The Right to Self-determination and the Principle of Territorial Integrity of States: In Search of Reconciliation. From Kosovo to Crimea

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ABSTRACT

International law is a process that changes over the years with the international environment. Since the law is changed, certain principles have become soft, and some from year to year more and more strong and steadfast. Territorial integrity and self-determination are well-known principles of international law and are derived from the same documents of international law. Both principles are closely related to each other and cannot be disentangled. In addition, the meaning of these principles and relationship between them continue to form the subject of debate. Territorial integrity is the right of the states to protect their own territory, the right to self-determination is the right of people to freedom.

The purpose of this thesis is to analyse the relationship between the principle of self-determination of the people and the principle of territorial integrity of states. Is there normative conflict between them? This thesis will be based on the use of both primary and secondary sources. Analysis of documents of international law is essential for the case. The Case of Kosovo and Case of Crimea are used as tools, to show that any matter relating to both principles must be examined individually. In case of Kosovo the right to self-determination may be used to justify Kosovo secession from Serbia, because of special circumstances. Consequently it will be concluded that Crimea cannot base its claim to statehood in a right to self-determination.

Keywords: International Law, Territorial Integrity, Self-Determination, Kosovo, Crimea

ÖZ

Uluslararası hukuk, uluslararası çevre ile beraber yıllar boyunca değişen bir süreçtir. Zamanla hukuk kuralları değişmiş ve bunlardan bazıları yumuşamış bazıları ise güçlenerek yerleşik hale gelmiştir. Uluslararası hukukun en çok bilinen ve aynı sayfalarından türeyen iki ilkesi, bölgesel bütünlük ve özerklik ilkeleridir. Bu iki ilke birbirleriyle ilgili olup ayrı düşünülemezler. Bununla beraber aralarındaki ilişki yıllardır tartışılmakta olup tartışmalar da gelecekte devam edecektir. Bölgesel bütünlük ülkelerin kendi sınırlarını koruma hakları olarak tanımlanır iken özerklik ise o bölge içerisindeki insanların özgürlük haklarını ifade eden bir tanımdır.

Bu tezin amacı, bölgesel bütünlük ve özerklik ilkeleri arasındaki ilişkinin analizi ve bu ilkeler arasında normatif bir çatışma olup olmadığının incelenmesidir. Bu tezin temellendirilmesinde uluslararası hukukun birincil ve ikincil kaynakları kullanılmıştır. Bu iki ilke arasındaki ilişki Kosova ve kırım olayları ele alınarak açıklanmaya çalışılacaktır. Kosova'nın Sırbistan'dan özerklik istemesi olayı uluslararası hukukun özerklik ilkesi, kırım olayı ise bölgesel bütünlük ilkesi içerisinde ele alınacaktır.

Anahtar kelimeler: uluslararası hukuk, toprak bütünlüğü, ozerklik, Kosava, Kırım

DEDICATION

To My Mother

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Chapter 1

INTRODUCTION

The principle of territorial integrity is one of the oldest and most important principles of modern international law. The roots of this principle are commonly associated with the system established by the Peace of Westphalia in 1648. This principle is so essential, because states cannot exist without territory. For the international community, the principle of territorial integrity is crucial as it is the guarantor of the *status quo*, which is tantamount to the world peace and the maintenance of international order. Respect for the principle of territorial integrity was important for the League of Nations and, nowadays, it belongs to the principles of the United Nations.

After World War II, the emphasis given by international law to states and their territorial integrity started to shift towards the recognition of human rights and self-determination of people. A consequence of that were decolonization and the emergence of new states on the world map. Another very important change, which took place in the late twentieth century, was the disintegration of multinational states such as the Soviet Union and Yugoslavia. Numerous states gained independence, some of them became completely new republics. However, in many cases, the breakdown of multinational states led to civil wars and bloodshed. Hatred between the newly created nations and minorities living on the same territory increased significantly. Many minorities, culturally, religiously and ideologically different

from people living with them in same state, wanted to create new, separate states on the basis of the principle of self-determination. Nowadays both principles continue to be invoked by states or other entities and by the people aspiring to statehood in places such as Transnistria, South Ossetia, Abkhazia and Nagorno-Karabakh, and cause conflicts that are difficult to resolve.

In the twenty-first century, there has been a big change in which the definition of a military conflict and other traditional concepts were reinterpreted. Moreover, completely new concepts came into existence, such as hybrid warfare, disinformation or humanitarian intervention. The basic values of international law, namely sovereignty and integrity of the state, are not as valuable as they used to be. Humanitarian intervention, preventive missions and peacekeeping missions are on the agenda of international organizations and from the point of view of international law are legal, but from the point of view of states on whose territory it comes to intervention they might violate their sovereignty. In the struggle for human rights, the international community began a process that continues until today. The world has entered a new era, in which human rights, understood as individual rights, have become more important than boundaries of existing states

The principle of self-determination is a principle which belongs to the people, while the principle of territorial integrity protects the state against the interference into its internal and external affairs. However, it must be understood that both principles are closely related to each other and cannot be disentangled. The principle of self-determination is the realization of the will of the population. Over time, it may come to the situation when the people decide not to be a part of the existing state anymore. The state as a territorial unit wants to keep its sovereignty and territory that is why

states give minorities autonomy, in which they can freely develop. In the past the interest of the state and the maintenance of boundaries were the most important aspects of the state-centric system of international relations. Sometimes, it led to individuals suffer for the good of the state whose interests were the priority. However, the situation is different nowadays. International law reached the point when the individual rights are paramount and the people decide on the most essential issues related to the state. That is why the realization of the right to self-determination of the people has gradually became superior to territorial integrity

The main problem, which may and does arise in many cases, is that the members of the international community are often divided. The newly created state to be recognized by the states and international organizations must fulfil the legal criteria. Sometimes states support the new state guided by the premises of political nature, not international law. The support for newly established states depends on the orientation of foreign policy and the benefits the state can receive in exchange. It is still debatable, who has the right to self-determination, and when exactly the right to self-determination is more important than the territorial integrity of the state.

The choice of this thesis topic was conditioned by the author's interest in the relationship between human rights and the politics of states, as well as in the changes in the Post-Cold War world. The aim of this thesis is to analyse the relationship between the principle of self-determination of the people and the principle of territorial integrity of states.

The main research question of this thesis is: Is there a normative conflict between these two principles? Are self-determination of the people and territorial integrity

mutually exclusive? Normative conflict is a situation where two rules or principles suggest different ways of dealing with a problem. This is the case where two norms that are both valid and applicable point to incompatible decisions so that a choice must be made between them. The thesis considers that both principles come from the same sources of international law and that in international law there is a presumption against normative conflict.

Additional research questions are needed to answer the main question. These additional questions can help in the study of the relationship of both principles. That is why it is important to verify if the right to self-determination applies only to decolonization or if it is a universal principle. Does the right to self-determination include the right to secede is yet another supplementary question that requires careful examination of the documents of international law. It is also the goal of this work to investigate how has international law evolved over several years, what new trends in international law related to the two principles in question may be identified and, ultimately, which of these two principles became more important in state practice? Has the principle of territorial integrity lost its importance in favour of the principle of self-determination of the people?

For this thesis, the case of Kosovo and the case of Crimea have been selected to illustrate the relationship between the principle of territorial integrity of states and the principle of self-determination of people, its evolution and the way both principles are applied in practice. Both cases seem similar, but they have more differences than similarities. It is important to compare the cases but it is more relevant to use this comparison to assess the relationship between these principles. Based on case studies, it is significant to find an answer to the main question

concerning the normative conflict between the principle of self-determination and territorial integrity. It is essential to show that in particular conditions the two principles can be applied and interpreted differently, depending on the circumstances.

Despite the fact that the case of Kosovo is often invoked as a precedent for the case of Crimea, fact it is not. Every case is different and the International Court of Justice in it is Advisory Opinion described Kosovo as a unique case. Any matter relating to self-determination should be considered separately due to the fact that each case is different. The case of Crimea is quite different from the case of Kosovo. In fact, it is difficult to understand why during the unilateral proclamation of independence of Crimea a reference was made to the case of Kosovo.

What is most important is the fact that Crimea refers to the status of Kosovo. But is there a reasonable comparison to Kosovo? In both cases, it is essential to examine the legality of the actions of those who unilaterally declared independence as well as international reactions of international organizations and states involved in the conflict. The most interesting element which connects these two cases is the Russian Federation and Russia's role in both conflicts. Russia is a state which is against the independence of Kosovo. In the international arena, Russia presented its objections very loudly stating the argument that territorial integration of Serbia should be respected. However, a few years later, in 2014, Russia annexed Crimea and justified its action by making reference to the status of Kosovo, which is not recognized by Russia. Therefore, another objective of this thesis is to explore what has changed in the field of international law since the case of Kosovo, and what impact the change could have on the events in Crimea.

Methodologically, the thesis will be based on the use of both primary and secondary sources. In order to clarify the concepts of territorial integrity and self-determination, the author will interpret relevant international treaties, including the Charter of the United Nations, and other UN documents, such as Declaration on Friendly Relations and Co-Operation Among States, Charter of Economic Rights and Duties of States, Convent on Civil and Political Rights and the Convent on Economic, Social and Cultural Rights. An extensive analysis of the ICJ Advisory Opinion concerning Kosovo and related documents – declarations submitted to the Court by a number of states, including the Russian Federation, will be used. In the case study of Kosovo, it is essential to examine the Security Council resolutions of the United Nations because of their critical importance of this case. In the case study of Crimea, it is important to analyse documents of national law, namely the Constitution of Crimea and the Constitution of Ukraine. The key to the case of Crimea are international agreements between Ukraine and Russia which guarantee the integrity and security of Ukraine. However, the most relevant issue is to compare the texts of unilateral declarations of independence proclaimed by Kosovo and Crimea and their contexts. A comprehensive literature review, contextual and comparative analysis of both cases will complement the main toolbox used.

This thesis is composed of an introduction, literature review, the chapter on concepts and definitions, the chapters on the case of Kosovo and the case of Crimea, a chapter comparing these two cases, and the conclusions.

The literature review presents the opinions of scholars of international law. This chapter is divided into seven subsections. The first two sections are related to the major principles discussed in this thesis, namely the way the principle of self-

determination of the people and the principle of territorial integrity are viewed in the literature. In this case, the literature addresses the issues of the relation between the two principles and the importance of these two principles for international law. Another element is the right to secession and its legality. The researchers also discuss the evolution of these two principles and the role of international organizations, mainly the United Nations, in the development of human rights and in particular, the principle of self-determination of the people.

The third chapter explains the concepts of self-determination and territorial integrity. It provides information about the history and evolution of both principles over the centuries. This chapter is divided into four sections, which reflect the key aspects of both principles. The section on territorial integrity establishes how has this principle changed since its original form embodied in the Westphalian order and what the sources of this principle are. The section on self-determination explains who has the right to self-determination, deals with the internal and external aspects of self-determination and the source of this principle. An important element of the analysis is the concept of secession and its legality from the point of view of international law.

The following two chapters focus on different ways the two principles were invoked in the case of Kosovo and in the case of Crimea. The fourth chapter concerns the case of Kosovo. This chapter is divided into four sections. The first one deals with historical background of the conflict in Kosovo. This section presents political, geographical and legal conditions that affected the proclamation of independence of Kosovo. There is an analysis of the impact of Resolution 1244 on the conflict and the role of international organizations in the conflict. This chapter follows the pattern

developed in the Advisory Opinion of the International Court of Justice which investigated the legality of the proclamation of independence of Kosovo and deals with the consequences of this opinion. The following section is an analysis of the arguments included in the statement of the Russian Federation, relevant to the analysis of the case of Crime in the next chapters.

The fifth chapter concerns the conflict in Crimea, from the point of view of international law. This chapter is divided into six sections. There is an analysis of the historical background of Crimea, when it was a part of Ukraine. This part focuses on the analysis of the documents of international law which deal with the legal status of Crimea as an integral part of Ukraine and in particular, the agreement signed by Ukraine and Russia after the fall of the Soviet Union. Later, it determines who the author of the declaration of independence of Crimea is, and whether this declaration is in conformity with international law. In the case of Crimea, it is worth clarifying the role of the Russian Federation, which is directly involved in the conflict. It is important to check if Crimea could apply for the right to self-determination. Russia justifies its actions in Crimea as interventions at the invitation to protect its citizens outside the country. It is important to check if Russia had the reasons to intervene.

The sixth chapter includes seven subsections. It compares the cases of Kosovo and Crimea focusing on their similarities and differences and considers whether both qualify as cases involving the right of the people to self-determination. Next, it considers whether the principle of territorial integrity of Serbia and Ukraine were violated. In order to address this question, the investigation of the ethnicity of these two territories follows. Was there a violation of human rights, which resulted in the declaration of independence? This chapter also compares the declarations of

independence in both cases. From the point of view of international law, it is important to recognize a state to confirm its legality that is why we take a look at the number of states which have recognized Kosovo and Crimea.

Chapter 2

LITERATURE REVIEW

The principles of self-determination and territorial integrity belong to the most important concepts of international law. There are many sources of international law which explain the relationship between these two principles, however, they are not sufficient. The content of the principles of territorial integrity of the state and self-determination of the people and the nature of their relationship remain debatable. How can the two principles be reconciled? Which of the two principles prevail? According to Rupert Emerson, „as with most issues of self-determination, the questions which are likely to be asked are simple, the answers complex or non-existent".[1]

The literature of international law focuses on the meaning of those two principles their origins and evolution. An important component of the literature is the relationship between these principles and the question whether there is a normative conflict between them. Many writers contextualize this relationship by analyzing the development of international law at large and the concept of human rights. This chapter presents different opinions of relevant scholars about the changes in modern international law and their consequences. The researchers, who rely on the sources of international law, try to explain if the right to self-determination includes the right to

[1] R. Emerson, *"Self-Determination"*, American Journal of International Law, Volume 65 (July 1971) 469

secede and if so, under what conditions. Others focus on the role of international organizations.

The literature on self-determination is huge. However, the literature on territorial integrity and the relationship between these two principles is very sparse and the writers divided.

2.1 The Principle of Territorial Integrity

The establishment of the principle of territorial integrity, in its modern form, is typically associated with the 1648 Pace of Westphalia and so-called Wesphalian order. The first rules on state territory and borders were included in this document.[2] In those early centuries of the Westphalian order territory was the main factor of existing states. It determined the security of the states, and thus protection and acquisition of the territory were important components of their foreign policies. Since that time, international law has been based on the concept of the territory and state's sovereignty over its territory is absolute and complete. [3]

Without the territory a legal person cannot be a state.[4] Shaw believes that "since such fundamental legal concepts as sovereignty and jurisdiction can only be comprehended in relation to territory, it follows that the legal nature of territory becomes a vital part in any study of international law".[5] The principle of territorial integrity is one of the most important protection principles in international law, because of the respect for the borders of existing states. That is why territorial integrity is a key concept of international law.[6] One of the essential tasks of the

[2] B. Cali, *International Law for International Relations* (Oxford University Press, 2010) 193-194
[3] M. Dixon, *Textbook on International Law*, 6th edition (Oxford University Press, 2007) 154
[4] M. N. Shaw, *International Law*, 4th edition (Cambridge University Press, 1997) 331
[5] Ibid.,
[6] M. N. Shaw, *International Law*, 332

principle of territorial integrity is to guarantee resistance to dismembering the territory. Not only is it the respect of the territorial sovereignty, but also its integrity.[7]

According to Kohen, territorial integrity is related to the respect for the performance of the prerogatives of the sovereign state on its territory. He adds that this principle is also connected to the inviolability of the state territory and resistance to dismembering the same state territory.[8] Some of the authors do liken the principle of territorial integrity to the principle of stability of territories and borders.[9] Others maintain that the principle of territorial integrity is nothing else but the principle of *uti possidetis*.[10]

However, contemporary international law has shown very little attention to the principle of territorial integrity.[11] Shaw admits that "it is difficult to find any contemporary author showing interest in the definition of the principle of territorial integrity".[12] The reason for this is the development of international law and the increase of importance of other principles concerning international law, including the right to self-determination. Lillih underlines that "sovereignty today is an extraordinarily flexible, manipulative concept".[13] The right to self-determination is

[7] M. G. Kohen, *Secession: International Law Perspectives* (Cambridge University Press, 2006) 6
[8] M. G. Kohen, *Possession Contestee et Souverainete Territoriale* (Paris: P.U.F., 1997) 339-377
[9] S. Lalonde, *Determining Boundaries in a Conflicted World: The Role of Uti Possidetis* (Queen's University Press, 2002) 143
[10] M. G. Kohen, *Possession Contestee et Souverainete Territoriale*, 453, M.N. Shaw, *"Peoples, Territorialism and Boundaries*", European Journal of International Law, Volume 8, No:3 (1997) 499
[11] J. G. Ruggie, "Territoriality *and Beyond: Problematizing Modernity in International Relations",* Review of International Organization, Volume 47, No:1 (1993) 174
[12] M. N. Shaw, *International Law*, 76
[13] R. B. Lillich, "*Sovereignty and Humanity: Can They Converge?* in A. Grahl- Madsen and J. Tomam, *The Spirit of Uppsala* (Gruyter, 1984) 413

now a part of the criteria for statehood, because in many cases the exercise of the right will either create a state or be a determinant in the creation of a state.[14]

2.2 The Principle of Self-Determination

At first, the principle of self-determination was only a political postulate, but after World War II it underwent a significant evolution, especially when it comes to understanding its meaning. Since the establishment of the United Nations, the right to self-determination of the people has been transformed from a political principle to a legal principle, and from a right of colonial peoples it has become a human right. Falk states that "the evolution of the right to self-determination is one of the most dramatic normative developments in this century".[15]

According to Casanovas, "historically, politically and legally the concept of self-determination of peoples has had many meanings and has evolved considerably during past few decades".[16] Crawford distinguishes "political principle, legal principle and legal right in terms of generality" and argues that self-determination is all three.[17] For Crawford, "the legal principle of self-determination plays a residual role. In the absence of the right, the principle acts as a template for the translation of moral or political arguments into international law".[18] While the colonial governments at the time may have denied that the right to self-determination had any impact, now it is certain that decolonization was an exercise of the right to self-

[14] S. Blay, R. Piotrowicz and M. Tsamenyi, *Public International Law: An Australian Perspective*, 2nd edition (Oxford University Press, 2005) 190
[15] W. Danspeckgruber, *The Self-Determination of Peoples: Community, Nation and State in an Interdependent World* (Lynne Rienner Publishers, 2002) 64
[16] O. Casanovas, *Unity and Pluralism in Public International Law* (Martinus Nijhoff Publishers, 2001) 1
[17] J. R. Crawford, *The Creation of States in International Law* (Oxford University Press, 1979) 85-102
[18] Ibid.,

determination.[19] Colonial people had four methods of exercising their right, like emergence as a sovereign independent state, free association with an independent state, integration with an independent state or any other way chosen by people.[20] Cassese points out that „the right only concerns external self-determination, that is, the choice of the international status of the people and the territory where it lives".[21]

By decolonization and the growing importance of the principle of self-determination, the rights of the people have developed into an international legal right.[22] The fundamental question is whether the international right to self-determination has been recognized as applicable outside of decolonization or not. Rosalyn Higgins notes that "the very concept of a legal right of self-determination, in a post-colonial situation has proved controversial but its existence cannot really be doubted".[23] Cardenas and Canas claim that "the general acceptance of a common obligation to protect other peoples' rights to individual and collective existence and self-expression is growing beyond scope of traditional self-determination".[24] On the other hand, they believe that "external self-determination beyond the idea of decolonization has frequently proven overambitious".[25]

As Kirgil Jr observes, „the self-determination principle in the UN era has a great many faces".[26] There are more important problems, which concern the interpretation of the right of people to self-determination. First, there is a question of how to define

[19] S. Blay, Public International Law, 189
[20] Ibid.,
[21] A. Cassese, *Self-determination of Peoples: A Legal Reappraisal* (Cambridge University Press, 1995) 72
[22] R. Higgins, *The development of International Law Through the Political Organs of United Nations* (Oxford University Press, 1963) 103
[23] Ibid., 27
[24] W. Danspeckgruber, *The Self-Determination of Peoples,* 102
[25] Ibid.,
[26] F. L. Jr. Kirgis, „*The Degrees of Self-Determination in the United Nation Era*", American Journal of International Law, Volume 88, No:2 (1994) 305

people. Second, there is an issue of whether the right to self-determination includes the right to secession from a state.[27] It is the view of Knop that „self-determination must be interpreted as justifying secession only where there is no less drastic means to free a people from oppression from others".[28] The international law is problematic aside from self-determination. According to many researchers, this form of self-determination is valid only under certain special conditions, such as human rights violations. However, Kohen believes that "there are not two different rights to self-determination, one internal and the other external, but two aspects of a single right".[29]

2.3 Relationship Between the Two Principles

The principle of territorial integrity applies to preserve the sovereignty and national boundaries. Nevertheless, in some cases the principle of self-determination may lead to the fragmentation of the existing state in violation of international law. In the past decades, the concept of territorial integrity was tremendously challenged by dramatically increased claims to self-determination. They often led to civil wars.[30] For Sharma "new principles like self-determination making their impact at the international level. However, it may be noticed that the territorial integrity concept of international law is in no way jeopardized by the principle of self-determination".[31] According to the definition of self-determination in the modern era, science self-determination without the counterbalancing force of territorial integrity would run

[27] J. Berndtsson and P. Johansson, *" Principles on a Collision Course? State Sovereignty Meets Peoples' Right of Self-Determination in the Case of Kosovo*", Cambridge Review of International Affairs, Volume 28, No:3 (2015) 450
[28] K. Knop, *Diversity and Self-Determination in International Law* (Cambridge University Press, 2002) 82
[29] M. G. Kohen, *Secession: International Law*, 9
[30] A. E Ouali, *Territorial Integrity in a Globalizing World: International Law and State' Quest for Survival* (Springer, 2012) xiii
[31] S. P. Sharma, *Territorial Acquisition Disputes and International Law* (Martinus Nijhoff Publishers, 1997) 18

the risk of anarchy.[32] Castellino observes that "territorial integrity clause is thus an important control to self-determination in an international system that is preoccupied with the need for stability and order".[33]

Castellino also claims that there is a conflict of interest between self-determination and territorial integrity.[34] Self-determination is not in conflict with the principle of territorial integrity, if its internal aspect is considered. The problem comes into when the autonomy that people get is not enough, which makes people want to apply external self-determination. Balayev points out that "internal self-determination autonomy is not contradicting territorial integrity at all. It is secession that contradicts the territorial integrity of states".[35] In some cases, external self-determination could lead to secession, which is not compatible with international law.[36] Any form of external solutions or external self-determination is hereby prohibited.[37]

Due to the conflict between these principles, writers are divided. For some of them, the principle of self-determination is more important than the principle of territorial integrity. For Ouali, international law "remains powerless in helping states to address the increasing external and internal challenges that territorial integrity, that is states' right of the existence, is being faced with."[38] Butler states that "territorial integrity

[32] L. Brilmeyer , "*Secession and Self-Determination: a Territorial Interpretation"*, Yale Journal of international law, Volume 16 (1991) 177-202, E. Suzuki, *"Self-Determination and World Public Order: A Community Response to Territorial Separation"*, Yale Journal of International Law, Volume 16 (1976) 779-862
[33] J. Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial National Identity* (Kluwer Law International, 2000) 26
[34] Ibid., 105
[35]B. Balayev, *The Right to Self-Determination in South Caucasus: Nagorno Karabakh in Context* (Lexington books, 2013) 92
[36] J. Castellino, *International Law and Self-Determination*, 34
[37] U. Barten, *Minorities, Minority Rights and Internal Self-determination* (Springer, 2015) 32
[38] A. E Ouali, *Territorial integrity in a Globalizing World* , xviii

has its limits which include, *inter alia*, the obligations to respect human rights and the obligation to recognize the principle to self-determination".[39] As Sharma writes „since 1945 the principle of self-determination has acquired the status of the fundamental norm of territorial separation".[40] Mullerson states that "territorial integrity may be maintained (often only for while) but democracy and human rights are sacrificed (usually for long). Moreover, even such a price for territorial integrity may not be, at the end of the day, sufficient".[41]

However, there are writers who believe that the principle of territorial integrity is more important than the principle of self-determination. One of them is Thornberry, who, with respect to self-determination, points out that "in terms of a more participatory concept of people and a less oppositional view of the right of people and other communities the integrity principle can manifest opportunity as well as limitation".[42] He also believes that "the respect for territorial integrity is a feature which may recommend itself".[43] However, Cassese remarks that "self-determination also eroded one of the basic postulates of the traditional international community: territorial sovereignty".[44] He also believes that self-determination "had a significant impact on the most traditional segment of international law, namely the acquisition, transfer and less of title over territory".[45] Fabry points out that "in the postcolonial

[39]W.E. Butler, *"Territorial Integrity and Secession: The Dialectics of International Order*" in J. Dahlitz, *Secession and International Law: Conflict Avoidance: Regional Appraisals* (United Nations, 2003) 112
[40] S. P. Sharma, *Territorial Acquisition Disputes*, 167
[41] R, Mullerson, *"Sovereignty and Secession: Then and Now, Here and There "* in J. Dahlitz, *Secession and International Law,* 130
[42] V. Love and C. Warbrick, *The United Nations and the Principles of International Law: Essays in Memory of Michael Akehurst* (Routledge, 1994) 190
[43] Ibid.,
[44] A. Cassese, *International Law*, 2nd edition (Oxford University Press, 2001) 105
[45] Ibid., 108

era, self-determination has taken an inward turn, decidedly subordination claims of independence to the territorial integrity of existing states".[46]

2.4 Secession

International law treats secession as a fact, not as a consequence of self-determination. In the literature on international law there is a dispute concerning the legality of secession as a part of self-determination, which directly affects the territorial integrity. As it has become evident now, the position of international law on the issue of secession is far from clear.[47]

Chernichenko and Kotliar point that "priority should be also given to the principle of self-determination of people (including secession) as compared to the principle of respect for territorial integrity".[48] Mullerson believes that "at the end of the day, both the international community and the authorities of the state from which secession is sought may have to be accept secession as inheritable".[49] For Buchanan, Brilmayer and Ornentlicher, secession may be justified from philosophical point of view of international law.[50]

According to some opinions, secession as part of self-determination is unreasonable and violates the norms of international law. Some authors believe that self-

[46] M. Fabry, *Recognizing States* (Oxford University Press, 2010) 204-207
[47] C. Walker,,A. von Ungern-Sternberg and K. Abshov, *Self-Determination and Secession in International Law* (Oxford University Press, 2014) 5
[48] S. V Chernichenco and V. S. Kotliar, *"Ongoing Global Legal Debate on Self-Determination and Secession: Main Trends"*, in J. Dahlitz, *Secession and International Law*, 76
[49] R. Mullerson, *"Soveregnity and Secession: Then and Now...",* 130
[50] A. Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, Colorado: Westview Press, 1991) 174, L. Brilmayer, "*Secession and Self-Determination: A Territorial Interpretation"*, Yale Journal of International Law, Volume16 (1991) 177-202, *D. F. Orentlicher, "Separation Anxiety: International Responses to Ethno- Separatist Claims*", Yale Journal of International Law, Volume23 (1998) 1-78

determination, including secession, is wrong.[51] Dugard and Raić point out that "right to unilateral secession does not exist under international law or whether international law recognizes such a right in specific circumstances only".[52] Thornberry claims that "thinking on self-determination has largely been concerned with the spectre of secession".[53] Cassese suggests that secession is not the limitation of the principle of territorial integrity, indeed, the "international community does not recognize the right of secession".[54]

Some researchers maintain that secession is possible, but under certain conditions that must be fulfilled. Kruger, for instance, believes that the "principle of territorial integrity generally ranks higher then external right to self-determination".[55] However, "there are exceptions under certain condition when the external right to self-determination can prevail over the principle of territorial integrity".[56] Secession can be considered legitimate only in exceptional cases and only within the framework of the right of people to self-determination.[57] For Buchanan right to secede may exist if state violates basic individual and political rights, also when state conducts policy of discrimination against the community with a unique culture.[58] However, Kohen states that „secession is not an instant fact. It always implies a complex series of claims and decision, negotiations and/or straggle which may or

[51] R. Higgins, "*Judge Dillard and the Right to Self-Determination"*, Virginia Journal of International Law, Volume 23, (1983) 89, E. Suzuki, *"Self-Determination and World Public Order: A Community Response to Territorial Separation*", Virginia Journal of International Law, Volume 16 (1976) 73, L. Brilmeyer, *" Secession and Self-Determination...",* 73
[52] M.G Kohen, *Secession*, 95
[53] V. Love and C. Warbrick, *The United Nations*, 190
[54] A. Cassese, *International Law*, 112
[55]H. Kruger, *Nagorno-Karabakh Conflict: A Legal Analysis* (Springer, 2010) 53
[56] Ibid., 54
[57] S. V Chernichenco and V. S. Kotliar, *"Ongoing Global Legal Debate on Self-Determination and Secession...",* 78
[58] A. Buchanan, *Secession: The Morality of Political Divorce From Fort Sumter to Lithuania and Quebec* (Oxford: Westview Press, 1991)

may not- lead to the creation of a new state".[59] For Higgins, „secession is international relations 'long stop' or 'bolt hole' an ultimate possibility for group caught in a total faille of the intended balance between self-determination of all the peoples and minority rights of some of the people".[60]

2.5 Evolution of International Law

Another issue discussed in the literature is the volatility of international law. The principle of territorial integrity and the principle of self-determination of the people are legal principles and their understanding evolves with the evolution of international law. It is important to understand those principles in the context of international law and its evolution. There have been many changes from the old order in Westphalia to the twenty-first century. Some of the principles of international law have become 'soft' and they have lost their validity.

For Higgins, international law is "not just a body of rules, the rules play part in law, but not an only part".[61] She also believes that "If international law was just 'rules', then international law would indeed be unable to contribute to and cope with a changing political world".[62] Mullerson notes that "international law, as the law of international society, responds to the needs of states and others actors of international society and in constancy changing".[63] Higgins defines international law as "a system, a process, rather than rules or commands".[64] According to the process theory, international law responds to changing the environment, such as the international community, the policy of states, and the events that are currently taking place in the

[59] M.G Kohen, *Secession: International Law Perspectives*, 14
[60] Ibid., 22
[61] R. Higgins, Problems and Process: International Law and How We Use It (Oxford University Press, 1994) 2
[62] Ibid., 3
[63] R. Mullerson, *"Sovereignty and Secession: Then and Now...",* 139
[64] R. Higgins, *Problems and Process*, 10

world. Process theory has reached the point where it is important to consider the timeliness of the principle of self-determination and territorial integrity. Is the principle of territorial integrity as permanent and unbreakable as before? The most important issue is why there has been a revolution in the relation between those principles. It is difficult to find an unanimous answer to these questions. However, Higgins believes that "international law became confused with other phenomena, such as power or social or humanitarian factors".[65]

Tunkin recognizes the principle of territorial integrity of states as 'old' international law, due to the fact that the international community created 'new' principles of international law.[66] For him, this 'old' international law is a part of Westphalian principles, which lost their significance in the twentieth century. This happened by means of globalisation such as technology, communication, transnational interest and concerns.[67] The nation states have lost their significance because of the supranational communities, which haveeroded territorial integrity by globalisation and technology.[68] Territorial space as the element of security is no longer a guarantee of security as it used to be.[69] At the same time, when the 'old' principle lost its value, a 'new' principle, such as respect for human rights, has begun to be the most important part of international law. Mullerson states that „the principle of respect for human rights, including minority rights, and that of self-determination of people refract this drastic change. Traditional Westphalian principles of international law such as the respect for territorial integrity and non-interference in internal affairs have to coexist

[65] Ibid., 3
[66] G. I. Tunkin and W.E Butler, *Theory of International Law* (Harvard University Press, 1974) 86-89
[67] G. I. Tunkin and W.E Butler, *Theory of International Law*, 86-89
[68] Ibid.,
[69] W.E. Butler, *"Territorial Integrity and Secession:...",* 119

and often come into conflict with Post Westphalian principle".[70] Robertson defines Post Wesphalian era as "third age of human rights".[71] Henkein believes that "changes in the system have been accompanied by changes in the character of statehood. States continue to value their independence, autonomy and impermeability, but state borders are now more readily permeable in fact, which has diluted the importance of the veil of statehood".[72] Moreover, he points out that "the international system, one may anticipate, will continue to evolve its accommodation between traditional state values and a growing concerns for human values".[73]

International law was created for states and individuals. That is why international law responds to their needs. With the revolution of international community, the law has adjusted to them, but these changes do not occur only with respect to the principle of self-determination and territorial integrity, but also with respect to other areas of international law.

2.6 The Role of International Organizations

The literature of international law focuses on the role of the United Nations in the creation and development of the right of people to self-determination and human rights. Cassese believes that law-making activities of the United Nations shaped the customary law on self-determination.[74] Besides, he claims that international organization activity expanded the principle of self-determination and gave it a different meaning.[75] Casanovas defines law-making activities of the UN in the development of self-determination in the following way: „from a political principle it

[70] R. Mullerson, "*Sovereignty and Secession: Then and Now...",* 127
[71] G. Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (Ringwood, 1999) 450
[72] C. Ku and F. Diehl, *International Law: Classic and Contemporary Readings* (Lynne Rienner Publishers, 1998) 551
[73] C. Ku and F. Diehl, *International Law: Classic and Contemporary Readings*, 555
[74] A. Cassese, *Self-determination of Peoples,* 159
[75] Ibid.,

has became a legal principle and in content from being a right of colonial people it has became a human right".[76] Farer believes that "United Nation organization had reached the end of the beginning of serious efforts to protect the rights of the globe's people".[77] What is more, Shelton states that "self-determination has evolved from an international 'principle' declared in United Nation Charter to a right of all people guaranteed by global and regional human right instruments.

The biggest change, which began in the 90s and still continues, is the increased support for the idea of legitimate use of force in defence of human rights. After the Cold War, the United Nations have become a universal organization whose main goal is to fight for the rights of the people, this struggle has caused the change of traditional international law. Shaw notes that "the elucidation, development and protection of human rights through the United Nations has proved to be a seminal event".[78] Cristescu and Higgins point out that the recommendation of the United Nation General Assembly in reaction to self-determination has established a new customary law on the subject.[79] Additionally, he believes that history of territorial integrity as a "principle of international law has yet to be unbroken".[80] In 1966, the legislative work of the United Nations created two new Covenants of Human Rights whose regulation goes beyond the framework of customary law.[81] Those documents began to show the universal concepts of the principle of self-determination, not only

[76] O. Casanovas, *Unity and Pluralism*, 1
[77] A. Roberts and B. Kingsbury, *United Nations Divided World: The United Nations Roles in International Relations*, 2nd edition (Oxford University Press, 1993) 296
[78] M. N. Shaw, *International Law*, 206
[79] A. Cristescu, *The Right to Self-Determination: Historical and Current Development on the Basis of the United Nations Instruments* (New York 1981) 23, R. Higgins, *The development of International Law Through the Political Organs*, 104
[80] A. Cristescu, *The Right to Self-Determination*, 117
[81] A. Cassese, *Self-Determination*, 65

the relation to decolonization.[82] As previously mentioned, the twenty-first century has led to a significant development of human rights and the principle of self-determination of peoples, Henkin believes that „human right will continue to increase".[83]

2.7 Conclusions

The literature reviewed helps to determine the relationship between the principle of self-determination and the principle of territorial integrity and its evolution. The principle of territorial integrity, derived from the Westphalian system, has lost its significance over the past few decades. The evolution of post-1945 international human rights law has been applied to amplify the legal protection that individuals enjoy against state power held by governments of their own nation.[84] Danspeckgruber points out that "self-determination has had a diverse impact on the communities, states and regions of the world".[85] Moreover, he believes that international system is changing, as well as the meaning and impact of self-determination.[86] The more powerful challenges related to the state sovereignty, including international law, are global the human right movement and the forces of globalization.[87] Territorial integrity has been weakened by globalization.[88]

This means that the traditional concept of the state and its place in international law has been modified by the right of the people. The process of the formation of the concept of human rights is still going on, and seems to slide toward the superiority of

[82] T. M. Franck, "*The Emerging Right to Democratic Governance"*, American Journal of International Law, Volume 86, No: 1 (January 1992), 58
[83] C. Ku and F. Diehl, *International Law*, 556
[84] W. M. Slomanson, *Fundamental Perspectives on International Law*, 6th edition (Wadsworth, 2011) 603
[85] W. Danspeckgruber, *The Self-Determination of Peoples*, 335
[86] Ibid.,
[87] R. J. Hanlon and K.Christie, *Freedom from Fear, Freedom from Want: An Introduction to Human Security* (University of Toronto Press, 2016) 87
[88] A. E Ouali, *Territorial integrity in a Globalizing World*, xv

the principle of self-determination of people over the principle of the integrity of States. The confirmation of this can be found in the literature. Nowadays, the crisis of territoriality seems to be pushing towards the rise of the new paradigm where self-determination in increasingly requested to preserve state's territorial integrity.[89]

This part is a summary of the literature on self-determination and territorial integrity. Having presented different opinions about the relation between those two principles, we can move on to the next chapter. The next chapter concerns the theoretical aspects of these principles from the point of view of international law. Concerning the principle of territorial integrity it is important to examine its validity in the Wesphalian order and in the present. While discussing the principle of self-determination, it is important to examine the process by which it evolved from a political postulate to one of the most important principles of international law.

[89] Ibid.,

Chapter 3

SELF-DETERMINATION AND TERRITORIAL INTEGRITY: CONCEPTS AND DEFINITIONS

The aim of this chapter is to explain two basic concepts of international law: self-determination of the people and territorial integrity of the state. Both principles are contained in many important international law documents, including the Charter of the United Nations. Unfortunately, self-determination remains vaguely defined, leaving much room for the determination who has the right to self-determination and under what conditions. It is important to clarify the differences between internal and external self-determination. It is also disputed whether self-determination includes the right to secede, and if so, under what conditions, and is secession legal in the post-decolonization era?

In many cases, self-determination can be used to justify historical and geographical claims, which is of great importance for the disputes related to the territory. It is important to determine the extent to which the principle of self-determination can be reconciled with the principle of territorial integrity and inviolability of borders. The main aim of this chapter is to demonstrate that the principle of territorial integrity represents the tendency to maintain the *status quo*, while the principle of self-determination represents dynamic changes.

3.1The Principle of Territorial Integrity

Territory is a fundamental concept of international law. Although possessing a land is not a pre-condition for acquiring personality in international law, there cannot be a

state without territory.[90] Territorial integrity is essential, as without it the state cannot hold the power at the national and international level. As a matter of fact, one of the qualifications prescribed under the criteria of statehood is that the state as a person of international law must have a 'defined territory'.[91] Territorial integrity has been defined as "the material expression of State sovereignty and jurisdiction (land, water, subsoil, airspace, population) and in some instances, state ownership of such material expression (aircraft, space vehicles, ships)".[92]

International law shows that the possession of a land mass or territory is fundamental to the basis of the national power. In the classical international law, the state has exclusive control and sovereignty over its own territory. Just like in case of the territory, the territorial sovereignty symbolizes a strong bond between a particular piece of territory and the people identified with that territory or living on it. This is evident due to the fact that the exercise of sovereignty within the territorial limit of a community presupposes the establishment and maintenance of stable institutions which after all is a function of individuals belonging to that community.

The limitation of the principle of territorial integrity may, under certain circumstances, include: the duty to provide democratic government, the duty to protect human rights, the duty to recognise the principle of self-determination, transboundary pollution, accidental violations of territory or of air or sea spaces, the duty to respect and comply with international law generally.[93] However, instead of speaking about limitation, Butler believes that "the principle of territorial integrity is

[90] S. P. Sharma, *Territorial Acquisition, Disputes and International Law*, 2
[91] Montevideo Convention on Rights and Duties of States on 26 December 1933, https://www.ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf, access: 31 May 2016
[92] C.L Rozakis, „*Territorial Integrity in Political Independence"* in R. Bernhart, *Encyclopedia of Public International Law* (2000) 812-818
[93] W.E. Butler, *"Territorial Integrity and Secession:...",* 112

closely interrelated with other principles of international law".[94] Territorial integrity applies to the prohibition of the threat or use of force and respect for human rights and self-determination of the people. This principle is related to non-intervention in the internal or external affairs of other states and peaceful settlement of disputes. Cassese points out those fundamental principles of international law "supplement and support one another and also condition each other's application. International subject must comply with all of them. Also, in the application of any one of the principles, all the others must simultaneously be borne in mind".[95]

3.1.1 The Peace of Wesphalia

The idea of the territory as an essential component of sovereignty was known even to the ancient Greeks and Romans. However, it is the Peace of Westphalia that symbolizes a starting point in the formation of the modern international legal order, where a system of sovereign states based on defined territorial units was introduced.[96] The Treaties of Westphalia implemented two fundamental principles of complementary nature known as the territorial sovereignty and the sovereign equality of states. The functions of territory under the Westphalian legal order were primarily two-fold as providing security to the people against external attacks and excluding harmful effect caused by other entities.

An important feature of the Wesphalian order was a centralization of power and the formation of national identity and, as a result, the creation of uniform national states. Further, the territorial sovereignty over a particular area evolved and formed the boundaries in today's meaning. There has been a change in the international order,

[94] Ibid.,
[95] A. Cassese, *International law*, 112
[96] K. Gross, *"The Peace of Westphalia 1648-1948",* American Journal of International Law, Volume 42 (1948) 20-41

the process moved away from the state-centred structure of the world. Thereby, it was not only a new approach to sovereignty that was formed, but also the modern idea of statehood. Sovereignty was gradually transferred from the person of the monarch towards the community, which for the bond and the ethnic identity of the group evolved into the nation. Since then, we have had a fully formed state, which is a determinant of territory and power as well as the nation.

3.1.2 Territorial Integrity in the Post-Westphalian Order

The international order created by the Westphalian system continues until today. The Westphalian system was the guarantor of security in the world for a long time. However, the collapse of the system took place during the First World War and later during the Second World War.[97] These wars changed the territories of many states and led to the deaths of millions of people. Additionally, during First World War developed the liberal trend, which supported the occupied nations in Europe.[98]

It seems that after the First World War the perception of territorial states changed, and international organizations and non-state actors gained subjectivity as well. The problem is the growing role of large number of non-state actors, who have protected their own goals and values, and who do not always coincide with the values protected by the state. Nowadays, more and more is being said about the global security, including not only Earth, but also its environment in space. Besides, broadening the definition of security has reduced the primacy of the nation-state as the main subject of security to the individuals.

[97] E. Engle "*The Transformation of the International Legal System: The Post-Westphalian Legal Order*", Quinnipiac Law Review, Volume 23, No. 23 (2004), 23-27
[98] Ibid.,

The on-going changes in the corpus of international law may be described in terms of the growing impact of the principle of self-determination of the people. This principle is now a part of the human rights law, which is universally accepted, and international cooperation, which nation states have pledged to observe. One common element in those new prescriptions and their underlying policies is that on the face of it, they appear to be penetrating the cloak of the state sovereignty and territorial integrity.[99]

In spite of evolution in international law, the current international system continues to be based on the principles set out in Westphalia. The difference consists in the fact that the system has changed to adapt to the current needs of international actors. In spite of globalization and a growing number of non-state actors, the territorially based view of international law still retains its pivotal position. The contemporary international law is still based on the concept of territoriality of the state and aims at protection and preservation of this traditional structure of international order. The core principles of this order are: state sovereignty, territorial exclusivity of states, sovereign equality, and non-intervention in domestic affairs of states.[100] They are strongly embodied in the Charter of the United Nations in which territorialism finds a prominent place in the form of protection of states territorial integrity and political independence against the threat or use of force,[101] sovereign equality of members,[102] maintenance of international peace and security[103] and non-intervention in essential domestic matters of any state.[104]

[99] S. P. Sharma, *Territorial Acquisition,* 8
[100] S. P. Sharma, *Territorial Acquisition*, 13
[101] Article 2(4) the Charter of United Nations adopted in San Francisco on 26 June 1945, http://www.un.org/en/charter-united-nations/ access: 12 June, 2016
[102] Article 1(2) of the UN Charter
[103] Chapters VI and VII of the UN Charter
[104] Article 2(7) of the UN Charter

3.1.3 The Origin of the Principle of Territorial Integrity

After the Second World War, the matter of respect for the territorial integrity took the central place in the international relations. This principle is present in numerous international declarations and agreements that relate to the principles of the Charter of the United Nations in particular to Article 2 (4), which prohibited "threat or use of force against the territorial integrity or political independence of any state".[105] However, the territorial integrity first appears in documents of international law representing the Wesphalian model.

The term 'territorial integrity' appeared in international law at the Congress of Vienna in 1815 when it guaranteed territorial integrity of Switzerland. But what was more important for the principle of territorial integrity was the creation of the first international organization, which was the League of Nations. Article 10 of the Covenant of the League of Nations also contains the information about the territorial integrity: „The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League."[106] However, in the Kellogg-Briand Pact of 1928, it can be found that states renounced "war as an instrument of national policy".[107]

Under the United Nations, the 1970 Declaration on Friendly Relations and Co-Operation Among States explicitly stipulates that all states enjoy sovereign equality, due to which each state is obliged "to respect the personality of another one, so that the territorial integrity and political independence of states are inviolable, and each

[105] Article 2(4) of the UN Charter
[106] Article 10 of the League of Nations Covenant adopted by the Paris Peace Conference on 28 June 1919, http://avalon.law.yale.edu/20th_century/leagcov.asp, access: 11 June, 2016
[107] Para 1 of Kellogg-Briand Pact adopted in Paris on 27 August 1928, https://www.uni-marburg.de/icwc/dateien/briandkelloggpact.pdf, access: 10 June 2016

state has the right to choose and develop its political, social, economic and cultural system freely".[108] The 1974 Charter of Economic Rights and Duties of States includes a provision highlighting the "sovereign and inalienable right of states to choose their own economic as well as political, social, cultural system without outside interference".[109] The principle of non-intervention is protected by the UN Charter Article 2 (7), the Declaration on International Law and certain resolutions of the General Assembly.

The Declaration of the Conference on Security and Cooperation in Europe was adopted in 1975. The idea behind the creation of the OSCE was peace in Europe and cooperation between the countries that belong to NATO and the Warsaw Pact. The idea of convening the Conference on Security and Cooperation in Europe was not only a consequence of the political situation in Europe after World War II, but also an attempt to build a pan-European security system. It proposed mutual obligations of the parties to the non-aggression, non-use of force and settle disputes by peaceful means of settling disputes. The legal basis of this agreement was to be the Chapter VIII of the Charter of the United Nations systems and regional organizations.

The 1975 Declaration guarantees the inviolability of the territory by banning the military occupation, as well as the prohibition of other direct or indirect acts of coercion. Since that time, it has been protecting the entire territory by the prohibition and illegality of acquiring it by force. As Article 4 (1) says, "states will respect the

[108] Para 25 of Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States, http://www.un-documents.net/a29r3281.htm, access: 10 June 2016
[109] Chapter 2 (1) of Resolution adopted by the General Assembly 3281 (XXIX), Charter of Economic Rights and Duties of States on 12 December 1974, http://www.un-documents.net/a29r3281.htm, access: 10 June 2016

territorial integrity of each of the participating States".[110] Article 4 (3) states that "states will likewise refrain from making each other's territory the object of military occupation... no such occupation or acquisition will be recognized as legal".[111] It should be particularly noted that although the document has played an important role in the development of detente between the military-political blocs and states in Europe, however it has a political character, non-binding. This document refers to the 1970 Declaration on Friendly Relations, in accordance with the Charter of the United Nations as the legal basis.

3.2 The Principle of Self-Determination

The principle of self-determination of the people is one of the most well-known and debatable principles of international law. Philosophical roots of this principle can be discerned as early as in the seventeenth century, but its legal form was founded in the twentieth century.[112] The principle of self-determination, which at first was only a political programme, later took on the nature of a true legal norm.[113] This principle played a huge role during decolonization, but it is wrong to associate it only with this process. Cassese points out that "self-determination has been one of the most important and driving forces in the new international community. It has set in motion the restructuring and redefinition of the world community's basic 'rules of the game'".[114]

The 1776 Declaration of Independence of The United States of America is one of the important documents that foreshadowed the recognition of the right to self-

[110] Article 4 (1) of Final Act of *Conference on Security and Co-operation in Europe*
[111] Article 4 (3) of *Conference on Security and Co-operation in Europe*
[112] M. Perkowski, *Samostanowienie Narodow w Prawie Miedzynarodowym (eng. Self-Determination of People in International Law*), (Wydawnictwo Prawnicze PWN, 2001) 17
[113] B. Simma, *The Charter of the United Nations: A commentary*, Volume 1 (Oxford University Press, 1995) 51
[114]A. Cassese, *Self-Determination*, 1

determination. In the American Declaration of Independence one can find a statement that men are entitled to have the right to freedom as well as the right to participate in the exercise of the state power. If one classifies that document as a kind of starting point of the right to self-determination, it is followed by the concept involving not the secession of an ethnic group from established state, but the installation of a free and democratic form of government.[115]

In 1789, the Declaration of Human and Civil Rights was adopted in France. In Declaration is written that natural human rights are liberty, property, security, and everyone is equal under the law.[116] In France, self-determination was firstly propounded as a standard concerning the transfer of territory.[117] In article 3 of the Declaration it is written that "the principle of any sovereignty lies primarily in the nation...".[118] It was considered a primary right of all the people to organize its form of government freely, without any intervention of the third powers.[119]

Another stage of the development of the principle of self-determination was the period after the First World War. At that time, two key figures of the political scene, President Woodrow Wilson and the Russian Bolshevik leader Vladimir Lenin, referred to the concept of self-determination in their postulates. Lenin had previously announced the proposals concerning self-determination, which were in power until the end of the Soviet Union. At the same time, Woodrow Wilson had his own

[115] K. Roepstroff, The *Politics of Self-Determination: Beyond the Decolonisation Process* (Routledge, 2013) 10-11
[116] Article 2 of Declaration of Human and Civil Rights approved by the National Assembly of France, 26 August 1789, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/anglais/cst2.pdf, access: 21 July, 2016
[117] A. Cassese, *Self-Determination*, 11
[118] Article 3 of Declaration of Human and Civil Rights
[119] Article 6 of Declaration of Human and Civil Rights

proposals on the subject.[120] While the Leninist conception was based on the socialist political philosophy, Wilson's self-determination originated from typical Western democratic theory.[121] In 1918, Wilson formulated his Fourteen Points and attached great significance to the principle of self-determination.[122] The President was interested in spreading democracy. Wilson's aim was to give freedom to the nations that were under the influence of socialism by promoting the idea of self-determination of the people.[123] His idea was to create a system of the League of Nations, whose one of the tasks was to protect minorities.

3.2.1 Who Has the Right to Self-Determination?

The main question related to self-determination is who the 'people' are. It might appear that the holder of the right to self-determination are all the 'people', as the term 'people' is wider than 'nation'. State practice in relation to the authorized actors of this rule proves the superiority of the ethnic over the national factors.[124] The sources of international law do not specify the term 'nation'. However, it seems that this lack of precision was intentional. It appears that the international community has used the term 'people' in order to unify the concept to create a universal formula of entities entitled to self-determination.[125]

The first group who can use the self-determination of the people are the nations under foreign domination. The right to self-determination of the colonial people is

[120] R. Isaak, *Individuals and World Politics, 2nd edition* (Monferey, 1981) 179
[121] A. Cassese, *Self-Determination*, 40
[122] A. Pelinka and D. Ronen, *The Challenge of Ethnic Conflict: Democracy and Self-Determination in Central Europe* (Routledge,1997) 50
[123] Ibid.,
[124] F.R. Teson, *The Theory of Self-Determination*, 54-55
[125] J. Fisch, A *History of Self-Determination of Peoples: The Domestication of an Illusion* (Combridge University Press) 8-10

indisputable, but due to the completion of the decolonization process it has already had the historical character.[126]

The second group involves the people of the multinational states. At this time, the realization of the right to self-determination of the people living in the multinational states is related to the disintegration of previously existing multinational state.[127] The collapse of this can take place in a peaceful manner, as in and Czechoslovakia, as well as the use of force, as in Yugoslavia.

The third group that might have the right to invoke the principle of self-determination are minorities, which differ from the people of the multinational states, as they live in the state dominated by another nation. This can be exemplified by the Catalans and Basques living in Spain or the Scots from the United Kingdom. The doctrine used to deny minorities the right to self-determination. It was also reflected in some UN documents.[128] The minorities are often given the right to internal self-determination in case they receive adequate autonomy.[129] Furthermore, Higgins believes that the minorities do not own the right to external self-determination.[130] Likewise, the minorities do not have the right to secession, as it would lead to the violation of territorial integrity.

The fourth group under consideration is indigenous people. The term 'indigenous people' may be associated with colonial issues, such as in Africa. However, the issue of the indigenous people is usually discussed at the level of human rights and their

[126] P. Duara, *Decolonization: Perspectives from Now and Then* (Routledge, 2004) 3
[127] A. Moltchanova, *National Self-Determination and Justice in Multinational* States (Springer, 2009) 2
[128] B. A. Boczek, *International Law: A Dictionary* (Scarecrow Press, 2005) 186
[129] W. Danspeckgruber, *The Self-Determination of Peoples,* 113
[130] R. Higgins, *Problems and Process,* 124

rights to self-determination are not explained in an uncontroversial manner. It is worth noting that until September 2007, when the United Nations General Assembly adopted the Declaration of the Rights of Indigenous Peoples, there were no official documents or international legal instruments, which used the term self-determination in relation to indigenous peoples.[131] Currently, the majority of the indigenous rights defenders agrees that self-determination does not include the right to statehood.[132] Self-determination is primarily used as an argument supporting all kinds of aspirations for autonomy within the existing borders or partially overlapping with them.[133] Therefore, the understanding of the term self-determination in the context of the rights of indigenous people has been remains controversial. Nevertheless, the efforts were made to find a compromise on this issue.[134]

3.2.2 The Criteria of Self-Determination

The concept of self-determination is based on a set of criteria, which help to determine who can be considered 'the people'. Then the status of a 'carrier' is transformed into the status of the entity entitled to self-determination. The act of identifying a 'carrier' of the right to self-determination as a subject of this law takes the form of international recognition.[135] In this case, the view that recognition by the global, universal international organization represents the recognition by the international community will not be wrong.[136] In international practice, states have

[131] United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly on 13 September 2007, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf access: 10 June 2016
[132] D. French, *Statehood and Self-Determination: Reconciling Tradition and Modernity of International Law* (Cambridge University Press, 2013) 361
[133] D. French, *Statehood and Self-Determination,* 361
[134] A. Cooper, B. Hocking and W. Maley, *Global Governance and Diplomacy: Worlds Apart?* (Palgrave Macmillan, 2008) 220-222, R. K. M. Smith, Textbook on International Human Rights, 7th edition (Oxford University Press, 2016) 336-337
[135] I. Grazin, *" The International Recognition of National Rights: The Baltic States Case",* Notre Dame Law Review, Volume 66 (1991) 1385
[136] H. Lauterpacht, *Recognition in International Law* (Cambridge University Press, 1947) 67-69

begun to increasingly move away from the practice of individual recognition of the "nations" for their collective recognition by the UN General Assembly.

If a newly created state wants to be recognized by the international community, it has to fulfil the criteria contained in the Montevideo Convention. They have been accepted as reflecting the requirements of statehood in customary law.[137] According to Article 1 of this Convention "the state must have the permanent population, the defined territory, the government and the capacity to enter into relations with other states".[138] In any case, to identify the subject of the right to self-determination, certain criteria must be met, because omitting the duty to respect certain rules can harm self-determination, take away its credibility and effectiveness.[139]

However, the quantitative criterion is not important for the international community. This could be the situation of 20 million Kurds,[140] whose right to self-determination is not universally recognized. But the Security Council and the ICJ accept the right to self-determination of 800,000 East Timorians.[141]

Efficiency is the primary, but not the only condition to recognize a nation as a subject of international law.[142] It cannot be temporary, it must be durable and stable.[143] The entity aspiring to self-determination must in the first place be representative, which means, for instance, that the national liberation movements

[137] D. Raić, *Statehood and the Law of Self-Determination* (Kluwer Law International, 2002) 24
[138] Article 1 on Montevideo Convention on Rights and Duties of States
[139] J. R. Crowford, *The Creation of States,* 128-129
[140] F. K. Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention* (Kluwer Law International, 1999) 145
[141] H. Hannum and E. F. Babbitt, *Negotiation Self-Determination* (Lexington books, 2006) 48
[142]D. Raić, *Statehood and the Law of Self-Determination*, 51
[143] C.Walter, A.V. Ungern-Sternberg and K. Abuushov, *Self Determination and Succession in International Law* (Oxford University Press, 2014) 51-52

must obtain universal recognition of the nation which they represent.[144] Kirgiz Jr. points out that "only the desire expressed by collective representative factor can be considered credible and fully proved valid self-determination of peoples".[145] The nation should accept a proclamation in a legal way, for example in the election or referendum, not through terror and intimidation.

3.2.3 Internal and External Self-Determination

In international law, there are two types of self-determination, internal and external. The right to internal self-determination entitles the people to choose their political affiliation and the impact on public order. It gives people the right to preserve the nation's cultural, ethnic, historical or territorial identity.[146] However, the desire to external self-determination is not justified when the people comprise a part of the democratic system. Barten claims that "if states are liberal, endorsing human rights, the rule of law and democracy- should not to fear this most radical form of self-determination. Giving minorities right will not lead to the break-up of the state".[147] The problem occurs when the state does not have democratic government and the group autonomy. Then it is reasonable to support them by the international community with an internal self-determination. If this is not sufficient, then the external self-determination needs to take its place.

Internal self-determination does not create any legal problems as it occurs inside the state and does not violate territorial integrity of any state. The right to external self-determination allows the people to decide on its international identity and to be free

[144] M. Pomerance, *Self -Determination in Law and Practice: The New Doctrine in United Nations* (Martinus Nijhoff Publishers, 1982) 40-41
[145] F.L. Kirgis Jr, *The Degrees of Self-Determination in the United Nations Era*, American Journal of International Law, volume 88 (1994) 310
[146] F.R. Teson, *The Theory of Self-Determination* (Cambridge University Press, 2016) 111-114
[147] U. Barten, *Minorities, Minority Rights and Internal Self-Determination* (Springer, 2015) 194

from interference. It may affect the international status of the state.[148] Internal self-determination does not conflict with the principle of territorial integrity, the conflict appears when it comes to external self-determination.[149] Therefore, external self-determination can lead to secession and even annexation of the territory by the third state. The Declaration on Friendly Relations explains that "external self-determination is a way of implementing the right of self-determination through the formation of an independent state, the integration in, or association with a third state".[150] Dugard prefers to see secession as „the unilateral withdrawal of part of an existing state from that state without the consent of the government of that state".[151] Striving for external self-determination may cause international tensions. Therefore, the international community should support the internal self-determination and respect the rights of national minorities before it comes to external self-determination.

3.2.4 The Origins of the Principle of the Self-Determination

The first international treaty establishing the right to self-determination of nations is the Charter of the United Nations. Article 1 (2) describing the purposes of the United Nations provides that "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...".[152] In addition to this provision, the right to self-determination is mentioned in article 55 of the Charter providing that international economic and social co-operation should be carried out "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the

[148] C. Tomuschat, *Modern Law and Self-Determination* (Martinus Nijhoff Publishers, 1993) 101-102
[149] C. Tomuschat, *Modern Law and Self-Determination*, 101-102
[150] Para 4 of Declaration on Principles of International Law concerning Friendly Relations and Co-Operation Among States
[151] J. Dugard, " *A Legal Basis for Secession: Relevant Principles and Rules",* in J. Dahlitz, *Secession and International*, 89
[152] Article 1 (2) of the UN Charter

principle of equal rights and self-determination of peoples...".[153] It should be noted that article 55 of the UN Charter designates the right to self-determination as a 'principle' not only a 'purpose'.[154] The words "respect for the principles of equal right and self-determination of peoples" emphasize the essential point from Article 1(2), which also demands that the relations between nations rest upon such principles. As Article 55 indicates, it has a declaratory character and its implementation is not immediately made the direct responsibility of the UN.[155] The 'equality of peoples' was meant to underline that no hierarchy existed between the various people. Consequently, the prohibition of the racial discrimination was transformed from the national level to the level of the international relations.[156]

In 1960, the UN General Assembly adopted two important resolutions concerning self-determination. The first one was Resolution 1514 (XV), the Declaration on Granting Independence to Colonial Countries and Peoples.[157] The other one was Resolution 1541 (XV) titled "principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter".[158]

Resolution 1514 states that all the people subjected to colonial rule own the right to self-determination to "freely determine their political status and freely pursue their

[153] Article 55 of the UN Charter
[154] Article 1(2) of the UN Charter
[155] B. Simma, *The Charter of the United Nations: a commentary*, Volume 2, 902
[156] B. Simma, *The Charter of the United Nations: a commentary*, Volume 1, 44
[157] Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by General Assembly Resolution 1514 (XV) on 14 December 1960 http://www.un.org/en/decolonization/declaration.shtml access: 31 May 2016
[158] General Assembly Resolution 1541 (XV) on 15 December 1960 https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/153/15/IMG/NR015315.pdf?OpenElement access: 31 may 2016

economic, social and cultural development".[159] The right concerns the whole people, if the population of a colonial territory is divided into various ethnic groups or nations, they are not free to choose their external status on their own. This originates from the principle of territorial integrity, which should play an overriding role.[160] Resolution 1541 claims that association or integration with an independent state "should be the result of a free and voluntary choice by the people of the territory concerned expressed through informed and democratic process".[161]

Self-determination is presented as a human right in the United Nation Convent on Civil and Political Rights and the Convent on Economic, Social and Cultural Rights. Article 1 of each Covenant asserts that"all peoples have the right of self-determination...".[162] The Covenants include the right to internal self-determination, which applies to: Article 19 (2) "everyone shall have the right to freedom of expression ..."[163] Article 21 states that, "the right of peaceful assembly shall be recognized..."[164] or Article 22 "everyone shall have the right to freedom of association with others ..."[165] and many other provisions that relate to public affairs.

After the United Nations Charter, the most important document on self-determination and territorial integrity is the Declaration on Principles of International Law

[159] Article 2 of the General Assembly Resolution 1514
[160] A. Cassese, *Self-Determination*, 72
[161] Article 7 of the General Assembly resolution 1541
[162] Article 1 of the United Nation Convent on Civil and Political Rights and the Convent on Economic, Social and Cultural Rights on 19 December 1966 https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf access: 31 May 2016
[163] Article 19(2) of the United Nation Convent on Civil and Political Rights
[164] Article 21 of the United Nation Convent on Civil and Political Rights
[165] Article 22 of the United Nation Convent on Civil and Political Rights

concerning Friendly Relations and Co-operation among States.[166] One of the paragraphs of the Declaration explains that its parties are:

Convinced that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security, Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality.[167]

This Declaration suggests that the right to self-determination applies to the process of decolonization „until the people of the colony or non-self-governing territory have exercised their right of self-determination...".[168] However, is this correct to assume that the right to self-determination applies only to decolonization? The 1966 Convent explicitly declares that "all people have right to self-determination."[169] Are these documents in a normative conflict? Another postulate of the Declaration reveals the supremacy of the principle of territorial integrity over the right to self-determination: "the territorial integrity and political independence of state are inviolable…"[170] The Declaration, in the section on self-determination of people, clearly provides that:

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the

[166] Preamble of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States
[167] Preamble of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States
[168] Annex of the Declaration on Principles of International Law concerning Friendly Relations and Co-Operation Among States
[169] Article 1 of the United Nation Convent on Civil and Political Rights and the Convent on Economic, Social and Cultural Rights
[170] Principle 6(d) of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States

whole people belonging to the territory without distinction as to race, creed or colour.[171]

In conclusion, this Declaration is one of the most essential documents, which link the right to self-determination with the principle of territorial integrity. The declaration of the people's rights is very important. However, the declaration prohibits any action that may result in violation of territorial integrity of the state. According to the Declaration, the legitimate self-determination is internal, which respects territorial integrity. Conditions of stability and well being require not only the development of the peaceful and friendly relations between the states, but also the respect for the equality and the right to self-determination of the people.[172]

3. 3 Secession

One of the problems directly concerning self-determination and territorial integrity is the right to secession. Dahlitz points out that "self-determination and secession are two different concepts. Self-realization of a group and the maintenance of its identity do not necessarily require secession, but may be achieved through other means such as devolution of power, administrative and cultural autonomy".[173] At present, international law confers neither the right to unilateral secession, nor does it deny such a right.[174] For Dahlitz "secession is legally possible in the following cases: by mutual consent and agreement of all those concerned, by pursuant to the Constitution or laws of the state or where peoples are under colonial rule or illegal foreign occupation".[175]

[171] Principle 5 of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States
[172] B. Simma, *The Charter of the United Nations: a commentary* , Volume 2, 902
[173]Ibid., 265
[174] Ibid., 902
[175] Ibid.,

The right to secession can be invoked in a situation which can lead to conflict between self-determination and territorial integrity. International law prohibits the secession, however, every each case is unique and differs from the previous ones. International community when dealing with self-determination examines every case individually, secession may be the result of some special circumstances. Another example can be a territorial claim against another State, if such claims are justified by the right to self-determination of the population living in these territories.

The practice of states and international organizations indicates that the principle of self-determination does not include the right to secede. However, sometimes there is a stalemate situation in which human rights are violated and the international community has exhausted all means of negotiation and diplomacy. In such cases, the international community is often divided. However, in cases of Kosovo or South Sudan, the international community has recognized the secession as a part of the right to self-determination due to the special circumstances. On the other hand, after the creation of a new state, its existence is also protected by the right to self-determination. For that reason, it is apparent that the principle of territorial integrity does not prohibit secession.[176]

3.4 Conclusions

The principles of self-determination and territorial integrity remain fundamental to contemporary international law. They are closely related to each other and cannot be disentangled, but their relation is complex and not free from normative conflict. Both principles are inseparable because they come from the same sources of international law. Upon closer inspection it is evident that between these two principles there is no

[176] C. Walter, *Self Determination and Succession*, 249

conflict normative. Any matter relating to self-determination is accountable individually, that is why international community in every case examines all the circumstances and events that lead to self-determination. If there has been a violation of human rights, the international community may decide that it is self-determination that prevails over territorial integrity. Then, it can lead to approvals the external form of self-determination and even secession.

In certain situations where this normative conflict is likely, the best option for the host state is to guarantee the autonomy to a minority, to discourage it from seeking secession. The desire to the external aspect of self-determination promotes conflicts within the state and may lead to the reaction of international organizations. Therefore, the best solution which respects the territorial integrity is the realization of the right to self-determination inside the state.

Having presented the concepts of territorial integrity and self-determination as well as their roots and evolution, it is now possible to move to the next chapter which will discuss the application of these two principles in the Case of Kosovo. The primary purpose of this chapter is to show how those principles were invoked to justify the position of Kosovo, Serbia, Russia and the United Nations. It will be important to examine how the conflict occurred and whether the declaration of independence of Kosovo was lawful. The question is the case of Kosovo a case of self-determination of the people, or a violation of the territorial integrity of Serbia? It will be possible to find the answers to these questions using the sources of international law, especially the Advisory Opinion of the International Court of Justice concerning Kosovo.

Chapter 4

THE CASE OF KOSOVO

The main purpose of this chapter is to analyse the interplay between the principle of territorial integrity and the principle of self-determination in the case of Kosovo. It is important to examine the positions of Serbia, Kosovo and the United Nations which were directly involved in the conflict in Kosovo from the point of view of both principles. What is also important is the analysis of the involvement of the Russian Federation, which will help to understand the actions of this state in the conflict in Crimea, which will be discussed in the following chapter.

In this chapter, we will examine the historical background of the conflict in Kosovo to discover why Kosovo declared independence. It is important to examine the role of resolution 1244 and its consequences, which have had an impact on the future of Kosovo. The most significant element is the analysis of the Advisory Opinion of the International Court of Justice and its consequences which have an impact on both principles. It is also important to analyse the opinion of states concerning the independence of Kosovo and whether the case can be considered as representing self-determination of the people.

Finally, this chapter will underline that Kosovo can be seen as an important case that strongly influences the change in the perception of certain fundamental principles of international relations and international law. The Kosovo precedent has opened the

door for the development and protection of human rights, and to increase the importance of the principle of self-determination of people.

4.1 Historical Background

The status of Kosovo became an issue after the fall of Yugoslavia. However, it was problematic even earlier, before the official split. From 1946 until the fall of Yugoslavia, Kosovo was an autonomous unit and part of Serbia.[177] However, since 1980 there was an exacerbation of conflict between Kosovo and Serbia, after the nationalist leader Slobodam Milosević came into power[178] and the amendments to the Constitution of Serbia entered into force.[179] After that, the autonomous territories, such as Kosovo, became unitary and lost their rights. Thereby, the autonomy of Kosovo has been limited, but not eliminated. The province had its own parliament and representatives of the federal authorities.

In 1990, a meeting of all Kosovar opposition groups took place in Pristine. Kosovo Albanians, wanted to gain influence in the state by peaceful means, without the use of force. Having lost the autonomy, the Kosovo Albanians were dissatisfied and called for demonstrations which initiated the conflict in Kosovo. Even though the opposition led by Ibrahim Rugova, the leader of the Democratic League of Kosovo, was originally peaceful, the character of the resistance became increasingly violent in the mid 1990s, with the establishment of the Kosovo Liberation Army (KLA).[180] The aforementioned change of the Constitution of Serbia caused ferocious exacerbation of the conflict between the Kosovo Liberation Army and the Serbian forces. Between

[177] R. Muharremi, *"Kosovo's Declaration of Independence: Self-Determination and Sovereignty Revisited"*, Review of Central and East European Law, Volume 33 (2008) 401
[178] Ibid., 407
[179] H. Krieger, *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999* (Cambridge University Press, 2001) 1
[180] P. Williams, „*Earned Sovereignty: The Road to Resolving the Conflict Over Kosovo's Final Status",* Denver Journal of International Law and Policy, Volume 31 (2002) 397

1997 and 1998, fighting between Serbs and Albanians escalated. The lack of agreement between the parties resulted NATO intervention.[181] The most important peace negotiations carried out by the Western states took place in 1999 in Rambouillet.[182] However, the proposed peace plan was rejected by President Milosevic.

Consequently, all of these led to the controversial intervention of NATO. The leaders of NATO states were afraid of humanitarian disaster and even genocide of the Albanian minority in Kosovo.[183] It was the first such intervention in the history without the permission of the UN Security Council. Orford believes that "NATO intervention in Kosovo shows a new phase in progression of international legal arguments in favour of humanitarian intervention".[184] British Prime Minister Tony Blair portrayed the NATO intervention in Kosovo as "just war based not on territorial ambitions, but on values".[185]

4.2 Kosovo's Way to Independence

In 1999, the UN Security Council adopted Resolution 1244 concerning the situation in Kosovo.[186] This resolution referred to, and took into account, the previous UN resolutions on Kosovo.[187] The aim of Resolution 1244 was "serious humanitarian

[181] P. Williams, "*Earned Sovereignty: The Road to Resolving the Conflict...",* 402-404
[182] T. Jaber , *"A Case for Kosovo? Self-Determination and Secession in the 21st Century",* The International Journal of Human Rights, Volume 15 (28 July 2010) 927
[183] NATO: Kosovo on the Brink of „Major Humanitarian Disaster" March 28, 1999 http://edition.cnn.com/WORLD/europe/9903/28/kosovo.fighting.02/, access: 31 May 2016
[184] A. Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press,2003) 4
[185] Tony Blair "*Doctrine of the International Community"* Speech in the Economic Club of Chicago, 24 April 1999, http://www.number10.gov.uk/Page1297 , access: 31 May 2016
[186] Resolution 1244
[187] Resolution 1160 (1998) adopted by Security Council on 31 March 1998 http://www.nato.int/kosovo/docu/u980331a.htm access: 31 May 2016, Resolution 1199 (1998) adopted by Security Council on 23 September 1998 http://www.securitycouncilreport.org/un-documents/document/kos%20SRES1199.php access: 31 May 2016, Resolution 1203 (1998) adopted by Security Council on 24 October 1998 http://www.nato.int/kosovo/docu/u981024a.htm access: 31

situation in Kosovo and the Federal Republic of Yugoslavia and the assured safety and the right to return of all refugees and displaced person displaced from their homes".[188] The document condemned "all acts of violence against the population of Kosovo, the terrorist acts of some organizations".[189] Among the most important provisions of Resolution 1244 was the one providing that Kosovo would remain within the state of Yugoslavia. One of the conditions, on which the Serbs have decided to sign an agreement ending the war in June 1999, was the provision that it would stay within Serbia. However, Resolution 1244 did not establish the final status of Kosovo, but the UN administration in Kosovo - the United Nations Mission in Kosovo (UNMIK).

In 2005, Martti Ahtisaari began a diplomatic initiative which aimed to end the Kosovo conflict.[190] His plan failed because neither the representatives of Kosovo, nor Serbia did want to compromise. Kosovo wanted independence but Serbia agreed only on its autonomy.[191] After the unsuccessful talks, Martti Ahtisaari presented his report, where he concluded that it was not possible to find a solution, because, from the very beginning, the only option for the Kosovar Albanians was independence.[192] The UN Security Council was not able to find any solution, because Russia would use its right to veto. However, Kosovo used the support of the United States and most European Union members and declared independence.

May 2016 and Resolution 1239 (1999) adopted by Security Council from 14 May 1999 http://www.nato.int/kosovo/docu/u990514a.htm access: 31 May 2016

[188] Preamble of the Resolution 1244

[189] Para 15 of the Resolution 1244

[190] T. Judah, *Kosovo: What Everyone Needs to Know* (New York: OUP, 2008) 111

[191] T. Judah, *Kosovo: What Everyone Needs to Know*, 111

[192] M. Ahtisaari, Rapport of the Special Envoy of the Secretary-General on Kosowo's Future Status, UN Document S/2007/168 (2007) http://www.securitycouncilreport.org/un-documents/document/Kosovo%20S2007%20168.php access: 31 May 2016

On February 17, 2008, the Assembly of Kosovo proclaimed its independence by one hundred and nine votes of one hundred and twenty members "answering the call of the people to build a society that honours human dignity and affirms the pride and purpose of its citizens".[193] The declaration includes a statement that "Kosovo is a special case arising from Yugoslavia's non-consensual breakup and is not a precedent for any other situation".[194] The authors of the declaration emphasized that their action was based on a social mandate and, in accordance with the guidelines, contained in the plan of 26 March 2007. They declared that Kosovo would be a 'democratic, secular and multi-ethnic' state, respecting the principle of non-discrimination and equal protection of the law, and minority rights.[195] The authors of the declaration also ensured that they would respect all the regulations that had been previously adopted by the international community, including the regulations adopted by UNMIK.

The Minister of Internal Affairs of Serbia, who criticized the decisions on the recognition of Kosovo made by some members of the international community, lodged a complaint that an offense was committed by the leaders of the Kosovo Albanians- who proclaimed a 'false state' on Serbian territory.[196] Having forgotten that the organization did not have such a competence, the President of Serbia requested the Secretary-General of the United Nations to cancel the declaration of independence of Kosovo immediately.[197] The problem of the proclamation of independence by Kosovo became a concern of the General Assembly of the United

[193] Declaration of Independence of Kosovo on 17 February 2008, http://www.assembly-kosova.org/?cid=2,128,1635 access: 31 May 2016
[194] Ibid.,
[195] Para 1 and 2 on Kosovo Declaration of Independence
[196] H. Perritt Jr., *The Road to Independence for Kosovo: A Chronicle of the Ahtisaari Plan* (Cambridge University Press, 2010) 217
[197] Ibid.,

Nations. In October 2008, by 77 votes 'in favour' to- 6 votes 'against' with and 74 states abstaining from voting, a decision was made to ask the International Court of Justice to give an Advisory Opinion on the legality of the proclamation of independence by Kosovo.[198]

4.3 International Court of Justice Advisory Opinion

The question of the legality of Kosovo's independence was decided to be submitted to the International Court of Justice with a view to solve the problem of the violation of the territorial integrity of Serbia. The request for the opinion on Kosovo was initiated by the Serbs, who considered the declaration of independence of Kosovo as violating Serbian's territorial integrity. Article 96 (1) of the Charter of the United Nations provides that the General Assembly of the United Nations may request the International Court of Justice to deliver an advisory opinion and that was the way it was decided to be used.[199] The International Court of Justice investigated the matter of the declaration of independence by Kosovo at the request of the UN General Assembly.

4.3.1 Key Assumptions

The United Nations General Assembly requested the International Court of Justice to answer the following question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"[200] The subject of the preliminary analysis of the judges was the scope and meaning of the question asked. The Court considered the question as clear, narrow and specific and indicated that it was not asked to assess the consequences

[198] Backing Request By Serbia GA/10764, General Assembly Decides To Seek International Court Of Justice Ruling On Legality Of Kosovo's Independence http://www.un.org/press/en/2008/ga10764.doc.htm access: 31 May 2016
[199] Article 96 of the UN Charter
[200] Para 1 of the Resolution 63/3 adopted by General Assembly from 8 October 2008 http://www.refworld.org/pdfid/48f3527e2.pdf access: 31 May 2016

posed by the declaration of independence of Kosovo.[201] For this reason, in its Advisory Opinion, the Court did not address the issues related to the status of an act of international recognition and the effects of the acts related to the recognition of Kosovo made by some Member States of the United Nations. The Court did not analyse the issue of Kosovo's statehood. However, the judges considered it necessary to determine the authors of the "unilateral declaration of independence".

The analysis of the Court focused on the legal aspect of the declaration of independence proclaimed by Kosovo on February 17, 2008, and the facts associated with this event. The starting point was the Security Council resolution 1244 establishing international control over Kosovo in order to stabilize the internal situation and deter violations of international law in this area. The order created by a decision of the Security Council "replaced the Serbian legal system in this area".[202] Resolution 1244 deprived Serbia of its control of the area.

The judges analysed the decisions taken by the international institutions established in Kosovo and responsible for the administration of the area. The judges took into account the results of the stakeholder discussions aimed at defining the status of Kosovo. Referring to the same declaration of independence, the judges stressed that it was released as a consequence of inability to determine the status of Kosovo through negotiations and they took into account the need to ensure residents worried about the future and the creation of a democratic society. If the UN Security Council imposed the terms of the agreement, it would function as in case of the Cyprus

[201]Para 51 of Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo. Advisory Opinion on 22 July 2010 http://www.icj-cij.org/docket/files/141/15987.pdf access:31 May 2016
[202] Para 100 of Advisory Opinion on 22 July 2010

conflict, which precisely defined how the dispute should be settled. Judge Koroma's make clear that "its legal reasoning cannot properly be understood as giving aid and comfort to the separatist initiatives being pursued with respect to Northern Cyprus and the Republika Srpska".[203]

The judges analysed the key instruments of international law in response to the allegation that the declaration of independence of Kosovo was contrary to the principle of territorial integrity of Serbia, guaranteed to every state. According to the International Court of Justice, the principle of territorial integrity applies only to the relations between sovereign states and not to the relations between the state and the nation.[204] The Court also emphasized that in the past, the UN Security Council condemned the declarations of independence in case of Southern Rhodesia, Northern Cyprus, and the Republic of Serbia. However, no international recognition of those countries did result from the fact that the declarations of independence were one-sided. The real reason for that was the use of force and violation of other principles of international law. The Court also stated that the Security Council resolution 1244 was not intended to determine the final status of Kosovo, it did not formulate the conditions for its establishment, nor reserved this task for its own competence.[205] Therefore, in the opinion of the Court, this resolution did not contain any provisions prohibiting the declaration of independence. Hence, the judges rejected the claims of some participants in the proceedings who claimed that the proclamation of independence was a one-sided attempt to end the international presence in Kosovo, established under the Security Council resolutions.

[203] R. Falk, " *Kosovo Advisory Opinion: Conflict Resolution and Precedent"*, The American Journal of International Law, Volume 105, No:1 (January 2011) 51
[204] Para 80 of Advisory Opinion on 22 July 2010
[205] Para 114 of Advisory Opinion on 22 July 2010

On the other hand, the judges stated that the right of people to self-determination manifests itself in practice, among other things, in the proclamation of independence opposed to the sovereignty of the state. The Court referred to the concept of the so-called remedial secession, associated with self-determination combined with secession in case of decolonialism. The International Court of Justice has decided that the issue of secession was not covered by the questions asked by the UN General Assembly and the judges agreed that the issue was beyond the scope of the questions addressed by the General Assembly.[206]

In case of Kosovo, we cannot talk about the existence of a nation without a state, because the people of Kosovo declare to be Albanians in the vast majority. At the same time, for political reasons, the connection of Kosovo with Albania is currently impossible. The Court took into account the international practice in this field and noted that there were no legal norms considering a proclamation of independence.

The most important for the judges was to investigate the circumstances in which the proclamation of independence was made and the content of the document itself. Therefore, in the first place, the judges investigated who the authors of the Declaration of Independence of Kosovo were.[207] Some participants in the proceedings argued that the document, which was adopted at the session of the Assembly of Kosovo was neither a document of this Authority nor any other temporary institution created under the supervision of the UNMIK and Special Representative.[208]

[206] Para 83 of Advisory opinion on 22 July 2010
[207] Para 52 of Advisory opinion on 22 July 2010
[208] Para 105 of Advisory opinion on 22 July 2010

The judges decided that it was necessary to take into account all the circumstances surrounding the proclamation of independence. The analysis of the text of the declaration of independence allowed the judges to conclude that the aim of the authors was to create "an independent and sovereign state" and, consequently, go beyond the competences defined in the legal system adopted by the UNMIK and the Special Representative. In addition, the judges came to the conclusion that the Assembly of Kosovo could be the author of this document. The words "Assembly of Kosovo" do not appear in the original document, only in English and French translation.[209] The original document states "We, the democratically-elected leaders of our people..."[210] What is more, the language of the text is different from the words used in the texts usually adopted by the assembly acts. Moreover, a different procedure was used, as the act was signed by all the people present during the vote, including the President of Kosovo.

Moreover, the Declaration was not transferred to the UN Special Representative for publication in the official journal. No reaction on the part of a special representative was, according to the judges, the proof that the declaration of independence was not treated as an act "interim self-governing institutions of Kosovo".[211] As the judges state, the authors of the Declaration of Independence were the people acting on their own behalf and representing the people of Kosovo.

To conclude, it must be noted that it was the Security Council Resolution 1244 that first established a special legal regime for Kosovo and the system of international control of the area. The Security Council assumed the responsibility for the

[209] Para 105 of Advisory opinion on22 July 2010
[210] Para 1 of Declaration of Independence of Kosovo on 17 February 2008
[211] Para108 of Advisory opinion on22 July 2010

management of Kosovo at the time, because Serbian law was not in force.[212] Secondly, the resolution created a temporary regime, initially for a period of twelve months, which was meant to continue unless the Security Council decided otherwise.[213] Thirdly, resolution 1244 set up a "provisional democratic self-governing, autonomous" institutions of the executive and judicial nature.[214] One of these institutions was the Assembly of Kosovo, the authority to adopt laws. It should be added that a special representative did not invalidate the Declaration of Independence. Fourth, adopting resolution 1244 in June 10, 1999, the Security Council did not intend to determine the final status of Kosovo, did not formulate the conditions for its establishment, nor reserved the task to Security Council competence. This allowed the judges to say that the resolution did not rule out the possibility of the declaration of independence. If the Security Council intended to prohibit such activities, it would have been stated in this resolution.

The Advisory Opinion of the Court does not close the discussion on the right of Kosovars to self-determination in any way. Walter points out that "Advisory Opinion of the International Court of Justice and the Kosovo casus open to new discussions on self-determination and secession".[215] It is also worth noting that the Albanians were satisfied with the Advisory Opinion and the Serbs naturally rejected it. The issue of legal recognition of the state is commonly determined by the foreign policy of the states which recognize. There is no codification in this regard and, therefore, to grant or not to grant recognition always depends on particular interests.

[212] Para 100 of Advisory opinion on 22 July 2010
[213] Para 100 of Advisory opinion on 22 July 2010
[214] Para 10 of Advisory opinion on 22 July 2010
[215] C. Walter, *Self-Determination and Succession*, 1

4.3.2 Statement by the Russian Federation

The statement of Russia is really important because it links the case of Kosovo with the case of Crimea. This statement will help in the analysis of the role of Russia in the conflict in Crimea. The Russian Federation argues against the independence of Kosovo but agrees with the possibility of secession outside the context of decolonization. It states that "the primary purpose of the 'safe clause' is to serve as a guarantee of territorial integrity of States. It is also true that the clause may be construed as authorizing secession under certain conditions".[216]

The statement of Russia proclaims that "the present case concerns some of the key principles of contemporary international law: state sovereignty, territorial integrity, self-determination. The Russian Federation has always given them its full support".[217] However, there are states for which secession as a part of the right of the people to self-determination is possible, but only if all the conditions are fulfilled.[218] These conditions should be limited to the exceptional circumstances, such as an armed attack which threatens the lives of citizens.[219] However, for Russia "the population of Kosovo had never been considered as a people entitled to self-determination amounting to the right to independence".[220] Russia states that it is not correct to consider Kosovo's attempt at secession as the last step in the process of disintegration of Yugoslavia.[221] Russia believes that the democratic institutions were built before 2008, and the level of violence was reduced.[222] At that time, there was

[216] Para 83 and 88 of written statement of the Russian Federation, http://www.icj-cij.org/docket/files/141/15628.pdf access: 31 May 2016
[217] Para 5 of written statement of the Russian Federation
[218] Statements by the Czech Republic (para 11), Estonia (para 6), Germany (para 29), Japan (para 6f), Norway (para 9), Poland (para 23), UK (para 15), US (para 15)
[219] Para 31 (f) of written statement of the Russian Federation
[220] Para 91 of written statement of the Russian Federation
[221] Para 43 of written statement of the Russian Federation
[222] Para 49 of written statement of the Russian Federation

no violation of the minority human rights and no humanitarian catastrophe.[223] Indeed, Russia claims that "The Declaration of independence sought to establish a new State through separation of a part of the territory of the Republic of Serbia. It was therefore, *prima facie,* contrary to the requirement of preserving the territorial integrity of Serbia".[224] The Russian Federation takes into account that the role of the United Nations administration was to complete the situation, which "had been qualified as a treat to international peace and security" and that it did allow the implementation of self-determination by the people of Kosovo.[225] That is why, Russia considers that the unilateral declaration of independence is not compatible with international law.[226]

4.4 Conclusions

Kosovo has been recognized by 69 states, including 22 EU Member States.[227] The supporters of independence of Kosovo referred to the provisions of Resolution 1244 of the UN Security Council under which the Federal Republic of Yugoslavia was required to withdraw its troops from Kosovo and transfer control of the province to the United Nations. The resolution indicated that the international supervision was the first step towards independence, essential to the will of the residents and the creation capable of self-government authorities. States that opted for the recognition of Kosovo showed that the declaration of independence was a consequence of the failure of the international community's efforts towards an agreement between the authorities of Serbia and Kosovo and that "in these circumstances the change of the

[223] Para 94 of written statement of the Russian Federation
[224] Para 76 of written statement of the Russian Federation
[225] Para 97 of written statement of the Russian Federation
[226] Para75 and 104 of written statement of the Russian Federation
[227] Para 1 European Parliament resolution on 8 July 2010 on the European integration process of Kosovo http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0281+0+DOC+XML+V0//EN access: 31 May 2016

unsustainable status quo was unavoidable".[228] In the twentieth century, there was a significant development of human rights and the increasing importance of self-determination of the people. The nations that were under the foreign or colonial domination, proclaiming independence relied on that power and gained international acceptance. After the announcement of the advisory opinion, all the countries that have recognized Kosovo have gained a legal argument confirming the legality of their actions.

On the other hand, the governments of some states (such as Russia, China, Serbia, Spain, Cyprus, Slovakia, Romania and Greece) refused to recognize Kosovo, being of the opinion that it could set a precedent and lead to the intensification of the separatist activities in Abkhazia, South Ossetia, Nagorno-Karabakh, Transnistria, and the Basque country .

In the next chapter, the case of Crimea will be analysed. It is important to determine the circumstances in which the proclamation of independence of Crimea was made and the historical background of the territory. Moreover, it is essential to analyse the acts of international law and national law to prove that Crimea during the declaration of independence was an integral part of Ukraine. It should also identify the consequences of the advisory opinion on Kosovo for the events that took place in Crimea. Finally, it is important to find out whether the right to self-determination could be used in case of Crimea, and what role Russia played in this conflict.

[228] Statement of Bulgaria, Hungary and Croatia on Forthcoming Recognition of Kosovo on 19 March 2008, https://vlada.gov.hr/news/joint-statement-by-the-governments-of-bulgaria-hungary-and-croatia-about-the-announcement-of-the-recognition-of-kosovo/15392, access: 31 May 2016

Chapter 5

THE CASE OF CRIMEA

The main purpose of this chapter is to deal with the same question that was asked with respect to the declaration of independence of Kosovo: is the unilateral declaration of independence by the provisional institutions of self-government of Crimea in accordance with international law?" The structure of this chapter will follow, by analogy and as far as possible, the structure of the ICJ's Advisory Opinion on Kosovo. First, it is essential to investigate the facts that accompanied the declaration of independence of Crimea. Second, it is important to determine the authors of the declaration of independence and third, whether their actions were in accordance with the domestic law of Ukraine and international law.

The analysis will focus on the documents of international law and in particular agreements between Ukraine and Russia, which are the evidence of sovereignty of Ukraine and the fact that Crimea, legally speaking, is an integral part of that state. This chapter will address the question of application of the principle of self-determination to Crimea and consider whether Russia has violated territorial integrity of Ukraine. This chapter will also examine the arguments of the Russian Federation which believes that the annexation of Crimea took place legally and that Russia had the right to incorporate the peninsula to its territory. Russia used the following arguments to justify the annexation of Crimea: the right to self-determination, intervention by invitation and protection of the Russian citizens. The final part of this

chapter deals with the reactions of the international organizations and states to the annexation of Crimea.

5.1 Historical Background

Historically, Crimea was an integral part of Russia for 200 years, until the fall of the Soviet Union in 1991.[229] After the collapse of the Soviet Union, Russia refused to formally confirm the border between the Russian Federation and Ukraine for a long time. The main reason was the lack of its acceptance by the Russian elites who believed that the eastern Ukraine and Crimea never belonged to Ukraine, but were historically parts of Russia. Not without significance are also the economic interests of both states regarding the conduct of the common border on the Sea of Azov and the Kerch Strait.

When Ukraine declared independence in 1991, Crimea with Sevastopol became part of this state. This happened under the Constitution of Crimea adopted on May 6, 1991 which stated that Crimea was a part of Ukraine.[230] Most of the territory of Crimea established the Autonomous Republic of Crimea with its capital in Simferopol. In 1994, the authorities of the Autonomous Republic of Crimea decided to develop a new constitution. The Crimean parliament passed new constitution soon, but the Parliament of Ukraine refused to approve it and demanded changes in the text. Finally, the new constitution was adopted in October 1998 and entered into force on January 12, 1999.[231]

[229] A. Navarro, *Mexicano and Lation Politics and the Quest for Self-Determination: What Needs to Done* (Lexington Books, 2015) 536
[230] M.C Walker, *The Strategic Use of Referendums: Power, Legitimacy, and Democracy* (Palgrave Macmillan, 2003) 107
[231] Crimea Constitution on 21 October 1998, http://zakon3.rada.gov.ua/laws/show/350-14, access: 31 May 2016

The conflict between Crimea and Ukraine began again in 2013 when Viktor Yanukovych refused to sign an association agreement with the European Union. After numerous demonstrations, Ukrainian began to insist that Ukraine was no longer under the influence of the Kremlin and the government should start to introduce reforms that would help in the integration with the European Union.[232] It is worth mentioning that, at the time, a part of society of Ukraine and most of the citizens of Crimea did not want to integrate with the European Union.

The people of Crimea, after the collapse of the Soviet Union, have called for closer cooperation with Russia and critically referred to the proposals of Ukraine's accession to NATO and the European Union. Therefore, the negative attitude of the residents of Crimea to social protests which erupted in Kiev at the end of November 2013 is not surprising. The authorities of the Crimean autonomy repeatedly expressed their support for Ukraine's accession to the Customs Union of Russia, Belarus and Kazakhstan.[233] The Crimean authorities considered the purpose of the protests in Kiev the illegal seizure of power in Ukraine, which would represent a major threat to the autonomy and the rights of its people.

5.2 Crimea's Declaration of Independence and its Implications

The Declaration of Independence of Crimea was adopted by the Supreme Council of the Autonomous Republic of Crimea at the extraordinary plenary session of March 11, 2014.[234] According to the Constitution of Ukraine, "Supreme Council of the

[232] M. W. Shoemaker, *Russia and The Commonwealth of Independent State* (Rowman &Littlefield, 2015)180
[233] C.E Bagley, *Mangers and the Legal Environment: Strategies for the 21st Century* , 8th edition (Yale University Press, 2016) 798
[234] Declaration of Independence of the Autonomous Republic of Crimea and the City of Sevastopol adopted by the Supreme Council of the Autonomous Republic of Crimea on 11 March 2014, http://j-spacetime.com/content/PDF/Krim/declaration%20of%20independence_march%2017_2014.pdf, access: 10 June 2016

Autonomous Republic of Crimea is the representative body of the Autonomous Republic of Crimea".[235]

The Supreme Council of the Autonomous Republic of Crimea, within the limits of its competence, makes the decisions and resolutions.[236] One of the competences of the Council of Crimea is organizing and conducting local referenda.[237] However, in the event of non-compliance of the legal acts of the Supreme Council of the Autonomous Republic of Crimea with the Constitution of Ukraine and other normative acts of Ukraine, the President of Ukraine may suspend the application of the normative acts of the Supreme Council of the Autonomous Republic of Crimea.[238] Crimea exercises normative regulation of domestic issues for example agriculture and forestry, city construction and housing management or tourism. For that Ukraine deals with the foreign policy and matters relevant to the status of Crimea.[239] The unilateral declaration of independence of Crimea is illegal, because the Supreme Council did not have appropriate competence. If Ukraine would agree to Crimea independence, the declaration would be lawful, without the consent of the Ukrainian authorities, declaration is illegal.

The Crimean Declaration of Independence relies on Advisory Opinion on Kosovo, and specifically on this part which says that unilateral declaration of independence, by a part of the state, does not violate any international norms. However, it must be taken into consideration that both the declaration of independence of Kosovo and the

[235] Article 6 of the Constitution of Ukraine on 25 May 2006
[236] Ibid.,
[237] Article 138 (2) of the Constitution of Ukraine on 25 May 2006
[238] Article 138 (10) of the Constitution of Ukraine on 25 May 2006
[239] Article 137 of the Constitution of Ukraine on 25 May 2006

Advisory Opinion clearly state that the case of Kosovo is unique, so no other case can refer to it.

The Declaration of independence and the referendum were crucial for the future of Crimea and the annexation of it by Russia. Originally, referendum was scheduled for May 25 but later the date was changed twice, first on March 30 and then on March 16.[240] The decision to change the date of the referendum was probably a result of the necessity of separating Crimea from Ukraine as soon as possible and the difficult situation of the authorities in Kiev. Keeping distance from the original schedule in May was meant to give the central authorities much more time to develop the tactics and better prepare for the diplomatic, legal, and possibly military battle for Crimea.

In March, the same year, Ukraine lost Crimea in favour of Russia after an earlier referendum, in which the alleged majority (96, 8) wanted to join Russia.[241] After the referendum, President Vladimir Putin signed the documents on Crimea becoming an integral part of Russia. One was the law on ratification of the Accession of the Republic of Crimea to the Russian Federation and on Forming New Constitution Entities within the Russian Federation.[242] The second was the constitutional law on the procedure to join the two new entities to Russia.[243] For Ukraine, NATO[244] and

[240] Para 19 of the Report on the Human Rights Situation in Ukraine on 15 April 2014, Office of the United Nations High Commissioner for Human Rights http://www.ohchr.org/Documents/Countries/UA/OHCHR_eighth_report_on_Ukraine.pdf, access: 31 May 2016
[241] Para 22 of the Report on the Human Rights Situation in Ukraine on 15 April 2014
[242] Agreement on the Accession of the Republic of Crimea to the Russian Federation and on Forming New Constituent Entities within the Russian Federation on 18 March 2014, http://publication.pravo.gov.ru/Document/View/0001201403180024?index=0&rangeSize=1&back=False, access:21 June, 2016
[243] Agreement on the accession of the Republic of Crimea to the Russian Federation signed on 18 March 2014, http://en.kremlin.ru/events/president/news/20604, access: 10 June 2016
[244] Statement by the North Atlantic Council on the So-called Referendum in Crimea, Press Release (2014) on 17 March 2014, http://www.nato.int/cps/en/natolive/news_108030.htm, access: 10 June, 2016

the European Union[245], the proclamation of independence and the referendum in Crimea were illegal and were a violation of a number of international agreements. Kiev responded to the adoption of the Declaration of Independence of Crimea the same day.

The Ministry of Foreign Affairs of Ukraine issued a strong protest regarding the position and actions of Russia.[246] Ukraine accused Russia of meddling in the internal affairs of Ukraine and destabilizing the situation in Crimea. Ukraine once again stressed that the decision to hold a referendum was illegal and contrary to the constitutions of Crimea and Ukraine. The President of Ukraine issued an official decree that annulled the resolution on holding the referendum, and Ukraine's Constitutional Court recognized the referendum as inconsistent with the Constitution of Ukraine.[247] One day later, the Supreme Council of Ukraine decided to dissolve the Crimean parliament. These legal actions, however, did not bring any result. Separatists claimed that they did not recognize the new authorities in Kiev because, in their opinion, what happened in Ukraine was a military coup and overthrow of the legitimate President Yanukovych. Crimea authorities stated that they were no longer loyal to Kiev because there was no longer the state with which Crimea concluded agreements.

[245] Declaration by the High Representative on behalf of the EU on Crimea, Press release on 16 March 2015, http://www.consilium.europa.eu/en/press/press-releases/2015/03/16-declaration-high-representative-crimea/ access: 10 June, 2016

[246] Ministry of Foreign Affairs of Ukraine Daily Briefing on 02 April 2014 http://mfa.gov.ua/en/press-center/briefing/1213-brifing-v-mzs access: 31 May 2016

[247] Judgement of the Constitutional Court of Ukraine on all-Crimean referendum on 14 March 2014 http://mfa.gov.ua/en/news-feeds/foreign-offices-news/19573-rishennya-konstitucijnogo-sudu-v-ukrajini-shhodo-referendumu-v-krimu access: 31 May 2016

5.3 The Status of Crimea

State territory is protected by international law, by the principle of territorial integrity and inviolability of borders which was already mentioned in the previous chapter. In order to prove that Crimea was an integral part of Ukraine it is worth quoting the documents of international law which confirm this.

After the collapse of the Soviet Union, the annexation of Crimea by Ukraine was based on the voluntary resignation of the Crimean independence. According to the Constitution of Crimea from 1992[248] and the Constitution of Ukraine from 1996, Crimea is an integral part of Ukraine. Article 134 provides that "The Autonomous Republic of Crimea is an inseparable constituent part of Ukraine and decides on the issues ascribed to its competence within the limits of authority determined by the Constitution of Ukraine".[249] Article 136 adds that "The Autonomous Republic of Crimea and of the Council of Ministers of the Autonomous Republic of Crimea, are determined by the Constitution of Ukraine and the laws of Ukraine".[250]

The Status of Crimea was confirmed in international agreements signed by Russia which continue to be in force. In 1990, the so-called Kyiv Treaty, which defined the area of cooperation between Ukraine and Russia as two sovereign and independent states was signed.[251] This cooperation also concerned non-interference into internal affairs and respect for the territorial integrity of both states. The most important document regulating relations between Ukraine and the Russian Federation is the

[248] Article 9 of the Constitution of the Republic of Crimea on 6 May 1992
[249] Article 134 of the Constitution of Ukraine on 25 May 2006
[250] Article 136 of the Constitution of Ukraine on 25 May 2006
[251] R. Salchanyk, *Ukraine and Russia: The Post- Soviet Transition* (Rowman & Littlefield, 2001) 36-37

Treaty of Friendship, Cooperation and Partnership from May 31, 1997.[252] The 2007 Treaty guaranteed "mutual respect to state sovereignty and territorial integrity".[253] Article 1 of the Treaty proclaims that "The High Contracting Parties, as friendly, equal and sovereign states base the relations on mutual respect and trust, strategic partnership and cooperation".[254] Article 2 states that "The High Contracting Parties in accordance with the provisions of the Charter of the United Nations and obligations under the Final Act of the Conference on Security and Cooperation in Europe respect territorial integrity of each other and confirm inviolability of borders existing between them".[255] Article 3 says that the "High contracting parties build the relations with each other on the basis of principles of mutual respect, sovereign equality, territorial integrity, inviolability of borders, peaceful settlement of disputes, the non-use of force or threat by force...".[256]

After the proclamation of Ukraine's independence in 1991, this newly created state had a lot of problems. One of them was a needed to regulate the borders and relations with Russia and, in particular, the status of the Black Sea Fleet and its bases. The talks between Ukraine and Russia on these matters took a long time and were often very dramatic. The starting point was a clear and firm position of the Ukrainian President and government declaring total absorption by Ukraine of both all Russian equipment and land infrastructure, but also half of the fleet of vessels and a similar division of land units.

[252] The Treaty of the Friendship, Cooperation and Partnership Between the Russian Federation and Ukraine on 31 May 1997 http://cis-legislation.com/document.fwx?rgn=4181 access: 31 May 2016
[253] Article 6 of the Treaty of Friendship, Cooperation and Partnership Between the Russian Federation and Ukraine
[254] Article 1 the Treaty of Friendship, Cooperation and Partnership Between the Russian Federation and Ukraine
[255] Article 2 of the Treaty of Friendship, Cooperation and Partnership Between the Russian Federation and Ukraine
[256] Article 3 of the Treaty of Friendship, Cooperation and Partnership Between the Russian Federation and Ukraine

The important documents are also the agreements on the Black Sea Fleet from 1997[257] and 2010[258] which shared the fleet, gave Russia the right to the stationing of troops and permission to use the port of Sevastopol until 2042. Article 6 (1) of the 1997 Black Sea Fleet Agreement states that "Military units shall conduct their operations in the areas of disposition in accordance with the legislation of the Russian Federation, respect Ukraine's sovereignty, obey its legislation and refrain from interference with Ukraine's domestic affairs".[259] According to Article 15 (5), "Movements related to activities of military units outside of their areas of disposition shall take place following an approval by Ukraine's competent authorities".[260] What is more, it was agreed that all the areas occupied by the Black Sea Fleet remain an integral part of the territory of Ukraine, leased to Russia until 2017 for the applicable fees.

Russia has denounced the 2010 Agreement because the war in Crimea in 2014. However, in 1994 there was a Memorandum about security in which Ukraine, the United States, Russia and Great Britain took part.[261] The participating states guaranteed Ukraine some benefits in exchange for resignation from the possession of nuclear weapons. Ukraine was promised to maintain its existing borders and promised a ban on the threat or use of armed force that threatened the territorial integrity of Ukraine. The participating states committed themselves not to harm the

[257] Agreement Between Ukraine and the Russian Federation on the Status and Conditions of Black Sea Fleet from 28 May 1997 http://zakon5.rada.gov.ua/laws/show/643_076 access: 31 May 2016
[258]Agreement Between Ukraine and the Russian Federation on the Status and Conditions of Black Sea Fleet from 27 April 2010 http://zakon5.rada.gov.ua/laws/show/643_359 access: 31 May 2016
[259] Article 2 of the Agreement between Ukraine and the Russian Federation on the Status and Conditions of Black Sea Fleet from 28 May 1997
[260] Article 15(5) of the Agreement between Ukraine and the Russian Federation on the Status and Conditions of Black Sea Fleet from 28 May 1997
[261] Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons, 5 December 1994 http://www.larouchepub.com/eiw/public/2014/eirv41n08-20140221/34-35_4108.pdf access:31 May 2016

sovereignty and economic interests of Ukraine and to the protect of Ukraine in the event of any external attack. These documents testify to the fact that Ukraine is a sovereign state and Crimea is a part of it.

5.4 Annexation of Crimea

The international community considers the incorporation of Crimea to Russia as an act of annexation which means "the acquisition of the title to territory (previously under the sovereignty of another state) by a unilateral act of appropriation by a conqueror state subsequent to subjugation".[262] Russia referred to various legal arguments to justify the use of force in Crimea. Russia uses the concepts of self-determination of the people and thus refers its actions to the Kosovo precedent. Russia is trying to justify its involvement in the conflict in Crimea as a protection of its own citizens abroad. Vladimir Putin believes that Viktor Yanukovych, who was president of Ukraine during the crisis on the Maidan, invited Russia to intervene.[263]

5.4.1 The Right to Self-Determination of the People in Crimea

President Putin justifies annexation of Crimea claiming it was a legal secession on the basis of the principle of self-determination of people. As discussed in chapter three of this thesis, secession is, in principle, illegal from the point of view of international law. In order to consider it a legal secession, as in Kosovo, special circumstances must occur, such as the mass violations of human rights. However,

[262] J. C. Perry and J.P. Grand, *Encyclopaedia and Dictionary of International Law*, 3rd edition (Oxford, 2009) 102

[263] L. Charbonneau "Russia: Yanukovich Asked Putin to Use Force to Safe Ukraine" on 4 March 2016, http://www.reuters.com/article/us-ukraine-crisis-un-idUSBREA2224720140304, access: 10 June, 2016

Russia has never lodged a single complaint to an international institution about human rights violations of the Russian minority in Ukraine or Crimea.[264]

Russian people living in Crimea do not qualify as 'people', in the context of self-determination. They are not a nation, not a minority, not indigenous people. For Merezhko "It is equally difficult to qualify this population of mixed ethnic origin (made up of Ukrainians, Russians, Crimean Tatars etc.) as a 'people'".[265] According to him "the population of Crimea has never been considered a separate people, neither by Ukraine nor Russia. Legally, the Crimean population in an integral part of people of Ukraine which has the right to self-determination as a totally".[266] That is why the "Russian ethnic origin does not have a right to self-determination".[267] Moreover, even if self-determination of the Russian minority was accepted, there could be no incorporation of one state to another. Zadorozhnii pointed out that "The Russian claim that it was helping the self-determination of pro-Russian mobs in Crimea was, however, not sufficient to legalize Russian force as it was outside the context of colonialism and not in conjunction with the principle of the UN Charter".[268]

5.4.2 Intervention by Invitation

The Russian Federation, in an attempt to justify the legality of its action, referred to the concept of intervention by invitation. In order for an intervention to be lawful, it must meet special conditions. The State which asks for intervention must give its

[264] North Atlantic Treaty Organization, "Russia's Accusations Setting the Record Straight" Fact Sheet on July 2014, http://www.nato.int/nato_static/assets/pdf/pdf_2014_07/20140716_140716-Factsheet_Russia_en.pdf , access: 30 July, 2016
[265] O. Merezhko, *"Crimea's Annexation by Russia – Contradictions of the New Russian Doctrine of International Law"* Heidelberg Journal of International Law, Volume 75, No 1 (2015) 184
[266] Ibid., 183
[267] Ibid.,
[268] O. Zadorozhnii, *Russian Doctrine of International Law After the Annexation of Crimea* (Kyiv National University, 2015) 41

approval. The State which intervenes must have permission of the legal, internationally recognized authorities. The inviting government must exercise control over the territory. The content of the invitation must clearly confirm the desire to intervene, without the intervention of another State. [269] Invitations cannot be launch by an authority of lower-level, such as local or autonomous authorities.

President Yanukovych, during the events on the Maidan, appealed to the Russian Federation for help.[270] In a statement, Yanukovych said that Ukraine was in a civil war and it was necessary to quickly restore stability and the rule of law in the state in order to protect the citizens of Ukraine.[271] In addition, the Ukrainian president said that the eastern Ukraine and Crimea engulfed the chaos that turned into anarchy.

The Ukrainian law system is designed in such a way that almost every president's decision must be confirmed by the parliament, called the Verkhovna Rada. According to the Ukrainian constitution, only Parliament has the right of deciding on the invitation of foreign troops on Ukrainian territory.[272] Merezhko agreed, that "Under Ukrainian Constitution, Yanukovych had no power to invite a foreign army to Ukraine without the permission of Verkhovna Rada".[273]Additionally, Yanukovych during the crisis left Ukraine. After his escape, the parliament has decided that Yanukovych was not suitable for his functions and was no longer president of Ukraine. In light of these events, invitation of Yanukovych is not in accordance with

[269] Article 4 of the Resolution on 8 September 2011, Institut de Droit international "Military Assistance on Request" http://www.justitiaetpace.org/idiE/resolutionsE/2011_rhodes_10_C_en.pdf access: 31 May 2016
[270] *Ex-Ukrainian President: Inviting Russia into Crimea Was Wrong*, New York Post on 02 April 2014 http://nypost.com/2014/04/02/ex-ukrainian-president-inviting-russia-into-crimea-was-wrong/ access: 31 May 2016
[271] Ibid.,
[272] Article 85 (23) of the Constitution of Ukraine on 25 May, 2006
[273] O. Merezhko, "*Crimea's Annexation by Russia...",* 193

law of Ukraine, neither with international law. Merezhko pointed out that, when Yanukovych was invited Russia "had already lost effective control over Ukraine".[274] Tancred believes that Russia significantly exceeded its powers because "nobody has or could have authorized an annexation".[275] That is why Yanukovyvh invitation has no legal basis, and Russia had no right to rely on it.

5.4.3 Protection of Russian Citizens Abroad

The use of force by Russia in Ukraine is justified by the desire to defend its own citizens. This is not a universally recognized right, however, it is a part of customary international law, a kind of self-defence.[276] The use of military force to protect own citizens abroad is a disputed exception to Article 2 (4).[277]

The intervention to protect own nationals must be distinguished from humanitarian intervention.[278] However, in the UN Report on the Human Rights Situation in Ukraine it can be read that Ukraine protects human rights and does not violate the rights of the minorities.[279] The state has the right to intervene if it meets certain conditions. One of them is that the people must be in danger. It must be a direct threat to life or people health. Secondly, the strength of the intervention must be proportionate to the threat. It cannot be that one state's intervention saves one man by sending all its troops.[280] Another condition is that the intervention cannot be used for any other purpose. Last, the intervention must be limited to the transfer of minorities to a safe place.

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[274] O. Merezhko, "*Crimea's Annexation by Russia...",* 193
[275]A. Tancred, *"The Russian Annexation of the Crimea: Questions Relating to the Use of Force"* Questions of International Law Journal, Volume 1 (2014) 18
[276] P. Grzebyk, *Criminal Responsibility for the Crime of Aggression* (Routledge, 2013) 34
[277] N. Ronzitti, *Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanitary* (Martinus Nijhoff Publishers, 1985) 24-26
[278] C. Arend, and J. R. Beck, *International Law and the Use of Force: Beyond the U. N. Charter Paradigm* (Routledge University Press, 1993) 94
[279] Para 29 of the Report on the Human Rights Situation in Ukraine on 15 April 2014
[280] C. Ku, and P. F. Diehl, *International Law,* 348

In conclusion, none of the conditions justifying intervention to protect own citizens abroad, has been fulfilled by Russia. For Zadorozhni "International law knows no such concept as the armed protection of 'compatriots (defined by Russians as comprising the whole multi-ethnic population of Crimea- 'Krymchane') rather than state's citizens".[281] Also in the Crimean Peninsula, "there were no legal grounds to refer to the 'responsibility to protect'- no threat of crimes, genocide, war crimes, rhetoric cleansing or crimes against humanitary".[282]

5.5 Russia's Involvement in Crimea Conflict

It is important to examine the role of Russia in the conflict in Ukraine, to determine whether the state has broken international law. As previously mentioned, immediately after Ukraine announced its intention to sign an association agreement with the European Union, Russia accused Ukraine of violating the rights of Russian-speaking Ukrainians. Russia "engaged in coercive efforts to manipulate local politics and undermine sovereign decision-making in Kiev, which continued and escalated militarily after the election of President Poroshenko".[283]

It is often submitted that Russia has violated international law, especially the prohibition to interfere in the internal affairs of another state and the threat of use of force and territorial integrity of Ukraine. Allison points out that, Russia "using coercion and force to take control of and destabilize the territories of a neighbour state, is a frontal challenge to the post-Cold War European regional order".[284] Russia also violated Ukrainian-Russian agreement on the status and conditions of stationing of the Black Sea Fleet on the Ukrainian territory. Morelli believes that, starting on

[281] O. Zadorozhnii, *Russian Doctrine of International Law After the Annexation of Crimea*, 41
[282] Ibid.,
[283] R. Allison, *"Russian Deniable' Intervention in Ukraine: How and Why Russia Broke the Rules"* International Affairs, Volume 90, No: 6 (2014) 1255
[284] Ibid.,

February 27, “heavily armed Russian-speaking troops poured into Crimea, seizing airports and other key installations throughout the peninsula”.[285]

The Russian Federation shall be liable for indirect destabilization of the situation in Ukraine by sending armed mercenaries and irregular forces who use military force against another state. Paul pointed out that, “Russia's annexation of Crimea began when armed men with no insignia, who were quickly labelled ‘little green men’, appeared on the Peninsula in late February 2014, shortly after the departure from office of Ukraine's then President, Viktor Yanukovych”.[286] The actions of the Russian Federation in Crimea led to the loss of Ukraine's effective sovereignty over the territory. In view of international law it is a territory occupied by Russia. Zadorozhnii believes that “Russia has also made baseless attacks on the legitimacy of the Ukrainian authorities and has used force to seize part of Ukraine’s territory”.[287]

The legality of the proclamation of independence is also reflected in the reaction of the international community, including international recognition. For NATO, “Russia, has illegally annexed Crimea, allowed mercenaries and heavy weapons to flow across its border into Ukraine, and refused to condemn the aggressive and illegal actions of armed separatists in Ukraine, as it committed to do in Geneva in April”.[288] NATO Secretary General Anders Fogh Rasmussen, before the meeting of the North Atlantic Council and the NATO-Ukraine Commission on 2 March 2014 said “I have convened the North Atlantic Council today because of Russia’s military

[285] V. L. Morelli, *"Ukraine: Current Issues and U.S. Policy"* Report of Congressional Research Service, on 27 April 2016, https://www.fas.org/sgp/crs/row/RL33460.pdf, access: 31 July 2016
[286] A. Paul, *"Crimea one year after Russian annexation"*, European Policy Centre (24 March 2014) http://www.epc.eu/documents/uploads/pub_5432_crimea_one_year_after_russian_annexation.pdf, access: 31 July 2016
[287] O. Zadorozhnii, *Russian Doctrine of International Law*, 194
[288] North Atlantic Treaty Organization, *"Russia’s Accusations - Setting the Record Straight*", 1

action in Ukraine and because of President Putin's threats against this sovereign nation".[289]

The UN Security Council calling upon States that the referendum in Crimea is not recognized because of its illegality.[290] In Article 6 of the Resolution 68/262 the UN General Assembly "Calls upon all States, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status".[291]

Moreover, the European Union believes that there was an annexation of Crimea by Russia. In a declaration adopted by the Council of the European Union, "The European Union reiterates that it does not recognise and continues to condemn this violation of international law. It remains a direct challenge to international security, with grave implications for the international legal order that protects the unity and sovereignty of all states".[292] Thus, the European Union imposed the restrictive measures in response to the illegal annexation of Crime and Sevastopol by Russia

[289] Doorstep statement by NATO Secretary General Anders Fogh Rasmussen before the meetings of the North Atlantic Council and the NATO-Ukraine Commission on 02 March 2014 http://www.nato.int/cps/en/natolive/opinions_107663.htm access: 31 May 2016
[290] General Assembly Plenary (GA/11493) on 27 MARCH 2014 "General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region", http://www.un.org/press/en/2014/ga11493.doc.htm, access: 24 September 2016
[291] Resolution 68/262 adopted by the General Assembly on 27 March 2014 http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_68_262.pdf access: 31 May 2016
[292]Council of the European Union Press "Declaration by the High Representative on behalf of the EU on Crimea" on 18 March 2016 http://dsms.consilium.europa.eu/952/Actions/Newsletter.aspx?messageid=4255&customerid=20947&password=enc_3744423732324446_enc access: 31 May 2016

until 23 June 2017.[293] The Council added that it will conduct a non-recognition policy of Crimea.[294]

The Visegrad Group[295] also believes that the territorial integrity of Ukraine should be respected: "The V4 Ministers are convinced that a peaceful solution to the crisis in and around Ukraine must be based solely on the principle of respecting Ukraine's independence, sovereignty and territorial integrity within its internationally recognized borders".[296] According to the statement of this group, "The V4 countries once again reconfirm their commitment to the EU policy of non-recognition of the illegal annexation of the Crimean peninsula by the Russian Federation".[297]

As opposed to the voices that speak of the illegality of actions of Russia in Crimea, there are those who consider them legitimate. So far, and apart from Russia, the Russian annexation of Crimea has been recognized by Afghanistan, Cuba, Nicaragua, North Korea, Syria and Venezuela.[298] It is obvious too, that Abkhazia, South Ossetia, Nagorno-Karabakh and Transnistria recognized the referendum in Crimea because in the future these territories will want to refer to the case of Crimea. It can be exemplified by the commentary of the Minister of Foreign Affairs of the Republic of South Ossetia who declared that "situation in Ukraine, where in the result of a coup Kiev and many cities of Western Ukraine were taken over by armed

[293] Illegal Annexation of Crimea and Sevastopol: EU Extends Sanctions by One Year, Press Release on 17 June 2016, http://www.consilium.europa.eu/en/press/press-releases/2016/06/17-annexation-crimea-sevastopol-eu-extends-sanctions/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Illegal+annexation+of+Crimea+and+Sevastopol%3a+EU+extends+sanctions+by+one+year, access: 18 June 2016
[294] Ibid.,
[295] Association of four Central European countries: Poland, Czech Republic, Slovakia and Hungary
[296] The Joint Statement of the Visegrad Group Foreign Ministers on Ukraine http://www.visegradgroup.eu/calendar/2014/the-joint-statement-of access: 31 May 2016
[297] Ibid.,
[298] Human Rights Activists Tell the UN of Russian-Crimean Casualties in Syria on 20 March 2016 http://uawire.org/news/human-rights-activists-tell-the-un-of-russian-crimean-casualties-in-syria access: 31 May 2016

radical extremists, is closely followed in South Ossetia. Activities of the extremists are getting more large scale and aggressive" and "It should be said that we express full solidarity with Russian Federation in support of the compatriots in Ukraine to prevent escalation and bloodshed".[299]

5.6 Conclusions

The unilateral declaration of independence of the Autonomous Republic of Crimea and Sevastopol is not in accordance with international law. Firstly, the declaration of independence by Crimea was adopted ha during the weakening of the Ukrainian state following the events on the Maidan. These events led to the growth of pro-Russian mood. No stability in Ukraine gave Crimea a chance to proclaim the declaration of independence, hold the referendum and to become a part of Russia. Secondly, the Crimean parliament had no right to proclaim independence without the consent of the Ukrainian authorities. Crimea has large autonomy, but most important decisions were in power of Ukrainian government. Indeed, the Declaration of Independence was unconstitutional. Thirdly, the involvement of Russia in Ukraine and Crimea was crucial. Russia, by expressing interest in Crimea escalated pro-Russian moods in the territory and later directly supported separatism. Ukraine is a sovereign state and no other state can interfere into its internal affairs. Therefore, the sequence of events that took place in Ukraine and Crimea should be only a matter of Ukraine. Russia had no right to get involved in these events.

In accordance with the accepted principles and norms of international law, the right of the people to self-determination cannot be interpreted as justifying any action violating or weakening territorial integrity and political unity of sovereign,

[299] Commentary of the Minister of Foreign Affairs of Republic of South Ossetia On the situation in Ukraine on 05 March 2014 http://www.mfa-rso.su/en/node/1025 access: 31 May 2016

independent states. Is those states respect the principles of equality and self-determination of the people and their governments to equally represent the interests of all nations on their territory, there should be no self-determination or secession. Merezhko believes that, for the Russian doctrine of international law, Russian constitutional court and Ukraine constitution, self-determination does not include secession from the existing state.[300]

We cannot talk about self-determination of Crimea because of the military involvement of Russia in the territory that legally belongs to Ukraine. The secession movements in Crimea were openly backed and inspired by Russia and that is why Russia violated the basic principles of international law such as non-use of force or threat of force, non-interference in the internal affairs of another state and non-violation of the territorial integrity of another state. Merezhko points out that "Crimea's annexation by Russia is an obvious and flagrant violation of a whole range of norms and principles of international law, beginning with the UN Charter and ending with bilateral international treaties concluded between Russia and Ukraine".[301]

In the next chapter, the case of Kosovo will be compared with the case of Crimea. It will focus on both declarations of independence. In both conflicts ethnicity of the territories involved and the circumstances that accompanied both declarations of independence were important. There is also a comparison of the action of the United Nations in Kosovo with the action of Russia in Crimea. Besides, it is important to establish how many states have recognized the independence of both territories.

[300] O. Merezhko, *"Crimea's Annexation by Russia...",* 192
[301] O. Merezhko, *"Crimea's Annexation by Russia...",* 194

Chapter 6

FROM THE CASE OF KOSOVO TO THE CASE OF CRIMEA

In the Declaration of Independence, the Supreme Council of Crimea invokes the precedent of Kosovo and the Advisory Opinion of the International Court of Justice which concludes that the unilateral declaration of independence of Kosovo does not violate international law standards. The purpose of this chapter is to determine whether both cases can be put in the same category.

The case of Kosovo and the case of Crimea belong to the most interesting cases in which the right to self-determination of the people was invoked. The Advisory Opinion of the International Court of Justice on Kosovo set an unique case. However, ICJ does not want its opinion on Kosovo to be used as a precedent, in reality it was invoked as such, due to the fact that, in this case, it was decided that the right of the people to self-determination was more important than the territorial integrity of Serbia. In the case of Kosovo, many states recognized the secession as a part of the right to self-determination of the people by special circumstances. In contrast the independence of Crimea has been recognized as a violation of the territorial integrity of Ukraine. Why has self-determination of Crimea been disapproved?

In this section, the cases of Kosovo and Crimea are compared to understand why Kosovo was recognized as a case of self-determination, and the case of Crimea as a

violation of the integrity of Ukraine. When there are problems with the legality of self-determination of the people, it is important to compare the criterion of ethnic characteristics of the territories and consider whether there are other possibilities to solve conflicts, such as peace talks or negotiations.

For this thesis, the cases of Kosovo and Crimea were not randomly chosen as the examples of self-determination of the nations and territorial integrity. It is important to use both cases as tools that show the relationship between these principles in real conflicts. It is important to understand that every case of self-determination of the people is different due to other circumstances and course of events. In each case, both principles are inseparable as clearly seen in selected case studies. Therefore, it is essential to compare the circumstances of both conflicts, to understand why the case of Kosovo, became a precedent for Crimea and why the case of Crimea has been recognized as a violation of the territorial integrity of Ukraine.

It was very important to present the cases which are apparently similar but, after closer examination, the differences between them are evident. It is important to show self-determination of the people which led to the legal secession because of the special circumstances, as in Kosovo. As it has already been mentioned in the previous chapters, Kosovo was under the protectorate of the United Nations when it declared independence, so Serbian law lost its power in this territory. However, Crimea, during the annexation, was an integral part of Ukraine, whose sovereignty was supported by a number of the international agreements which were also signed by Russia.

6.1 The Similarities

The similarities between Kosovo and Crimea are numerous. Both republics were parts of federal states and, after their fall, were granted autonomy within existing states. Kosovo became an integral part of Serbia and Crimea became an integral part of Ukraine. Both territories had substantial autonomy and self-government. In both cases, the territories were inhabited mainly by people of different nationality from the one that dominated in the state. Through this diversity, in both territories there were many conflicts between the minorities. However, in the end, minorities of Kosovo and Crimea proclaimed unilateral declarations of independence, which in the case of Kosovo has been recognized as legitimate, and in the case of Crimea not.

In 1999 in Kosovo, there was intervention of NATO and in 2014 there was the intervention of Russia in Crimea. An important element that unites the two cases is involvement of the Russian Federation. In Kosovo and Ukraine, both conflicts were a struggle for the influence between East and West. For the West, it was important to create military bases in the Balkans, but it was relevant for Russia to maintain its influence. The same situation occurred in Ukraine. When the country wanted to sign an association agreement with the European Union and to be under no influence of Russia anymore, the Kremlin made every efforts for this not to happen.

6.2 Ethnicity

In Crimea and Kosovo, there was a conflict that had the ethnic ground, because both territories were inhabited by the minorities which comprised the majority of the population. In both cases, there was a politicization of conflicts to fight for the influence in the Balkans and Ukraine. In Kosovo, the Serbs were saddled with the blame for the persecution of the Albanians. In Crimea, the biggest majority of the

people are Russians and, although the official language is Ukrainian the administration have used the Russian language as well.[302] However, the dominance of the Russians in Crimea is much smaller because, according to the latest available data, they represent about 58% of the population of Crimea, while at the moment of the declaration of independence in Kosovo in 2008, the population of the Albanian origin was nearly 95% of the general population.[303]

Table 1. Crimean population in percent (1939-2001)

	1939	1959	1979	1989	2001
Russian	49,6	71,4	68,4	67,0	58,3
Ukrainian	13,7	22,3	25,6	25,8	24,3
Tatars	19,4	0,0	0,3	1,6	12,1
Others	17,3	6,3	5,7	5,6	5,3

Source: M. Drohobycky, census data (simferpol 1989) via „Crimea", 1959 Soviet Census" State Statistics Committee of Ukraine, 2001

Table 2. Kosovo population in percent (1948-1981)

	1948	1953	1961	1971	1981
Albanians	68,5	64,9	67,2	73,7	77,4
Serbs	23,6	23,5	23,6	18,4	13,2
Others	7,9	11,6	9,2	7,9	9,4

Source: C. Ingrao and T. A. Emmert, *Confronting the Yugoslav Controversies*, 2nd edition (Purdue University Press, 2010) 52

At the moment, there are some voices that in Crimea we have to deal with the 'Crimean people', but there is no any 'Crimean nation'. There are three groups of people: the Russians, who are the majority, the Ukrainians, and the Tatars. In this case, only the self-determination of the Crimean Tatars would be justified. Crimean

[302] T. Kuzio, *Contemporary Ukraine: Dynamics of Post-Soviet Transformation* (Armonk.N.Y.:M.E., 1998) 76
[303] P. Latawski and M. A Smith, *The Kosovo Crisis: The Evolution of Post Cold War European Security* (Manchester University Press, 2003) 84

Tatars represents an ethnic nation, which for centuries lived in Crimea and is totally different linguistically and culturally from the rest of the population. In case of Kosovo, the recognition of the right to self-determination of the Albanian minority is also questionable. However, the recognition of this right was justified because of the crimes and the inability to keep Kosovo within Serbia and it was hard to find the solution between the Serbian and the Albanian authorities.

6.3 Human Rights

For the full picture, it is important to consider what had happened before and what caused the proclamation of independence in both cases. In case of Kosovo, it was the time of humiliation of the Albanian minority which intensified after the death of Marshal Tito in 1981 and, at the moment of coming to power of President Milosevic, reached its apogee.[304] In 1989, Milosievic abolished the autonomy of Kosovo, which had been given to it 15 years earlier. The Albanians of Kosovo did not accept the restriction of their autonomy. Initially, they chose the path of peaceful boycott of the institutions of the Yugoslav state which took the form of non-payment of taxes, the organization of a separate school, refusal to participate in the elections, or the refusal of military service in the armed forces of the federation.[305] In retaliation, many Albanians were forced to leave their jobs (in offices, courts and state institutions) and the Albanian students were expelled from the universities and schools.[306] In view of the increasing repression against the Albanian population of Kosovo, thousands of people were forced to flee to the neighbouring countries like Albania, Montenegro,

[304] J. Mertus, *Kosovo: How Myths and Truths Started a War* (University of California Press, 1999) 281-282
[305] R. Hudson and G. Bowman, *After Yugoslavia: Identities and Politics Within Successor States* (Palgrave Macmillan, 2012) 57-59
[306] R. Hudson and G. Bowman, *After Yugoslavia*, 57-59

and Macedonia.[307] In case of Crimea, the declaration of independence is not preceded by years of humiliation by the Ukrainian authorities against the Russian minority.

On the contrary, the Constitution of Ukraine guarantees the status of autonomous Republic of Crimea, which was respected. This status is also abided because of the respect for the great neighbour Russia which, at any moment, is able to intervene as shown by the recent events. None of the Russians living in the Crimea was forced to flee and Ukraine did not send tanks against them, especially since the Russian troops were present there. Ukraine did not participate in ethnic cleansing against the Russian inhabitants of Crimea; there was no such threat against the Russian minority as was against the Albanians in Kosovo. The direct involvement of Russia was caused by the fall of Yanukovych and the events on the Maidan, which has intensified the Ukrainian pro-European tendencies. In this case, Russia did not want to lose control over the Black Sea and Ukraine.

In addition, before the open conflict in Kosovo, the world did witness the events in Croatia and Bosnia, including the massacre in Srebrenica.[308] The examples of the discrimination and massacres in the former Yugoslavia (also against the Serbs) are well documented.[309] It seems that in this respect we cannot compare Kosovo to Crimea where there was no open warfare or persecution of civilians. In contrast to

[307] H. Krieger, *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999*, Volume 2 (Cambridge University Press, 2001) 89-90
[308] J. Genser and B. S. Ugarte, *The United Nations Security Council in the Age of Human Rights* (Cambridge University Press, 2014) 50-51
[309] M. Shaw, *"The International Court of Justice: Serbia, Bosnia, and Genocide"* on 28 February 2007, https://www.opendemocracy.net/globalization-institutions_government/icj_bosnia_serbia_4392.jsp, access: 10 June 2016

Kosovo, in Crimea there is no evidence that such a state of affairs took place, nor evidence that such situations could arise in the future.

6.4 The Activities of Third States Involved in the Conflicts

The conflict in Kosovo began in 1996 and the peace talks between Serbia and Kosovo were very intense. Lack of consensus led to the 1999 military intervention which, after that, established the international protectorate. Then, for several years, the international community carried out informal and formal discussions on the further status of Kosovo. However, Vladimir Putin demonstrated the great speed in Crimea. The referendum on independence was held just two weeks after taking control of the region by Russia. It is worth comparing the pace of events in Kosovo and Crimea. In Kosovo, the declaration of independence took almost a decade when in 2008 the democratically elected parliament of Kosovo unanimously voted for separation from Serbia. In Kosovo, the vast majority of the population supported independence. In case of Crimea, we had a referendum carried out without the electoral lists (the lists were in Kiev) and in which, in Sevastopol, it was reported that 123 percent of the population voted.[310]

In Kosovo, everything was done in accordance with international law. This applies to the peace talks, UN resolutions and stationing of peacekeeping mission. The Russian soldiers or the soldiers from other states could be easily stationed.[311] In case of Crimea, OSCE observers were not able to enter the peninsula.[312] In Kosovo, all the

[310] M. Klee *"Crimea Referendum sees 123 Percent Turnout in Sevastopo*l" from 17 March, 2014 http://www.dailydot.com/politics/crimea-referendum-123-percent-sevastopol/ access: 31 May 2016
[311] L. F. Szaszdi, *Russian Civil-Military Relations and the Origins of the Second Chechen War* (University Press of America, 2008) 199-200
[312] Latest from OSCE Special Monitoring Mission (SMM) to Ukraine on 19 March 2015 http://www.osce.org/ukraine-smm/145846 access: 31 May 2016

actions took place openly and have been duly documented. In Crimea, Russian actins cased chaos to prevent the Ukrainian power from controlling the situation.

As mentioned earlier, Crimea was so quick because the Ukrainian authorities were not able to recover the peninsula. It is also worth mentioning that Russia has used propaganda and started of hostilities on the Eastern Ukraine. Russia got engaged in a war in the east of Ukraine in order to make the Ukraine authorities 'busy' with the recovery of its territory and to divert their attention from Crimea. In Kosovo, all the activities of the international community were preceded by the laborious peace talks, and the process of gaining independence of the people of Kosovo lasted more than 10 years. However, Russia used the protests on the Maidan to send its soldiers and took over Crimea in two weeks.

6.5 Declarations of Independence

The right to secede, as part of the right of self-determination of the people, was created to protect the people from repression and give them a chance to build a new democratic state where human rights are respected. Declarations of independence of both Kosovo and Crimea were proclaimed unilaterally. It is also essential to note that Kosovo wanted to be an independent democratic state, which would have a great future and „Determined to see our status resolved in order to give our people clarity about their future, move beyond the conflicts of the past and realise the full democratic potential of our society".[313] However, Crimea proclaimed independence in order to become a part of Russia:

If the referendum brings the respective results, the Republic of Crimea as an independent and sovereign state will turn to the Russian Federation with the proposition to accept the Republic of Crimea on the basis of a respective interstate

[313] Para 13 of the Kosovo Declaration of Independence

treaty into the Russian Federation as a new constituent entity of the Russian Federation.[314]

Interestingly, the declaration of independence of Crimea relies on the precedent of Kosovo:

We, the members of the parliament of the Autonomous Republic of Crimea and the Sevastopol City Council, with regard to the Charter of the United Nations and a whole range of other international documents and taking into consideration the confirmation of the status of Kosovo by the United Nations International Court of Justice on July, 22, 2010, which says that unilateral declaration of independence by a part of the country doesn't violate any international norms.[315]

However, the declaration of independence of Kosovo clearly indicates that the declaration is not a precedent that cannot be used in any other case „Observing that Kosovo is a special case arising from Yugoslavia's non-consensual breakup and is not a precedent for any other situation".[316] As a principle, self-determination cannot be used to transfer the territory. The minorities cannot use this principle every time they do not like the newly elected government or politics, or because they want to become a part of another state. That is why, the Russian minority was not entitled to invoke the principle of self-determination of the people or the Kosovo precedent.

6.6 International Recognition

Another factor that distinguishes Crimea from Kosovo is international recognition. In this regard, it is worth asking the question whether there was an evolution of international law. However, this only applies to Kosovo because, as already stated, self-determination does not apply to Crimea, which, except Russia, has so far been recognized by only six states. Most states have not recognized the incorporation of

[314] Para 3 of the Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol from 11 March 2014 http://www.voltairenet.org/article182723.html access: 31 May 2016
[315] Preamble of the Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol
[316] Para 6 of the Kosovo Declaration of Independence

Crimea to the Russian Federation. Some of them, such as the member states of the European Union, the United States, Japan, Canada and Australia, even decided for the use of sanctions against those who are responsible for the violation of the territorial integrity of Ukraine.[317] In 2008, just after the unilateral declaration of independence by Kosovo, most of the states of the European Union and NATO recognized the new republic, and it was exactly the number of 53 states.[318] After the Advisory Opinion of the International Court of Justice was issued, the number of states recognizing Kosovo reached 96 countries in 2012 and 111 in 2015.[319] Year by year, more and more states are deciding to recognize Kosovo, it is a signal that more and more countries are recognizing the principle of self-determination over the principle of territorial integrity.

For Kosovo and Crimea, without the support of strong powers, the independence projects would not be possible. If the US did not support Kosovo's independence, Kosovo would probably continue to be a part of Serbia. If Russia had not supported the operations in Crimea, Ukraine would not have a problem on the peninsula. However, in case of Kosovo, the international organizations and the US, after the declaration of independence, encouraged other states to recognize Kosovo as a sovereign state. Still, there are states which have not recognized Kosovo's independence such as Cyprus, Greece, or Spain, because there are significant

[317] Briefing: Summary of Economic Impact on the EU of Sanctions over Ukraine Conflict on October 2015 http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/569020/EPRS_BRI(2015)569020_EN.pdf , access: 31 May 2016

[318] Recognized or Announced the Recognition of Republic of Kosovo http://www.kosovothanksyou.com/ access: 31 May 2016

[319] Recognized or Announced the Recognition of Republic of Kosovo http://www.kosovothanksyou.com/ access: 31 May 2016

minorities within the state and those states do not want to recognize Kosovo.[320] From the beginning, Russia declared solidarity with Serbia but later became a country which recognized Crimea. President Putin blames the West of supporting the violation of the integrity of Serbia, after some states recognized the independence of Kosovo. Russia also used the issue of Kosovo during the declaration of independence by the former Soviet republics of Ossetia and Abkhazia.[321]

6.7 Conclusions

The interpretation of the Advisory Opinion of the ICJ by Russia is strongly inconsistent. However, before this opinion was delivered, Russia questioned the secession of Kosovo and has not recognized Kosovo as a state yet. Russia claims that self-determination is legal only in extreme cases, especially when the people are victims of the most serious persecution from the home country. If, therefore, according to Russia, there were no legal grounds for secession of Kosovo, why is secession of Crimea legal? The situation of Crimea is quite different from the situation of Kosovo particularly because it is difficult to speak about the violation of the internal aspect of self-determination. Moreover, the alleged self-determination of the inhabitants of Crimea was a direct result of the use of force by Russia and the manipulation of the facts including the requirements of democracy, the so-called referendum. Despite initial denials, president Putin acknowledged that the free expression of the will of the people residing in the region has been made possible because of the support by Russian troops.[322]

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[320] M. Milanovic and M. Wood, *The Law and Politics of the Kosovo Advisory Opinion* (Oxford University Press, 2015) 11

[321] M. W Shoemaker, *The World Today Series 2012: Russia and The Commonwealth of Independence States* , 43rd edition (Stryker Publication, 2012) 94

[322] Putin Reveals Secrets of Russia's Crimea Takeover Plot on 9 March 2015, http://www.bbc.com/news/world-europe-31796226, access: 12 June 2016

The Russian annexation of Crimea must be considered illegal due to the use of armed force. In Crimea, there was no self-determination of the people or the secession. The application of these concepts to the territorial annexation is a part of the Russian propaganda campaign. One must admit that the annexation of Crimea by Russia destroys the real self-determination of the population of Crimea (non-uniform politically and nationally). The Russian troops which took part in the operation in Crimea include the units stationing in Crimea, additional troops dispatched (in violation of the agreement on the stationing of troops from 1997) and the Russian special forces (disguised as a group of irregulars).[323] In addition, the mass concentration of the Russian troops and their manoeuvres on the border with Ukraine can be classified as incompatible with Article 2 (4) of the Charter of the United Nations. It can be concluded that Russia's actions exhausted the conditions listed in the definition of aggression, even if those acts were not met with an armed reaction of Ukraine. In short, the case of Crimea does not qualify as a case of self-determination of the people and it constitutes a serious violation international law.

This chapter is also meant to illustrate that the case of Kosovo has changed the perception of the principle of self-determination of the people and the concept of human rights forever. The case of Kosovo represents an evident example of the evolution of international law. Higgins calls it 'authoritative decision-making' and she means that international law is the continuing process of the authoritative decisions, which are made by the authorized person and organs.[324] After the Kosovo case, the principle of self-determination seems to be more important than the principle of territorial integrity.

[323] J. L. Black and M. John, *The Return of The Cold War* (Routledge, 2016) 179-181
[324] R. Higgins, "*Policy Considerations and the International Judicial Process*", International and Comparative Law Quarterly, Volume 17 (1968) 58-59

Chapter 7

CONCLUSIONS

In summary, the main purpose of this thesis is to address the question of potential normative conflict between the principle of self-determination of people and the principle of territorial integrity of states. It is not easy to answer this question due to the complexity of the problem and the fact that both principles are derived from the same documents of international law and seem to be inseparable.

The conclusion this thesis reached is that the principle of self-determination and territorial integrity do not come into conflict and are not incompatible. Firstly, conflict is a situation where two rules or principles suggest different ways of dealing with a problem. In international law conflict can be approached from two perspectives as the subject matter or legal subject bound. Both principles are invoked in regard to the same matter addressed to the state and people. Despite the fact that both principles come from the same treaties of international law and are not mutually exclusive, it is clear that any matter relating to both principles must be examined individually, in its own right and, in any case, the relationship between the two principles is interpreted differently in different cases. In Kosovo, where special circumstances such as human rights violations were present, the international community decided to recognize the self-determination of the Kosovo Albanians. However, in the case of Crimea, there were no human rights violations by Ukraine. Russia used the argument of self-determination of people to justify the military intervention, and the illegal annexation of Crimea. That is why self-determination of

the Russian minority and the Russian intervention in Crimea is recognized as illegal. The fact that only six states have recognized the independence of Crimea may serve as an evidence of illegal actions of Russia. Most states and the European Union decided to use sanctions against Russia.

When it comes to the evolution of international law and the question which of these principles is more important, there can be no clear answer. It is impossible to answer this question in favour of one principle or the other because, as already mentioned, it depends on the circumstances in which these principles are interpreted. Nowadays, both principles are equally important. There is no hierarchy between these principles, none of the principles is more important than the other. Since there is no hierarchy, it all depends on the interpretation of these principles and on proper use of the settlement of self-determination of people. Viewed from a historical perspective and the evolution of international law, the principle of territorial integrity of the state should be more important, due to the fact that this principle is older and better established. However, the importance of the principle of self-determination is growing. It does not, however, undermine the harmony and hierarchy in international law. Still one cannot predict how international law will develop and which principle will be more important in future.

The legality of secession depends on whether it is caused by the will of the people, or is the result of intervention from outside. International law prohibits the threat or use of force against the territorial integrity, which is why territorial changes effected by way of outer violence are unacceptable. The desire of secession by a particular nationality is always the result of a complex geopolitical situation and historical baggage of a region. Each case must therefore be examined by the relevant body. In

the case of Kosovo, Serbia has asked the UN General Assembly to address the case to the International Court of Justice.

In addition, any secessionist movement should be dealt with on the basis of constitutional regulations of states. International law generally accepts that secession is legal in the situations with no other choice, when the right to self-determination cannot be realized within the structures of the state. Secession is legal in cases of decolonization or the oppression of the population of the territory, which results in its regular discrimination, human rights violations, or the disabling of its participation in the government of the state.

The application of the principle of self-determination of people reminds minorities and peoples that they are entitled to decide their own affairs and is strongly associated with the development of the international human rights system. However, the practice of the international community concerning the external aspect of the right to self-determination is often erratic which diminishes its role in the process of creating a new statehood due to the fact that existing States determine their actions mainly on the basis of their own political interests. The future development of the right to self-determination is difficult to predict. In connection with the completion of the process of decolonization, it is not invoked as often as during the Cold War, although there are still many of groups aspiring to statehood or greater autonomy. One of the best solutions is the one applied by Canada and Great Britain, which, in the face of struggle for independence in Quebec and Scotland, allowed to conduct referenda on independence by allowing the people to realize the full right to self-determination. Under international law there is no such requirement though.

The response to security threats and human rights violations are *inter alia* UN missions such as conflict prevention missions or peace enforcement missions. These missions demonstrate the erosion of territorial integrity and that absolute sovereignty no longer exists. From a legal point of view, sovereignty is indisputable, but the area in which the states can exercise their rights in the internal model and foreign relations, declined. Those UN missions were created because of the difficulty in resolving such conflicts by using diplomatic means and political measures. Some of the post-Cold War peace operations, such as in Somalia or Bosnia, were carried out without the express consent of the parties concerned which means a lack of respect for the state sovereignty and non-intervention in its internal politics. In some cases, the Security Council being under pressure to provide urgent humanitarian aid was willing to take the decision to launch the operation despite the lack of consent of the parties concerned. UN intervening in the ongoing civil wars, sometimes had the "force" peace, which required the use of force. As a result, the twentieth and twenty-first centuries can be considered an era of human rights and humanitarian interventions. The principle of territorial integrity is not as unassailable as it used to be.

The willingness to opt for secession by a particular minority or ethnic group is always the result of a complex geopolitical situation and historical baggage of a region. Each case should be examined by the relevant institutions. In case of Kosovo, Serbia asked the UN General Assembly to pass the case to the International Court of Justice to be examined. The Court, in 2010, issued an opinion stating that there was no violation of international law. Unfortunately, the recognition of secession as not violating international law does not entail the consequences in the realm of facts.

Law should be enforced which can take years and involve the need for an intervention. Even though everyone would like to see international disputes resolved by legal means and without bloodshed, the cases of Kosovo, South Sudan, Abkhazia and Ossetia show that nowadays the only effective method of gaining independence is by the use of armed force (own forces or allies forces).

The most important document that confirms that declaration of independence of Kosovo does not violate international law is the Advisory Opinion of the International Court of Justice. The United Nations General Assembly requested the Court to answer the following question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law? The International Court of Justice issued on July 22, 2010, an advisory opinion on the compatibility with international law of the unilateral declaration of Kosovo's independence. The Court decided that it does not violate the general principles of international law and did not infringe the territorial integrity of Serbia. Right after the declaration of independence by Kosovo, the reaction of states in the international arena was divided. Several states considered that this declaration was in line with international law, not a violation of territorial integrity of Serbia. After the declaration of independence by Kosovo, 69 states recognized its independence. After the Advisory Opinion was issued, the number of states recognizing Kosovo's independence increased to 111, including 23 EU member states.

It may seem that the decision of the International Court of Justice may give rise to interpretations in similar cases, as was the case in Crimea. The Court was very careful about the consequences of his opinion, because Kosovo has been recognized

as a unique case and no one can refer to it. Although the ICJ advisory opinion is not universally binding, its importance goes far beyond the specific case of Kosovo. In the political aspect, it will be used for the assessment of similar situations in other regions of the world. Therefore, it will strengthen both separatist tendencies, as well as the arguments of the right to self-determination so far unrecognized entities, including South Ossetia and Abkhazia.

One of the cases, in which the advisory opinion was explicitly referred to, is the case of Crimea. Russia justified the annexation of Crimea and its other actions as the desire to help the Russian minority which, according to Russia, was persecuted by the Ukrainians, and as in the case of Kosovo have the right to self-determination. However, as evidence earlier, in Crimea there was discussed persecution of the Russian minority and the "people" had no right to external self-determination. Crimea, despite its autonomy, had no right to hold a referendum for independence, and to declare independence. Crimea, from the point of view of international law, remains the occupied territory. By making the annexation of Crimea, the Russian Federation violated many treaties and the fundamental principles of international law, such as the principle of territorial integrity of states, the prohibition of interference in the internal affairs of another State, and the prohibition of the use and threat of use of military force against another state. As a consequence, the Russian Federation violated the rights of Ukraine, which are subject to the international protection. Russian Federation violated its legal obligations to the international community through violated basic standards of international law, which are the foundation of security in the world. On the side of international community, there is

an international legal obligation not to recognize the illegal situation and its effects resulting from the unlawful use of force in the form of armed aggression.

Despite what happened with Crimea, the evolution of law is apparent. It must be remembered that in Crimea there was a use of force violating international law and, in particular, violation of the territorial integrity of Ukraine. The use of the principle of self-determination was justified in Kosovo, but not in Crimea. Russia, after the declaration of independence by Kosovo was helpless and could not do anything to help their ally Serbia. The conflict in Crimea is, for Russia, yet another place where it can play the political game with the West even if self-determination of Crimea is not , in principle, acceptable and recognized by the international community.

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