entitled to minority protection under international law. However, it is **debatable** whether the population of Crimea as a whole **constitutes a 'people' under international law**. Notwithstanding it is clear that the inhabitants of Crimea share a common territory and constitute a distinct political unit within Ukraine as result of Crimea's autonomous status, it remains questionable whether they actually have a distinguished group identity and the wish to be identified as such. According to Driest, it seems that the inhabitants of Crimea is too diverse to meet the threshold of a 'people'. She concludes that the right of self-determination is a right of 'peoples' rather than territories.

¹⁰⁹ After the annexation, human rights protections in Crimea have severely deteriorated. There have been cases of deaths and disappearances under suspicious circumstances which took place after February 2014. The Human Rights Watch documented 15 cases in which people(Crimean Tatars and pro-Ukrainian activists) have disappeared or gone missing. Crimean authorities have also restrained the right

¹⁰⁷ Anatoly Kapustin, 'Crimea's Self-Determination in the Light of Contemporary International Law' (2015) 75 ZaoRV/HJIL 115.

¹⁰⁸ Simone F. van den Driest, 'Crimea's Separation from Ukraine: An Analysis of the Right to Self-Determination and (Remedial) Secession in International Law' (2015) 62(3) Netherlands International Law Review 350.

¹⁰⁹ Natalia Cwicsinskaja, 'The Legality and Certain Legal Consequences of the "Accession" of Crimea to the Russian Federation' (2014) 34 Polish Yearbook of International Law 83.

to freedom of expression, peaceful assembly, freedom of association and freedom of religion or belief. Violations of the right to freedom of expression numerous. According to last amendments of Russian criminal code, statements against annexation are prohibited. Freedom of assembly is also restricted. For instance, authorities blocked plans by Tatars to organize a rally in Simferopol on 18 May 2014 to commemorate the anniversary of their 1944 deportation. The new Crimean authorities have exerted severe pressure on the Tatars. A number of searches have been carried out in Muslim religious institutions as well as in private homes and companies which belongs to members of the Crimean Tatar community.

¹¹⁰ The Mejlis criticized Russia's annexation of Crimea and called Crimean Tatars to boycott the March referendum on Crimea's status and the September local elections. The prosecutor issued several statements warning the Mejlis against "extremist" activities. Also, there are many applications to European Court of Human Rights in terms of human rights violations.

¹¹¹ Last but not least, Russia has two separate laws of the 1991 on the rehabilitation of ethnic groups as collective entities as well as on individual victims, which were oppressed during Soviet period. In theory, Tatars have been subject to both acts because in 1944 Crimea was a part of Russia. In practice, Crimean residents were not able to benefit from them.

¹¹² It can be concluded that, Russian rule in Crimea does not promise the Crimean Tatars much more than they already had in Ukraine, but puts them at risk of a strict police control and pressure.

¹¹⁰ Natalia Cwicinskaja, 'The Legality and Certain Legal Consequences of the "Accession" of Crimea to the Russian Federation' (2014) 34 Polish Yearbook of International Law 85.

¹¹¹ Alexander Osipov, 'What do the Crimean Tatars face in Crimea' (2014) 32 European Centre for Minority Issues 15.

¹¹² Alexander Osipov, 'What do the Crimean Tatars face in Crimea' (2014) 32 European Centre for Minority Issues 16.

B) GENERAL THEORY OF SELF-DETERMINATION

¹¹³How did concept of self-determination emerge? According to Democratic political theory, this idea arose during the American and French Revolutions. Before that era, States generally did not respond to will of their peoples. Gradually, these peoples rejected to accept exercise of power by an authority which they experienced as ‘alien’. This idea suggests that governmental power should comply to will and consent of the people rather than on the will of monarch, aristocracy and privileged elite. In other words, peoples are not the subjects of States, but “ can do their own state making.” This idea derives from Locke’s theory of government with the consent of the governed and the Rousseau’s theory of *contract social*.¹¹⁴Theory of Ethnic nationalism suggests that individuals could only achieve self-realization and freedom through their nation. Therefore, only free nations could maintain peaceful and friendly relations in the international area. Meaning of the State according to this theory contains more than just a legal and territorial concept, as it also added a social and cultural dimension to it. ¹¹⁵Theory of Liberal nationalism conceives that a concept of self-determination which encompasses both representative government and popular self-rule, but also claim of ethnic nationalities to independent statehood for the purpose of determining their own destiny on the other hand.

After the WW1, concept of self-determination developed by contributions of Lenin and Wilson as a principle. ¹¹⁶According to Lenin, content of this right is liberation of oppressed nations from the oppressor state and to create a new state. This theory implies secession, however, Lenin also conceived this right as a last resort option likewise the concept of Remedial secession.¹¹⁷On the other hand, Wilson stressed on concept of self-government in terms of this principle. Wilson linked this principle with

¹¹³ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 14.

¹¹⁴ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 15.

¹¹⁵ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 16.

¹¹⁶ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 17.

¹¹⁷ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 19.

democratic governmental system with a peaceful society. Wilson's view has both internal and external dimension.

¹¹⁸After the WW2, the principle was codified in an international legal document. ¹¹⁹In current positive law, UN charter reserves the right of external self-determination to **colonized peoples**. This right more specifically concerns peoples living in two types of territories: 1) Trust territories(within the meaning of Chapter XII of the UN Charter). 2) Non self-governing territories(within the meaning of UN Chapter XI). There is no definition of these territories in UN Charter. Article 73 stipulates simply that these are "territories whose peoples have not yet attained a full measure of self-government." Initially these territories were identified by the relevant member states which they have obligations for transmitting information about these territories under article 73.

¹²⁰Christakis states that it is clear that no international treaty recognizes a right of external self-determination on an ethnic or other group apart from in the context of decolonization. Article 1 of two international Covenants of 1966 was never intended or construed as a right of secession to any ethnic group according to Christakis. Besides, he mentions that analysis of state practice and *opinio juris* shows that customary international law does not authorize secession. All the hard law and soft law texts on the rights of peoples, minorities, and native peoples contain "safeguard clauses" firmly and clearly excluding any right of external self-determination.

¹²¹On the other hand, beyond decolonization, the right to self-determination continued. It became a right of all peoples rather than merely colonial peoples. It includes two dimensions:1) Internal 2) External. Internal one suggests that self-determination should be accomplished within the framework of existing State(Samples: Right to choose their legislator and political representatives, equal participation of the peoples

¹¹⁸Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 26.

¹¹⁹Theodore Christakis, 'Self-Determination, Territorial Integrity and *Fait Accompli* in the Case of Crimea'(2015) 75 ZaoRV 82.

¹²⁰Theodore Christakis, 'Self-Determination, Territorial Integrity and *Fait Accompli* in the Case of Crimea'(2015) 75 ZaoRV 84.

¹²¹Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 3.

in the general political decision-making process within a State).¹²²Also, Crawford defines the internal self-determination as “essentially a summary of other rights.”¹²³External one involves right to secession of a group of people from their former authorized state. Beyond the decolonization, it is accepted that this right may be exercised through peaceful dissolution of a State, through consensual or constitutional secession. The critical point is What is the response of international law in case of there is no consensus between state and particular group of a people which demand to secede? ¹²⁴In fact , International law does not conspicuously accept this mode of exercising the right to self-determination.¹²⁵Human Rights Covenants of 1966 refers “all peoples”. This concept suggests universal applicability of the principle beyond the colonized people. Nonetheless, the concept of “people” did not imply the existence of a right to secede.

¹²⁶The tool of self-determination has a precedent in international law where ethnic conflict has occurred especially in cases of **state sponsored violence**. Before the annexation, Crimean Russians have not experienced state-sponsored violence therefore, international law would have a different view from Kosovo in terms of their right to self-determination in Crimea. This point is in favour of Ukraine.

¹²⁷Even if there was a state sponsored violence in Crimea, the Russia’s use of force is not admissible within the scope of UN Charter and principle of prohibition of use of force which is specified in the UN Charter. Cassese also states: “ *Even if one characterizes the forcible denial of self-determination as a ‘crime of State’ falling within the scope of Article 19 of the ILC Draft Convention on State Responsibility-as has been argued- the conclusion remains the same: State practice and the spirit of UN*

¹²² Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 40.

¹²³ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 3.

¹²⁴ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 4.

¹²⁵ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 42.

¹²⁶ Tetyana Malyarenko, David J Galbreath, ‘Crimea: Competing self-determination movements and the politics at the centre’ (2013) 65(5) *Europe-Asia Studies* 5.

¹²⁷ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1 st edn, Cambridge University Press 1995) 152.

Charter's basic provisions on the use of force do not allow third States to go so far as to send troops to assist peoples invoking the right to self-determination."

¹²⁸In terms of Crimean Tatars, one question is so crucial. Can a group of minority which is within a particular state be subject of the right of internal self-determination? Driest suggests that if a group minority can possess the characteristic of collective individuality, it will be subject of the right to internal self-determination. If we acknowledge the Crimean Tatars as minority, we can infer that Crimean Tatars have collective individuality in the Crimea. Moreover, Crimean Tatars are beyond the concept of minority: They are indigenous people of the Crimean Peninsula.

¹²⁹One point is in favour of Crimean Tatars. UN Declaration on the Rights of Indigenous Peoples conspicuously provides a right to self-determination for indigenous people in the article 3 of this declaration. In addition, the Declaration demonstrates a clear focus on the internal dimension of the right.¹³⁰ Admittedly, contemporary international law seems to emphasize internal rather than external self-determination.

¹³¹ Nevertheless, some international documents focus on the external self-determination such as Friendly Relations Declaration. This declaration acknowledges non-violent dissolution, merger or reunion as lawful modes of implementing the right of self-determination. However, when we examine the case of Crimea, was the merging process of Crimea with Russia **non-violent**? This is the main problematic question for claims of Russia.

¹³²Moreover, Cassese remarks the meaning of the word '*freely*' in Article 1(1) of both UN Covenant on Economic, Social and Cultural Rights and the UN Covenant on Civil and Political Rights. The author construes this word as Article 1(1) requires that a State's **domestic political institutions must be free from outside interference**. Thus,

¹²⁸ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 74.

¹²⁹ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 49.

¹³⁰ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 50.

¹³¹ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 93.

¹³² Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1 st edn, Cambridge University Press 1995) 55.

it prohibits States from meddling in the affairs of another contracting State, in a manner that seriously **infringes** upon the right of that State ‘**freely to determine [its] political status and economic, social and cultural development**’. Covenants also **prohibit** contracting States from **invading and occupying the territory of other contracting States** in such a manner as **to deprive the people living there of their right of self-determination**. Therefore, military occupation and annexation of a foreign territory deems as a grave breach of Article 1(1). That point casts doubt the legitimacy of claims of Russia because of its military intervention and annexation of Crimea.

¹³³In the same way, Cassese stresses on the UN Declaration on Friendly Relations which give rise to self-determination in two situations: 1) Colonialism 2) ‘subjection of peoples to alien subjugation, domination and exploitation’. ¹³⁴In the light of second circumstance, he states that alien occupation is not only contrary to the basic prohibition of use of force, but is also in breach of the right to self-determination of the people living in the occupied territory. In that point, Russia’s annexation of Crimea can be deemed as a block to effectuate the self-determination in Crimea in the aspects of both internal and external.

¹³⁵After mentioning the GA Resolution 1514(XV), the ICJ pointed out that self-determination always entails ‘the need to pay regard to the freely expressed will of peoples’ but that *exceptionally* this requirement can be and has been dispensed with in two instances: 1) *Non-existence of ‘people’ proper* in such a territory 2) when ‘*special circumstances*’ make a plebiscite or referendum unnecessary. In the case of Crimea, first question is so crucial. Some scholars tell that there is no unified people in Crimea in terms of ethnically, culturally. Some scholars mention opposite. This point is so significant to justify the claims of actors in terms of effectuating the self-determination.

¹³³ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1 st edn, Cambridge University Press 1995) 90.

¹³⁴ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1 st edn, Cambridge University Press 1995) 98.

¹³⁵ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1 st edn, Cambridge University Press 1995) 89.

CONCEPT OF AUTONOMY

¹³⁶After the World War 1, autonomy was conceived not only as a possibility to provide for the protection of national minorities, but also as a concept to prevent the call for the creation of new, small states. During the 20th Century, the right of self-determination developed together with the concept of national states, and in that concept, the main idea was that government was only possible with the consent of governed. Notwithstanding the international documents include provisions, self-determination of people is usually discussed with regard to the possibility of secession. These documents indicate towards a right of self-determination, which means the free choice of the form of government and the representation of all peoples of a country by this government.

¹³⁷It's worth noting that, self-determination had a different meaning in the Soviet Union. Formally, self-determination was always granted to the subjects of the Soviet Union, to stress the voluntary character of Soviet Union. But the **self-determination of people** was always **connected to the realization of communist ideals**, and Lenin pointed out that '*No Marxist can deny that the interests of socialism override the rights of nations to self-determination.*' On the Crimea an autonomous entity existed until 1944. It was set up to guarantee special rights and special protection for the Crimean Tatars. When in 1944 the Crimean Tatars were deported the autonomy was overruled. Meanwhile, it was stressed that the autonomy for the Tatars was justified because they amounted only to %40 of the population of the peninsula. This shows that, **within the Soviet Union, autonomous rights were often assigned through arithmetic calculations and they were not considered as means to provide for internal self-determination.** Consequently, there was no guarantee on legislative power of the autonomous entities. Each legislative act could be overruled by acts of higher ranking authorities.

¹³⁶ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 122.

¹³⁷ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 122.

¹³⁸The internal aspect of self-determination is not fully defined. Although international law does not prefer a certain form of government, in the European context the internal aspect of self-determination is clearly connected to democracy.

¹³⁹There is no collective state practice and autonomy is not a homogenous principle generally acknowledged to solve minority conflicts. Autonomy is quite often discussed as part of customary international law.

SECESSION

¹⁴⁰First of all, There is only little consensus on definition of secession and content of right of self-determination. Therefore, main reason of conflicts, debates and disputes in terms of self-determination which arise in international legal area is the definitional uncertainty of secession and right to self-determination.

¹⁴¹By the same token, Cassese remarks that scholars have criticism about the present legal regulation does not define the 'units of self-determination'. For instance, nowhere in international law can one find a definition of the 'peoples' enjoying at the right at issue. It is well known that there is much controversy in historical literature and in the writings of political scientists about the meaning of the terms of 'people', 'nation', 'ethnic groups', and so on. This gives great confusion existing in this area and the broad differences of opinion. For instance, when we examine the notion of 'people' which is specified in the international treaties, some political actors refer to 'colonial peoples', that is, to peoples living in territories under colonial rule. Others refer to 'peoples under foreign domination', that is, to populations living in territories subjected to foreign military occupation. Other refer to racial groups living in sovereign States. Others also refer to the whole population of each Contracting State.

¹³⁸ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 123.

¹³⁹ Doris Wydra, 'The Crimea Conundrum: The tug of war between Russia and Ukraine on the questions of autonomy and self-determination' (2004) 123.

¹⁴⁰ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 5.

¹⁴¹ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1st edn, Cambridge University Press 1995) 326.

¹⁴²Does right to self-determination encompass right to secession? We can find an answer in the final report of sixth committee of San Francisco Conference. This committee states; “*Charter only implied the right of self-government of peoples and not the right of secession.*” We can figure out that UN Charter’ purpose is not right of secession rather right of self-determination in terms of self-government of peoples.

¹⁴³If we examine the international documents, actually no international treaty prohibits secession; as for state practice and their *opinio juris*, they do not indicate the existence of any such prohibition either. The several “safeguard clauses” provided for in the relevant soft law and hard law texts already referred to are not designed to prohibit secession but rather to exclude any construing any favourable to the existence of a right of secession outside of the context of decolonization.

¹⁴⁴Nonetheless, in the issue of unilateral secession, no written sources of international law involve an explicit right to unilateral secession. James R Crawford summarizes this situation with his quote: “*secession is **neither legal nor illegal in international law**, but a legally neutral act the consequences of which are, or may be regulated internationally*”.

¹⁴⁵ In the same way, there are two opposite views about the intention of drafters about the unilateral secession in drafting process of UN Charter at the San Francisco Conference. Some commentators stemmed that the drafters had no intention of establishing a right to unilateral secession, while others carefully concluded that the drafters of UN Charter remained neutral on the question of whether unilateral secession is considered to be part of the general right to self-determination.

¹⁴⁶In the issue of the tension between principle of territorial integrity and concept of secession, some scholars suggest that the principle of territorial integrity generally

¹⁴² Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 27.

¹⁴³ Theodore Christakis, ‘Self-Determination, Territorial Integrity and *Fait Accompli* in the Case of Crimea’ (2015) 75 *ZaoRV* 91.

¹⁴⁴ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 97.

¹⁴⁵ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 100.

¹⁴⁶ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 160.

applies to inter-State relations, thus seceding groups within the State are not bound by the principle of territorial integrity. Expert reports prepared for the Canadian Supreme Court's *Reference re Secession of Quebec* are in the same way. In other words, they are not subject of this principle according to reports.¹⁴⁷ Therefore, according to experts, the principle of territorial integrity is generally irrelevant in those situations. Moreover, ICJ embraced the same approach in the case of Kosovo and court states: "the scope of the principle of territorial integrity is **confined** to the sphere of **relations between States**."¹⁴⁸ However, Driest criticized this view as : " *The finding that the actions of sub-State entities are not restricted by the principle of territorial integrity seems rather conservative, considering the emerging role of non-State actors within contemporary international relations, the belief that not all of these entities should and do operate in a legal vacuum, and relevant practice in this regard.*" Furthermore, in the concept of the emerging role of non-State actors, she illustrates the sample of extending the subjects of prohibition of use of force from state to non-state actors notably, "terrorists". Thus, she concluded that reference can be made to liberation movements, which are seen to be subjects of international law to a certain extent.¹⁴⁹ Moreover, she asserts that this view is not compatible with the spirit of Friendly Relations Declaration. Because, declaration does not only confirm a people's right to self-determination, also it does in connection to the principle of respect for the territorial integrity of States and emphasizes that the right to self-determination may not interpreted as "authorizing or encouraging any action which would dismember or impair, totally or in part, territorial integrity or political unity of sovereign and independent states." She states that the safeguard clause of Declaration also indicate the internal **intra-State dimension** of the principle of territorial integrity as well.

¹⁵⁰ Some of academic arguments suggest that Helsinki declaration legitimizes the unilateral secession by emphasizing the external self-determination of all peoples beyond the sovereign States as a norm of customary international law. However, there are two counter phenomena about this issue: 1) Can Helsinki declaration be deemed

¹⁴⁷ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 161.

¹⁴⁸ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 162.

¹⁴⁹ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 164.

¹⁵⁰ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1 st edn, Cambridge University Press 1995) 287.

as customary international law? If this concept is thought from my point of my view, there are still lacks of general state practice and *opinio juris*. Therefore Helsinki Declaration cannot be deemed as a norm of customary international law. Hence, this declaration is not legally binding for States in the International legal area. 2) Even though Declaration emphasized the external self-determination of all peoples, this declaration also have safeguard clause about to respect the territorial integrity of States likewise 1970 Friendly Relations Declaration. Thus, this safeguard clause does not permit any unilateral secession which would disrupt the territorial integrity of any State in International legal area.

REMEDIAL SECESSION

¹⁵¹Driest defines the remedial secession as; “ *The establishment of a new independent State through withdrawal of an integral part of the territory of an existing State from that State, carried out by the resident population of that part of the territory, without either the consent of the parent State or domestic constitutional authorization, yet **as a remedy of last resort to the serious injustices** which the resident population of that part of the territory has **suffered at the hands of the authorities of the parent state***”.

¹⁵²First of all, Cassese supports the concept of remedial secession for minorities as a last resort. He mentions that permission should be given for exceptional cases where factual conditions render internal self-determination impracticable. Moreover, he adds: “ *When, in a multinational State, armed conflict breaks out and one or more groups fight for secession, it may be that it is too late to plead for a peaceful solution based on internal self-determination. Similarly, when the central authorities of a multinational State are **irremediably oppressive and despotic**, persistently violate the basic rights of minorities and no peaceful and constructive solution can be envisaged, it seems difficult to imagine that those central authorities would be willing to grant autonomy, or participatory rights.*” ¹⁵³What’s more, he attributes his view to view of

¹⁵¹ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 7.

¹⁵² Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1 st edn, Cambridge University Press 1995) 359.

¹⁵³ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1 st edn, Cambridge University Press 1995) 360.

International Commission of Rapporteurs in 1921. He asserts that view of this Commission was based on the concept that self-determination embodies ‘the idea of justice and liberty’, conspicuously admitted that ‘the separation of a minority from a State of which it forms part’ could be considered ‘an altogether exceptional solution, a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees’.

¹⁵⁴In fact, stems of the remedial secession comes from the some academic scholar’s interpretation of Friendly Relations Declaration. According to these scholars, in the context of this declaration, unilateral secession may be justified when the parent state does not act in conformity with the right to internal self-determination, which requires representative, non-discriminatory government. These scholars attach a link between internal and external self-determination. Consequently, these scholars suggests that in case a State seriously and persistently violates the right to *internal* self-determination, it forfeits its right to territorial integrity and, thus a right to *external* self-determination by means of unilateral secession may be exercised. In other words, internal dimension of the right to self-determination turns into a right to external self-determination in the context of the responsibility of States under the Friendly Relations Declaration.¹⁵⁵Also, Cassese states that secession is not ruled out in the Declaration but may be permitted only when very stringent requirements have been met. He construes the Declaration’s emphasis on requirement not disrupting the territorial integrity as paramount but it is not definite in all circumstances. In other words, possibility of impairment of territorial integrity is not totally excluded, it is logically acknowledged according to him.

¹⁵⁶Buchheit states: “*the State a privileged bot not absolutely unassailable entity.*” He attributes his view to international response to the events in Bangladesh and Biafra as conforming the thesis that the international community of States “has accepted the legitimacy of secession **as a self-help remedy in cases of extreme oppression.**” Consequently, he considered a right to unilateral secession as a remedy of last resort

¹⁵⁴ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 107.

¹⁵⁵ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1 st edn, Cambridge University Press 1995) 118.

¹⁵⁶ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 107.

only.¹⁵⁷In contrast, Tomuschat conceived this issue more different. He mentions that States are no longer unassailable, but rather have a specific *raison d'être*. If States radically fail to meet their most elementary obligations, **their legitimacy** will fade and eventually their rationale can be disputed according to Tomuschat. In this regard, this scholar perceived evidence for conditional right to unilateral secession in the events leading to the creation of Bangladesh and the events leading to the autonomous position of Kosovo under international administration.

¹⁵⁸ However, many scholars are hesitant to issue of the content of the remedial secession. For instance, Xanthaki states: “who would be the interpreter of the law of self-determination” and determine whether a certain people has a right to secession in view of circumstances? In other words, who and how can define the limits and content of the remedial secession and measure of the gross human rights violations?

¹⁵⁹ In the era of League of Nations, the case of *Åland Islands* can be shown as a sample of remedial secession. Because, although the Jurists denied the existence of self-determination as absolute right for minorities and national groups to secede unilaterally, the possible resort to secession was recognized for cases where no alternative solution would be plausible expected as a result of extreme oppression.

¹⁶⁰ Also it can be said that the General Recommendation of the Committee on the Elimination of Racial Discrimination is progressive for it adduces that under certain circumstances, unilateral secession as a remedy may be legal.

¹⁶¹ During the Kosovo case, being the kin-state of Kosovo Albanian population, Albania recognized the right to remedial secession in its statement. However, Albania stipulated two preconditions to effectuate this right: 1) institutionalized policy of repression and gross and widespread violations of human rights 2) exhaustion of all

¹⁵⁷ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 110.

¹⁵⁸ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 118.

¹⁵⁹ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 26.

¹⁶⁰ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 102.

¹⁶¹ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1 st edn, Intersentia 2013) 247.

options for a negotiated solution.¹⁶² Besides, Ireland mentioned in its statement in the case: “international law contains **neither a general right nor a general prohibition on unilateral declarations of independence.**” On the other hand, Ireland contended that a right to secession may warranted under extreme circumstances. In that point, Ireland made its reference to *Åland Islands* and the case of *Reference re Secession of Quebec*. Consequently, Ireland defined the unilateral secession as a remedy for last resort and postulated two cumulative pre-elements for this right: 1) requiring serious human rights violations to involve “an element of discrimination” 2) absence of other remedies or feasible alternatives before a right to secession may arise.¹⁶³ On the other hand, the submissions which include Azerbaijan, Argentina, United States, UK opposed the right to remedial secession and these countries emphasized two phenomena of international law: 1) lack of evidence for the existence of such a right under positive international law 2) prioritization of the principle of respect for the territorial integrity of States over the exercise of the peoples’ right to self-determination.¹⁶⁴ Moreover, Cyprus asserted that 1960 Friendly Relations Declaration refer largely to colonial situations and does not refer to minorities within a State in terms of external self-determination. Hence, Cyprus indicated the cases of South Ossetia and Abkhazia which were generally criticized as being violations of the principle of territorial integrity rather than samples of exercise of an entitlement to secession.¹⁶⁵ Last but not least, Serbia claimed that paragraph 6 of Resolution 1514 (XV) and Friendly Relations Declaration refer to the respect for the territorial integrity of States in connection to the principle of equal rights and self-determination of peoples. According to Serbia, safeguard clauses of 1960 Declaration was aimed to protect the territorial integrity and political unity of States in relation to the principle of equal rights and self-determination of peoples, and not to provide for an entitlement to secession under circumstances.¹⁶⁶ Additionally, Serbia argued that an a contrario interpretation of safeguard clause of 1960 Declaration is not supported by State

¹⁶² Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 251.

¹⁶³ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 261.

¹⁶⁴ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 264.

¹⁶⁵ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 266.

¹⁶⁶ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 267.

practice either.¹⁶⁷ United States, UK, France stated that international law remains 'neutral' as regards the issue of secession as it does neither conspicuously permit, nor explicitly prohibit it.

¹⁶⁸Furthermore, some scholars indicated the Bangladesh case as a sample of remedial secession. However, Driest opposes to this idea with several reasons: "*While in view of the circumstances, the case of Bangladesh arguably had the potential of becoming an example of remedial secession, it was not recognized as a case of unilateral secession by the international community and does not provide for unequivocal support for the thesis that a right to remedial secession does indeed exist. Rather, the case of Bangladesh seems to suggest that the international community did not consider such an entitlement to exist at that time.*"

¹⁶⁹Last but not least, some States and academic scholars advocates that remedial secession is lawful as a customary international practice. However, Driest argues this view that the practice of remedial secession has not fulfil the two preconditions for being a norm of customary international law yet: 1) State practice; She states that there is still no unified or dense state practice of remedial secession in international legal area. 2) *Opinio juris*; She mentions that there is no strong and unequivocal *opinio juris* in this respect. Then she illustrates the opinions in the Kosovo case which are mixed and include mostly contrary views against the legality of remedial secession.

C) CONCLUSION

In the first section of this chapter, I tried to juxtapose the conflicting claims and arguments of actors and relevant academic writings in terms of the concept of the self-determination in this dispute. In the second section, I tried to expose the general theory of self-determination to provide an objective assessment of the rightness of the claims and arguments of actors in terms of the concept of self-determination and public international law. To sum up briefly, while the Ukraine claims that Crimea is an

¹⁶⁷ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 270.

¹⁶⁸ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 278.

¹⁶⁹ Simone F. van den Driest, *Remedial Secession: A Right to External Self-Determination as a Remedy to Serious Injustices* (1st edn, Intersentia 2013) 293.

integral part of Ukraine within its territorial integrity, Russia asserts that Crimean Russians have right to self-determination in external dimension within the concept of Remedial secession and Crimean Tatars, their demand is to preserve and strengthen their autonomous rights such as cultural, economic , linguistic within the authority of Ukraine in terms of internal dimension of self-determination. If we evaluate these counterclaims from my point of my view, grammatically, international treaty law neither prohibit nor permit the unilateral secession. However, if we interpret purposively, unilateral secession is incompatible with the spirit of the UN Charter and other international documents' safeguard clauses which specified the principle of respect to territorial integrity. Besides, Notwithstanding the Russia and some States and Scholars support the concept of remedial secession by making inference from the Friendly Relations Declaration and asserting the emergence of the concept of remedial secession as a customary international law norm and practice, this assertion has many drawbacks: 1) No treaty or other documents explicitly permit the remedial secession. 2) Even though, there are some practices of remedial secession in the past, there is still no dense and major state practice and there is still lack of *opinio juris* of States in the issue of remedial secession. Therefore, we cannot acknowledge that the concept of remedial secession as an emergence of a norm and practice of customary international law. 3) As I mentioned before, remedial secession is incompatible with the main principle of UN Charter which is respect for territorial integrity and the main purpose of the UN Charter which is to maintain and restore the international peace. Even if we acknowledge the existence of remedial secession in the international legal practice, Russia has two additional drawbacks: 1) Before the annexation, there was no oppression on the Russian population in Crimea which is first condition for existence of the right for remedial secession 2) More significantly, Russia's military action was an explicit breach of the UN Charter Article 2(4) which suggests the principle of prohibition of use of force. On the other hand, Ukraine also had drawbacks in terms of effectuating the internal self-determination in Crimean Peninsula. Internal dimension of self-determination has been specified and granted in the most of international legal documents. In the same way, customary international law recognizes the rights of peoples in terms of internal self-determination. Most of the international legal documents oblige the States to provide and protect the cultural, linguistic, economic rights and respect to general will of their peoples in terms of internal self-determination. Before the annexation, Ukraine's constitutional regulations were

insufficient to protect the autonomous rights of living nations in the Crimea especially for Crimean Tatars. Therefore, Ukraine did not fulfil its obligation under the international law. In conclusion, according to *de lege ferenda*, Crimea ought to be autonomous region of Ukraine within Ukraine's constitutional authority. On the other hand, Ukraine's constitutional structure ought to be adequate to provide and protect rights of living nations in the Crimea in terms of internal self-determination. It is an obligation of Ukraine which is obliged by International Treaty Law and Customary International Law. Last but not least, to provide autonomous rights of Crimean Tatars as indigenous people of Crimea would be most important element to effectuate the internal self-determination in terms of fulfilling this obligation. However, which mechanism can establish and sustain the order of *de lege ferenda* in Crimea? In the next chapter, I will try to discuss the possibility of establishment of an UN Interim Administration in Crimea as a solution mechanism for a temporary period to provide the conditions of the order of *de lege ferenda*. I will give rise and try to examine two important questions about this issue: 1) Does UN Have an authorization to establish an administration as an independent State in particular territory within the scope of UN Charter? 2) If UN has authorisation, can this administration accomplish to build international settlement between the parties of this dispute in terms of right to self-determination?

CHAPTER 3: A POSSIBLE SOLUTION FOR THE DISPUTE: ESTABLISHMENT OF AN UN INTERIM ADMINISTRATION

In this section, firstly, I will try to examine the legality of UN interim administration as a sovereign state under international law by scrutinizing the past two cases: Kosovo and East Timor. Then, I will try to discuss the applicability of this system in the dispute of Crimea in such own its circumstances.

1) QUESTION OF AUTHORIZATION UNDER THE UN CHARTER

¹⁷⁰Before to examine the past cases, it's worth to mention that the Charter does not allow the Security Council to exercise direct administrative authority in a territory in any form. On the other hand, the exercise of such powers by UN under Chapter VII of the Charter has been discussed at early stage as the San Francisco Conference. Thus, majority of recent academic comments disagree with the narrow interpretation advocated by Kelsen. It is argued that Chapters XII and XIII of the Charter do not conclusively regulate the powers of the Security Council in the area of territorial administration, thus preventing administration under Chapter VII. A historical and teleological interpretation of those chapters leads to **apply only in the post-colonial context** and cannot have intended to regulate UN powers conclusively in terms of territorial administration **outside this narrow scope of applicability**. Therefore, today only few scholars casts doubt the competence of the Security Council to administer a territory on a temporary basis, and its power to delegate this authority to the Secretary-General, even though no obvious legal basis for such action of the Security Council is to be found in the UN Charter.¹⁷¹The international community seems to have accepted territorial administration as legitimate means to resolve conflicts. However, we should give rise a question in that point: Is the **UN territorial administration legitimate outside the context of decolonization**? I will try to examine this discussion in the past cases.

KOSOVO

¹⁷²In the case of Kosovo, within the context of Resolution 1244, Security Council acted under Chapter VII of the UN Charter, thus established the UNMIK in Kosovo. Friedrich mentions that it is widely admitted that Chapter VII provides adequate legal ground for the deployment of a territorial administration, involving the complete take-

¹⁷⁰ Markus Benzing, 'Midwifing a new state: the United Nations in East Timor'(2005) 9(1) Max Planck Yearbook of United Nations Law Online 314.

¹⁷¹ Markus Benzing, 'Midwifing a new state: the United Nations in East Timor'(2005) 9(1) Max Planck Yearbook of United Nations Law Online 315.

¹⁷² Jurgen Friedrich, 'UNMIK in Kosovo: struggling with uncertainty'(2005) 9(1) Max Planck Yearbook of United Nations Law Online 233.

over of governmental functions as in the case of UNMIK in Kosovo. However, Is the Friedrich's view true in terms of the scope of UN Charter? In other words, Does UN have authorisation for acting as a State in particular territory under the UN Charter article 41? It is an important issue to reconsider cautiously. If we think the measures which specified in article 41 of UN Charter grammatically, there is no word of 'establishment of an administration' acting as a governmental structure likewise a State. But on the other side of the coin, some scholars like Friedrich interpret purposively the measures extensively which would also involve the establishment of administration.¹⁷³In the same way, he attributes his view that; *"The legal and political reasoning which supports such powers of the Security Council emanates from the consideration that the concept of "peace" in the sense of Article 39 UN Charter must be understood to include the establishment of long-term and sustainable peace. Insofar and to the extent that territorial administrations must be considered a necessary instrument to fulfil this task, the Security Council has the power to authorise such administrations under Article 41 UN Charter. The absence of any explicit reference to such a measure does not present an obstacle, because the list of measures contained in Article 41 must be considered as non-exhaustive."* He also states that we can find the traces of this authorisation in the implied powers doctrine of ICJ. In that doctrine, it can be argued that the establishment of a territorial administration is an essential and necessary tool for the Security Council in order to fulfil its duty under Article 39 of the UN Charter, i.e. to achieve peace and security.¹⁷⁴In addition, he adds that in this authorisation under Resolution 1244, this authorisation includes all of objectives are fundamental to building a sustainable peace, In other words, the Security Council's mandate is not limited to administrative tasks. It also contains governmental, judicial and legislative functions which are necessary to achieve a sustainable long-term peace.¹⁷⁵In the light of this view, UNMIK comprised all legislative and executive power, as well as the authority to administer the judiciary.¹⁷⁶On the other hand, Friedrich also gives a counter phenomenon which casts doubt to his view. He states

¹⁷³ Jurgen Friedrich, 'UNMIK in Kosovo: struggling with uncertainty'(2005) 9(1) Max Planck Yearbook of United Nations Law Online 234.

¹⁷⁴ Jurgen Friedrich, 'UNMIK in Kosovo: struggling with uncertainty'(2005) 9(1) Max Planck Yearbook of United Nations Law Online 235.

¹⁷⁵ Jurgen Friedrich, 'UNMIK in Kosovo: struggling with uncertainty'(2005) 9(1) Max Planck Yearbook of United Nations Law Online 238.

¹⁷⁶ Jurgen Friedrich, 'UNMIK in Kosovo: struggling with uncertainty'(2005) 9(1) Max Planck Yearbook of United Nations Law Online 241.

that Unlike Resolution 1272 regarding UNTAET, Resolution 1244 does not conspicuously vest legislative and executive powers and the administration of the judiciary in UNMIK. It rather enumerates objectives and functions at the same time as it stresses the sovereignty and territorial integrity of the FRY. Thus, one could argue that the complete legislative powers, involving the right to abolish the Yugoslavian law in force, goes beyond the authorisation under Resolution 1244 which could be perceived as merely outlining administrative tasks. Consequently, FRY has argued that in the initial stages of the mission, the SRSJ had “usurped more power than he was given under Security Council resolution 1244 (1999)”. However, he persistently advocates his view: “ *For the fulfilment of the objectives with which UNMIK is mandated by the Security Council, it requires full legislative powers and at least initially control over the judiciary. Promoting human rights as well as completely rebuilding and democratising a society which had up to that point been dominated by a discriminatory and oppressive legal system requires extensive legal reform. For similar reasons, the justice system and the executive had to be completely restarted and changed. In other words, the objectives could not be pursued in practice without possessing full governmental powers. This argument at the same time expresses the functional limitations that UNMIK has to obey in the exercise of broad powers.*” On the other hand,¹⁷⁷ Friedrich also remarks that the exercise of governmental powers is further limited by other sources of international law as well as the sovereignty and territorial integrity of Serbia and Montenegro, which must be respected by UNMIK as long as the final status has not been determined. However, he also criticizes that Resolution 1244 specifically states that UNMIK aims to establish “substantial autonomy within the FRY.” This contrasts with the wide scope of UNMIK’s responsibilities, which require not only executive but also legislative and judicial powers according to him.¹⁷⁸ Nevertheless, he draws a curious conclusion about the UNMIK in Kosovo. He mentions that UNMIK has broad scope which differs from the past samples notably UNTAET in East Timor and while the role and scope of governmental powers of UNTAET was equally wide and concentrated, the territory was completely internationalised and independent from Indonesia but Kosovo was not

¹⁷⁷ Jurgen Friedrich, ‘UNMIK in Kosovo: struggling with uncertainty’ (2005) 9(1) Max Planck Yearbook of United Nations Law Online 242.

¹⁷⁸ Jurgen Friedrich, ‘UNMIK in Kosovo: struggling with uncertainty’ (2005) 9(1) Max Planck Yearbook of United Nations Law Online 243.

internationalised. Circumstances in Kosovo seems that a system of Trusteeship albeit Article 77 and 78 UN Charter cannot apply directly, UNMIK could be seen as sort of a trusteeship administration implicitly according to him. Therefore, he suggests that although Kosovo case could not fulfil the conditions of Trusteeship system, the principles of the trusteeship system should be applied in Kosovo and this concept can at least give guidance to extensive and direct international administration because Security Council Resolutions lack specificity according to him.

¹⁷⁹However, Knoll disagrees with this idea. He asserts that there is still a legitimacy problem in the structure of UNMIK. He states that UNMIK was not, like the UNTAET, legitimized by the obligations of trusteeship that applied to non-self-governing territories. In addition, its exercise of power cannot be based on an international treaty, sanctioned by consent of contracting parties, as in the case of Bosnia according to author. He mentions: “ *UNMIK was created in the wake of a “controversial, if not dubious, use of force that obtained retroactive assent from the Security Council in the form of resolution 1244.” Without international validation- which, one might add, cannot be taken for granted- the task of UN territorial governance is fraught with difficulty.* ”

¹⁸⁰On the other hand, Marcus Brand criticizes the lack of definition of UNMIK: “*UNMIK and the international community with an interest in Kosovo has **preferred to stay away from definitions**, and muddle through with **some vague concept of building an entity that might end up being a federal unit in whatever form of future regional future regional federation or an independent state.***” Moreover, he adds: “*Traditional categories of international public law and constitutional law all fail to describe adequately how what is traditionally referred to as “state power” is exercised in Kosovo. At best, **one should stick with the terminology of resolution 1244**, which has Kosovo as a “territory” under international administration. The fact that this international administration has availed itself of assistance of locally elected, staffed and funded institutions changes nothing in the basic underlying assumption-namely that territory is under international administration. How such quality standards such*

¹⁷⁹ Bernhard Knoll, ‘Legitimacy and UN-Administration of Territory’ (2007) 8(1) German Law Journal 43.

¹⁸⁰ Marcus Brand, ‘The development of Kosovo institutions and the transitions of authority from UNMIK to local self-government’ (2003) 1(2) Centre for Applied Studies in International Negotiations 51.

*as those listed in the benchmarks, which are not less than those required of a state to apply for membership in the Council of Europe can be fulfilled in a state-less scenario, remains to be seen. **Whether the international administration itself can be seen as “the state” is an open question.***”

¹⁸¹In the same way, Chesterman mentions his criticism about the ambiguity of the concept of UN interim administration in the International legal documents: “ *the United Nations is becoming involved in state-building projects without any **clear institutional guidelines or political consensus**. This has given rise to **uncertainty of mandate** in ongoing UN operations, as well as the potential for establishing precedents that may confuse the normative framework within which future operations take place.*”

¹⁸²Last but not least, Yannis remarks that **uncertainty over the final status** of Kosovo has been a major drawback of UNMIK. It exacerbated the inherent difficulties of conflict tensions in Kosovo between parties.¹⁸³In the absence of an agreement over the final status of Kosovo, Kosovo Albanians and Serbs continued to follow their competing objectives and aims, respectively for secession and independence and preservation of FRY sovereignty and return to Serb rule. This is also a crucial point for Crimea case.

EAST TIMOR

¹⁸⁴In the case of East Timor, the Security Council adopted resolution 1272(1999) which established under chapter VII of the UN Charter the United Nations Transitional Administration in East Timor (UNTAET). Together with UN interim administration in Kosovo(UNMIK), UNTAET is unprecedented in the history of UN peacekeeping operations with respect to the scope of the responsibilities and the range of the mandate granted to the mission. Resolution 1272 authorized UNTAET to take over all branches of government on East Timor, including to exercise all legislative

¹⁸¹ Simon Chesterman, ‘Kosovo in Limbo: State-Building and ‘Substantial Autonomy’ (2001) 11 International Peace Academy Report 2.

¹⁸² Alexandros Yannis, ‘Kosovo under international administration’ (2001) 43(2) Survival 24.

¹⁸³ Alexandros Yannis, ‘Kosovo under international administration’ (2001) 43(2) Survival 25.

¹⁸⁴ Boris Kondoch, ‘The United Nations Administration of East Timor’ (2001) 6(2) Journal of Conflict and Security Law 245.

and executive authority which involve the administration of justice likewise the UNMIK in Kosovo.¹⁸⁵ Like UNMIK, UNTAET identified as emergent priorities- apart from addressing the humanitarian disaster and facilitating the return of refugees- the restoration of governance and administration through reconstruction of essential infrastructure, provision of basic social services, recruitment of civil servants, the revival of trade and commerce, and rebuilding of the justice and law enforcement system.¹⁸⁶ It's worth noting that, Resolution 1272 was drafted much more clearly in terms of authorization of transitional administration in East Timor than was the case in Kosovo. UNTAET would be empowered to exercise all legislative and executive authority, involving the administration of justice according to Operative paragraph 1. However, UNTAET has also many shortcomings and lacks of legal framework as being considered as drawbacks.

¹⁸⁷First of all, Ian Martin points out the unanswered key questions of this mandate, including the roadmap leading to self-government, the relationship of the governance and public administration component to the future East Timorese government, and the mechanism for consultation with the East Timorese.¹⁸⁸ Author mentions that shortcomings of this administration caused some confusions about the role of this administration. He asserts that as a transitional administration, it had to conduct peacekeeping, humanitarian assistance and public services. In this aspect, UN Secretariat and Security Council was de jure accountable according to author. On the other hand, in the aspect of state-building, including to construct a self-sustainable East Timorese government and public administration, and oversee the transition to independence. In that respect, UNTAET was de facto accountable according to author.

¹⁸⁹Kondoch remarks the one of the negative deficiency of UNTAET. He mentions that at the beginning of the administration, while the UNTAET had to consult and involve

¹⁸⁵ Sarah Pritchard, 'United Nations involvement in post-conflict reconstruction efforts: new and continuing challenges in the case of East Timor' (2001) 24 University of New South Wales Law Journal 185.

¹⁸⁶ Markus Benzing, 'Midwifing a new state: the United Nations in East Timor' (2005) 9(1) Max Planck Yearbook of United Nations Law Online 320.

¹⁸⁷ Ian Martin, Alexander Mayer-Rieckh, 'The United Nations and East Timor: from self-determination to state-building' (2005) 12(1) International peacekeeping 133.

¹⁸⁸ Ian Martin, Alexander Mayer-Rieckh, 'The United Nations and East Timor: from self-determination to state-building' (2005) 12(1) International peacekeeping 136.

¹⁸⁹ Boris Kondoch, 'The United Nations Administration of East Timor' (2001) 6(2) Journal of Conflict and Security Law 250.

the people of East Timor in the decision-making process under the Resolution 1242, UNTAET failed to consult and involve the people of East Timor in the decision-making process.¹⁹⁰ Moreover, he points out that purpose of the UNTAET was similar to Trusteeship system of UN Charter Article 76. Article 76 emphasizes to promote the progressive development towards self-government or independence. In the same way, Security Council 1277 specified that UNTAET 'was endowed with overall responsibility for the administration of East Timor and to support capacity building for self-government.' Therefore, concept of this administration has been characterized by some commentators as a 'trusteeship administration'. However, UN has not used this terminology but has chosen to use the terms interim and transitional administrations.

¹⁹¹Besides, Benzing criticizes the actions of Transitional administrator of UNTAET for he save in the field of the administration of justice, **did not gradually hand over** more and more legislative and executive competencies to East Timorese institutions. Rather, he focussed on creating structures and institutions with purely consultative functions. Benzing asserts that however, this institutions over time increasingly resembled those of a state, Thus, structures of these institutions are adequate for establishing the self-government system of East Timor. Nevertheless, these institutions remained purely just consultative.

¹⁹²If we focus on another issue, in the establishing period of the UNTAET in East Timor, Security Council based its decision on Chapter VII of UN Charter. However, does this chapter authorize the UN as a sovereign State on a particular territory by establishing an administration? According to Hans Kelsen's view in "The Law of Nations", the organization is not authorized by the Charter to exercise sovereignty over a territory which has not the legal status of trust territory. In the light of this view, article 78 of UN Charter only precludes the application of the trusteeship system to Members of the UN but does not prohibit the establishment of another mechanism allowing UN governance according to Kondoch. Consequently, Kondoch states that UN administration in East Timor would be legitimate if it complied with conditions

¹⁹⁰ Boris Kondoch, 'The United Nations Administration of East Timor' (2001) 6(2) Journal of Conflict and Security Law 253.

¹⁹¹ Markus Benzing, 'Midwifing a new state: the United Nations in East Timor' (2005) 9(1) Max Planck Yearbook of United Nations Law Online 347.

¹⁹² Boris Kondoch, 'The United Nations Administration of East Timor' (2001) 6(2) Journal of Conflict and Security Law 254.

under Chapter VII.¹⁹³ Besides, the author also acknowledges that UN administrations in Kosovo and East Timor are compatible within the scope of non-military measures which is specified in the Article 41 of UN Charter.

¹⁹⁴ Moreover, one question is so crucial: What is the time limitation of UN interim or transitional administrations? Author mentions that, the general answer has always been same: **as long as a threat to peace and security exists, the Council can keep the enforcement measures in force.** Therefore, author concludes that administrations can continue their missions as long as threat to peace exists in those territories within the scope of Article 41 of UN Charter. On the other hand, he admits that peacekeeping missions of these administrations is absolutely for a limited period.

¹⁹⁵ Lastly, Kondocho concludes that UNTAET achieved to create a stable and secure environment for a nation which has not lived in peace for decades. He states that after independence the UN will not leave behind a completely effective administration but a structure which enables the East Timorese to organize their state on their own.

¹⁹⁶ Chopra evaluates the UNTAET as a building state failure. He points out that UN seems to have had little effect on a social and political reality that has evolved by itself. He claims that this administration could not fulfil its aims which is to attempt to (re)build governments that have collapsed or states that have failed. However, he states that in practice, the intervention failed to decentralize its own absolutist form of authority, but succeeded in excluding the local population from the equation.¹⁹⁷ In the light of this view, the author asserts that the mission itself was **corrupting**, even for individuals who were not already pursuing power for its own sake. He mentions that foreign staff exhibited colonial-style behaviour. He states that the economic disparity was so great, the local people were so weak, it was difficult to resist the temptation of superiority. In the same way, the author claims that some officials attempted to prevent the participation of Timorese in the transitional government of the country, they

¹⁹³ Boris Kondocho, 'The United Nations Administration of East Timor' (2001) 6(2) Journal of Conflict and Security Law 256.

¹⁹⁴ Boris Kondocho, 'The United Nations Administration of East Timor' (2001) 6(2) Journal of Conflict and Security Law 261.

¹⁹⁵ Boris Kondocho, 'The United Nations Administration of East Timor' (2001) 6(2) Journal of Conflict and Security Law 265.

¹⁹⁶ Jarat Chopra, 'Building state failure in East Timor' (2002) 33(5) Development and Change 979.

¹⁹⁷ Jarat Chopra, 'Building state failure in East Timor' (2002) 33(5) Development and Change 981.

wanted to **abuse** their newfound authority and spend the millions of dollars committed by the world's donors.

¹⁹⁸ One of the criticism of Chopra about UN administrations by indicating the UNTAET is so crucial. He states that such missions can have more negative outcomes. For instance, they may undermine native forms of political legitimacy without establishing a reliable alternative and functioning administrative structures just as the UNTAET in East Timor.

SUMMARY

In conclusion, UN Charter did not regulate this mechanism. In other words, treaty law neither prohibit nor permit UN to establish an administration in terms of measures to maintain and restore the international peace as a sovereign state in a particular territory. Notwithstanding, teleological interpretation of contemporary academic environment and international community generally admits the legality of this structure, lack of regulation about this issue still exposes this structure of this mechanism under debate and doubts. Moreover, lack of regulation also prompts some problematics about this mechanism. First of all, this phenomena causes the lack of legal framework of this administration, Thus, this prompts many negative consequences. For instance, deficiency of legal framework stimulates the ambiguity of this administration in many aspects: limits of authorization, missions, goals, aims, duties and accountability of this administration, limits of UN personnel's enjoying their immunities, corruption, abusing its authorizations and human rights violations of UN Staff, justiciability of UN personnel in terms of the crimes committed by themselves, and most importantly, obstructing the participation of local people in the administration by malpractice of UN Mission Staff. These are some problematic questions about the vagueness of legal framework of UN interim administration. On the other hand, Notwithstanding the existence of doubts about the lawfulness of this administration under international law, and some problematic issues about limits of this administration and its staff which arise as a consequence of the first circumstance, It is possible to establish an interim administration acting as a State in a particular territory according to teleological

¹⁹⁸ Jarat Chopra, 'Building state failure in East Timor' (2002) 33(5) Development and Change 995.

academic interpretation. Besides the teleological interpretation of Chapter VII, contemporary scholars also attribute the lawfulness of the establishment of UN interim administration to Chapter XI(Non-Self-Governing Territories) and Chapter XII(International Trusteeship System) under the UN Charter. However, It's worth noting that, Crimea is not subject of both Chapter XI and Chapter XII. Therefore, we cannot attribute the legality of establishment of possible administration to these chapters. In the next part, I will try to discuss applicability and possibility of success of establishment of an UN interim administration by admitting the presumption of existence of the legality of establishment of this administration in Crimea.

2) POSSIBILITY OF SUCCESS OF THIS ADMINISTRATION

The prior fact is that Crimea case is definitely distinguished from both past cases which I examined. First of all, circumstances of Crimea is distinct from East Timor. Because, as I mentioned before, Crimea is not subject of Chapter XI(Non-Self-Governing Territories) nor Chapter XII(International Trusteeship System) likewise the East Timor and Crimea is outside the context of decolonization process which is specified under the UN charter. Therefore, while the academicians and international community legitimize the legality of UNTAET's extent power as a sovereign state in terms of decolonization process and Chapter XI and Chapter XII of UN Charter, a possible UN administration in Crimea cannot be legitimized with positive legal arguments about UNTAET. Accordingly, a possible administration in Crimea might be in more much debate and doubts for this case.

Besides, circumstances in Crimea also are also distinct from the case of Kosovo. Because, before the annexation of Russia, there was no repression on the local people of Crimea likewise the case of Kosovo. Moreover, even the legal basis of UNMIK is controversial in terms of decolonization process and Chapter XI and Chapter XII of UN Charter. In that point, Crimea case has similarities with the case of Kosovo. Legal basis of the UNMIK and a possible UN interim administration in Crimea can just only be attributed to extensive interpretation of Chapter VII of UN Charter especially in terms of article 39 and 41.

What's more, one of the main distinction of the case of Crimea from the cases of East Timor and Kosovo is the existence of Black Sea Fleet of Russian in Crimea and strong support of local Russian population to Russia's annexation. This means that establishment a possible administration definitely requires the consent and reconciliation of Russian Federation and other parties to prevent an armed conflict in that area.

Apart from those facts, as I mentioned before in the summary of the previous part, deficiencies of legal framework of UNTAET and UNMIK also should be repaired to prevent the corruption, possibility of crimes which might be committed by UN Staff and the abusing the extent authorization of UN personnel to restore and maintain the peace in Crimea. Therefore, a concrete legal framework requires for this possible administration. It can be provided in many ways: 1) By adopting definite Security Council Resolutions. 2) or codifying apart regulations and treaties from UN Charter. 3) But, in my opinion, the best option is to add extra subparagraphs about the establishment of UN administration as a measure into articles 39 and 41 or to restore the articles 39 and 41 including the establishment of UN administration as a measure for international peace.

¹⁹⁹Last but not least, as I mentioned before in the case of Kosovo, the uncertainty of final status of Kosovo was major drawback of UNMIK. Likewise the Kosovo, if a possible administration establish in Crimea without defining the final status of Crimean Peninsula, This situation would exacerbate the tensions of conflict between the parties in the Crimea. ²⁰⁰Consequently, lack of definition of final status of Crimea would bring more chaos and instability to Peninsula.

In conclusion, in spite of some drawbacks of the concept of UN administration and distinctions of case of Crimea from past cases, in my opinion, there is possibility of success of this concept of UN administration to resolve this dispute.

¹⁹⁹ Alexandros Yannis, 'Kosovo under international administration' (2001) 43(2) Survival 25.

²⁰⁰ Alexandros Yannis, 'Kosovo under international administration' (2001) 43(2) Survival 28.

CONCLUSION

In my dissertation, I tried to detect main points of the dispute of Crimea between 3 main actors and I tried to find a solution mechanism for resolving this dispute. In the first chapter, I tried to present a historical background of Crimean history and the history of dispute of Crimea. Then, in the second chapter, I tried to expose the *de lege ferenda* in the case of Crimea for resolving this dispute by presenting the conflicting claims of actors and general theory of self-determination in terms of public international law. In the third chapter, I tried to discuss a possible solution mechanism to resolve this dispute which is a possible UN interim administration and I tried to discuss and evaluate the lawfulness of this administration and its applicability and probability of success to resolve this dispute. In the light of this structure, I have reached two conclusions about two issues: 1) *De lege ferenda* in the case of Crimea in terms of public international law. In that aspect, Crimea is the integral part of Ukraine in terms of principle of respect to territorial integrity which is also specified in the UN Charter and Russia's use of force was in violation of prohibition of use of force which is also specified in the UN Charter. Therefore, Russia has no right to effectuate the external self-determination of Russian people by applying use of force in that territory. On the other hand, Crimean Tatars which are indigenous people of peninsula have weak rights and freedoms in terms of internal self-determination under the regime of Ukraine before the annexation of Russia. It can be concluded that, Crimea should be integral part of Ukraine again, but also Ukraine has responsibilities to effectuate the right of internal self-determination of local people of peninsula including Tatars and Russians. 2) Possible solution mechanism to resolve the dispute and effectuate the *de lege ferenda*. In that respect, I proposed the establishment of an UN interim administration for temporary period to effectuate the order of *de lege ferenda* in Crimea. This administration system has many drawbacks especially in terms of lacking legal framework and legitimacy. However, it might be also a possible solution mechanism to resolve this dispute. These are conclusions which have been drawn by myself.



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