HOW DOES THE INTERNATIONAL COMMUNITY RECONCILE THE PRINCIPLE OF SELF-DETERMINATION AND TERRITORIAL INTEGRITY

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‘How does the international community reconcile the principles of territorial integrity and self-determination? The case of Crimea.’

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Abstract

This paper explores the ambiguous nature of the two principles of international law - self-determination and territorial integrity, illustrating the controversial nuances of international law on a political board whereby the Crimean crisis has been described. In other words, it aims to elucidate the situation of Crimea from the existing international law prism by examination of these two principles. Multiple paradigms will be applied for interpreting juristic status of mentioned principles. After investigating the historical position and theoretical framework of the principle of self-determination and territorial integrity, research has been aimed to process the massive data collected over the Crimean crisis between Russia and the West. The foundation of this research will be based on the collision between Russia and the West collision over the legal interpretation of these two principles over the entire history and particularly in the case of Crimea. From the very beginning, the legal interpretation of the situation of Crimea was that Russia’s legal rhetoric was groundless and that her legal justification on the secession of Crimea was simply not plausible and therefore could not be linked by either law or moral theories.

Keywords: Self-determination, territorial integrity, International law, Crimean crisis, Russia, the West.

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1. Introduction

In 2014 March, by Russia’s support, Crimea’s secession from the mainland Ukraine alarmed the international community and ignited two contradictions of international law; (1) the historical ambiguity- the principle of self-determination against the principle of territorial integrity; (2) the historical confrontation - Russia and the West legal battleground on the interpretation of these principles which were questioned from early twentieth century. This paper explores the historical evolution of this ambiguity and the confrontation between Russian and Western lawmakers and policymakers, upon the reconciliation of the self-determination and territorial integrity whilst demonstrating ambiguity and confrontation by the case of Crimea.

Self-determination of people versus territorial integrity of states is a controversial international issue when they are implemented in practise. Although nations and states have been acquainted with these complicated norms for decades, as a principle of international law, territorial integrity was included with the Westphalian treaty (1648), the principle of the self-determination enshrined in the Charter of United Nation in 1945. Up until 1945- enshrining the principle of self-determination in UN Charter- territorial integrity was an uncomplicated norm of international law. Since the principle of self-determination gained juristic status, it triggered the legal inconsistency with the principle of territorial integrity in international law. When the principle of self-determination was converted into practice such as the independence of Bangladesh, the secession of states from Yugoslavia, Nagorno Karabakh in Azerbaijan, Kosovo, Abkhazia, Ossetia in Georgia etc. This juxtaposition became the main agenda of international negotiations and perplexed lawmakers and policymakers in discourse. The
Crimean case resonates the most among these examples in demonstrating the incompatibility of these principles.

The ambiguity of these principles was mostly consistent with historical confrontation that rooted from the Lenin’s and Wilson’s ideas of self-determination. Subsequently, the Soviet Union lead, socialist block and the United States lead Western capitalist block during the Cold War era continued the contestation as rival lawmakers in international law. When the Soviet Union fell, Russians exited from the legal ground as a lawmaker, and for the first time, Russia, since the collapsing of Soviet Union, derived its own legal interpretation of international law as shown in this case study.

In today’s legal battleground, Putin’s Russia could see itself as lawmaker that has been rooted from Lenin’s idea of self-determination, while Wilson’s liberal standpoint as an ideological origin for the western legal interpreters. Considering these historical ties, the first chapter acts as a timeline of this confrontation and investigates the ambiguity of the principle of the self-determination and territorial integrity, a crucial cornerstone of knowledge which facilitates an understanding of the contemporary legal rhetoric between Russia and the West.

The second chapter of research elucidates the renewed theoretical deliberation upon the interpretation of the principle of self-determination. Contrary to historical evolution, the theoretical analysis omits the confrontation between Russia and the West. Rather, it is reviewed by varying scholarly hypotheses, wherein the examination of self-determination is categorised in three conceptions: Remedial Only, Primary, Just Cause theories.

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

In the third chapter this legal battleground, until Crimea, will be described as a legal basis for Russia’s justification of Crimea’s secession. Similar to the theoretical understanding, history is of paramount importance to this research. Considering Russia’s arguments upon Crimea is mostly related to historical arguments which have to be highlighted for understanding Moscow’s cloak of legal interpretation. In the legal assessment of Crimean secession, Russia’s legal interpretation of Crimean situation is sourced from, mainly, President Vladimir Putin’s speech on March 16, 2014, and other officials of Moscow. Meanwhile, it is dissected by scholars, lawyers, policymakers, analysts from the West wing. Following this, in theoretical assessment, the Crimean case will be investigated according to three main conceptions (Remedial Only, Just Cause, Primary theories) of which none promote Crimea’s situation. The three theories did not help promote the situation because Crimea’s secession was a far cry from democracy which will be more elaborately discussed in later chapters of this dissertation.

On the one hand, my investigation into the historical confrontation of Russia and the West on a legal basis will demonstrate Russia’s groundless argumentation that essentially serves political interest, and Crimea will be the precedent for this. On the other hand, in concluding research on historical ambiguity, deep theoretical examination of the principle of self-determination versus territorial integrity stimulates a new alternative theoretical approach that is based on the fuzzy\(^2\) logic of mathematics.

\(^2\) Fuzzy logic is a superset of conventional (Boolean) logic that has been extended to handle the concept of partial truth - truth values between "completely true" and "completely false". A.S. Aziz, *You Fuzzyin’ with Me?* (1996), available at
2. Historical Evolution

A. Historical Development of Self-Determination and Territorial Integrity

Policy and lawmakers have long grappled with differing interpretations of self-determination and territorial integrity, either as enshrined postulate of international or customary law,³ or as ambiguous theory of international relations. Despite these norms having been imbibed by peoples and states for a long time and volumes of literature on the theoretical and legal status of self-determination and territorial integrity, there remains much uncertainty among policy and lawmakers of their political and legal meaning.

The core of the debate dates back to the peace of Westphalia, signed in 1648, after settlement of the Thirty Years War in which the territorial integrity, sovereignty of states were enshrined and state was solidified as dominant actor of International Relations. On accepting these norms, states were able to command on their citizens, dues from non-intervention and had protection from outside attack. The inviolability of territorial integrity and sovereignty thus became the deeper code of international relations between states. Philpott highlights the significance of sovereignty in the Westphalia, citing from Leo Gross, that “whatever evils occur within states, http://www.doc.ic.ac.uk/~nd/surprise_96/journal/vol1/sbaa/article1.html (last visited 30 August 2015).

³ According to Article 38(1)(b) of the ICJ Statute, customary international law is one of the sources of international law. Customary international law can be established by showing (1) state practice and (2) opinio juris. Customary International Law, Cornell University Law School Legal Information Institute, available at https://www.law.cornell.edu/wex/Customary_international_law (last visited 16 September 2015).
it is better to maintain the *modus vivendi*[^4] than permit the manifold, self-multiplying claims that can motivate, and serve as a pretext for, widespread intervention".[^5] So that the Westphalian treaty cemented "the order cluster" (sovereignty, non-intervention, and territorial integrity) of the state[^6]; the state possessed its rights and an utmost authority over its territories, expressing its commitment to non-intervention. Meanwhile, Westphalia treaty paved the way for the emerging of ‘the justice cluster’ (the rights of individuals and groups of self-determination) relations.[^7]

The political theory of International Relations - *Nationalism* was the ground for the evolution of the principle of self-determination both as a political and legal postulate. When the territoriality and borderlines of states and nations appeared in Westphalia it helped to establish among thinking peoples, sundry minorities and groups, a sense of their own national identities, cultures, languages and own territory which distinguished them from others. In political meaning, Miller argued, ‘the principle of nationality suggests that people who form a national community in a particular territory have a reasonable claim to political self-determination’.[^8]


[^7]: Ibid.

[^8]: Ibid, at 614.
the vein of this tendency, *Nationalism* advanced and accelerated the ascription of people to different national identities. As the distribution of world populations spread, nationalist feelings prompted different groups to determine their own interests without cooperation with outsiders. The realisation of this idea and self-regulation of territory was only passing through a phase of secession that undermined the territorial integrity of states.

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

1. ‘Mid-nineteenth-century European national self-determination;
2. Late-nineteenth-century Marxist class self-determination;
3. Post-WW I Wilsonian minorities' self-determination;
4. Post-WW II non-European/racial self-determination;’

Like Ronen, most scholars engaged in self-determination, conceiving the origin of the principle of the self-determinations from the American Declaration of Independence (1776) and in Europe, after French Revolution (1789). It does not imply that self-determination emerged in international relations in the eighteen century but as Monica Duffy Toft states ‘empires were threatened by separatist movements; today, it is multi-ethnic states’. In the past, this separatism within empires could be achieved only by wars; clashes which were illegitimate, while for the first time Americans and French legalised it by coining self-determination as human rights and enshrined in their constitutions. These constitutional acts, particularly, in

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France were not as genuine as to concern people’s destiny but emphasised more political purposes of governments. For instance, the French legalized the plebiscite right of people to masquerade the annexation of Belgium and the Palatinate\textsuperscript{12} and this kind of exploitation of the principles of international law never disappeared from the practice.

\textbf{B. Marxist-Leninist Conception of Self-Determination}

Ronen, in his classification of self-determination, coined ‘alien rule’ as those who guard territorial integrity of empires and indicated the main aim of ‘claimants’ who desire self-determination to secede from alien rule.\textsuperscript{13} However, the interpretation of alien and the claimant is completely different in the Marxist school. The conflict is not between minorities and majorities or any nations and indigenous peoples but the polar groups are the ‘working class’ or ‘proletariat’ and the intention is not secession of territory but merging these groups of people under \textit{Communism}.\textsuperscript{14} The Marxist concept of self-determination resonates more with internal self-determination of working class to determine their destiny of state. However, in the next stage of \textit{communism}, self-determination was championed by Lenin who stressed the declaration of self-determination as a vital right of nations and widened the interpretation of self-determination.

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

- Ethnic and national community acquired the rights of choosing their destiny freely;

\textsuperscript{12} Cassese, \textit{supra} note 9.

\textsuperscript{13} Hasani, \textit{supra} note 8.

\textsuperscript{14} Hasani, \textit{supra} note 8, at 45.
• After military frictions between sovereign states, self-determination can be applied for assigning territories between them;

• It was directed to anti-colonial regime that were carried out by European and the US metropolis in Africa and Asia.\textsuperscript{15}

Indeed, these components envisioned by Lenin on self-determination were most attractive as a theory, although largely vain in practice. It was intended in the interests of ideology and state rather than being a justice cluster. As Neuberger noted, self-determination for Lenin was just only about ‘political self-determination, political independence, the formation of a national state’.\textsuperscript{16}

The first and second elements were recording slogan for Lenin’s internal policy under named unification around his Empire. Here was manifested the plebiscite or referendum as a means of expression of people’s vote which was discursive with reality and yet would seem alien and strange to its inheritor - nowadays Russia. In reality, the supposed plebiscite or referendum was ‘a political tool to bring the nationalities into the union’,\textsuperscript{17} namely the ideas of Imperialism. In the 1920 invasion and the merging of five republics (Ukraine, Belarus and three Caucasus countries-Georgia, Armenia, Azerbaijan) with the mainland Russia and establishing Soviet Union, were showed as the assent and eagerness of these state's people by conducting referendum. Although, except small part of communists in these countries no one was eager to

\textsuperscript{15} Cassese, \textit{supra} note 9.


\textsuperscript{17} D. Kumbaro, \textit{The Kosovo Crisis in an International Law Perspective: Self-Determination, Territorial Integrity and the NATO Intervention} (2001) at 33.
lose their independence and Soviet Union made a decision on behalf of population of these countries.

Beyond that, Antonov assesses Lenin’s thesis about the ethnic and national community as ‘determining the extent of their autonomy’ and was rather serving the interests of ‘Bolsheviks to gain support of the national minorities during the civil war’.18 The desire of Soviet Russia for Imperialism, indeed, never disappeared and in the case of Crimea the speech of Putin in relating historical arguments, demonstrated that clearly. Putin’s Russia repeated her own “legal” referendum in Crimea as Soviet Union did while merging fifteen republics around the empire so that Russia as the Soviet Union was organiser, supervisor and executer of referendum.

Lenin’s focus on rights to self-determination pertained to anti-colonialism was well known as it was the external weapon utilised for strategic foreign policy aims against the US and European countries. To be more precise, Lenin and his successors advocated their ideological and political purposes than preserve the rights of people. To exemplify that, even the name of “Lenin’s Theses on the Socialist Revolution and the Right of Nations to Self-determination”, published in March 1916” displays permanently its ideological basis.19 Lenin championed Socialism and claimed that this was the only political structure that promoted democracy and human rights, indirectly concerning self-determination.


19 Cassese, supra note 9, at 15.
Despite discrepancy between the first and second components of Leninist conception of self-determination, Soviet scholars, generally, contributed colonial content of self-determination in international law and achieved legal decree in the UN.

C. Wilson’s Liberal Interpretation of Self-Determination

Wilsonian understanding of self-determination was the closest conception to today’s subject of self-determination. Unlike the narrow framework of Lenin’s self-determination which is more affixed on anti-colonialism and its ideological discourse, Wilson propounded the ‘universal implication’ of self-determination for the first time which reflected the rights of people to choose their self-government (internal form of self-determination) and subsequently, as an external version ‘peoples were to be free to choose their sovereign’. 20 Wilson’s conception was originated from Liberal democratic theory and hence, interpretation of internal self-determination as the self-government was not unusual for democracy which symbolises freedom and liberty for individuals and rights to determine their own destiny. However, in its external meaning it was an extraordinary novelty and not compliant with the conventions of its time and even still, faces resentment from world community today. Even, Wilson’s secretary of state, Lancing, was coming against a sizeable list of people who were firmly against it. Lansing typified Wilsonian external self-determination as a ‘dynamite, that is, a principle with enormous destabilising force when faced with practical realization’. 21 Lansing was confused about the meaning of self-determination and scared of breeding global ethnic and political conflicts.

20 Cassese, supra note 9, at 19.

Cassese envisioned Wilson’s argument that if self-determination was employed fairly it would redraw the borders of Europe correctly and removed the conflicts of ethnic minorities in Europe. Wilson’s point of self-determination of people was rejected to include the Covenant of League of Nations unanimously by international community and eventually, it was postponed to enshrine the self-determination as a principle for around three decades. Despite the failure of Wilson’s conviction to be verse of the League of Nation, the president Wilson ‘brought the concept into the international spotlight as never before’.22 Although it does not weigh any legal status, thousands of nations have claimed it in front of their governments and subsequently was turned into justification for political oppressions such as the Nazi’s abuse ‘as an excuse for German expansionism’23 for the annexation of Austria in 1938.

Among all these attempts, there exists a common point that is construed as self-determination. It aimed to realise their political or ideological will rather than creating judicial term for people. For instance, in spite of Wilson’s consistency on self-determination of minorities in Ottoman and Austro-Hungarian Empire, he did not have the same persistence when it came to self-determination of colonial people. In his speech, Wilson claimed to be taken by the interests of metropolitans as well as their rights to self-determination. Whilst they gave rights of referendum to indigenous and minorities of Europe, Germans were deprived of that right. Like Germans, Bulgarians and Turks of Ottoman did not allow self-determination because of them being collaborators of Germany in WWI. Apart from that, Ottoman territories were given under the control of the Great Powers due to Mandates system of the League of Nations.


However, Allen Lynch claims conversely in his article that Wilson’s intention was ‘genuine’, not like the French, British or Soviet who instrumented it as a weapon in politics and Wilson was unaware of European ethnic groups\textsuperscript{24} and as such could not calculate the perils of the principle of self-determination.

\textbf{D. Manifestation of Self-Determination in International Law}

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

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

\textit{To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;\textsuperscript{25}}

Furthermore, the United Nations refers to self-determination in chapter 9, article 55 where it declares that peace and friendly relations should be based on equal rights and self-determinations of people.\textsuperscript{26} These are two verses of UN Charter where it is directly referred to the self-determinations of people. Apart from these, chapter 11, 12, 13 indicate the


\textsuperscript{26} \textit{Ibid.}
administration of non-self-governing areas and concern about these territories which narratives construe as self-determination rights of people. However, these general articles of UN was not adequate for dealing with forthcoming abstruse political situations related to self-determination and as such, it had to be partly supplemented by resolutions of General Assembly or other decrees.

Due to its contents, these adopted resolutions on self-determination during the UN era, according to Mahalingam can be divided into three parts: internal, external and colonial self-determination of people. In Mahalingam’s analysis, he claims that internal and external self-determination is rooted in Wilson’s fourteen points, while the rights of colonial people to self-determination descended from Leninist Communism, with both proceeding in their own way during the Cold War. Whereas the external version of self-determination was not accepted unanimously, it was claimed that when UN meant self-determination it was assumed to be within the borders of the state. In the Universal Declaration of Human Rights (1948) self-determination was clearly not noted as a rights or principle but only endorsed as internal self-


28 ‘Internal self-determination means the right to authentic self-government, that is, the right for a people really and freely to choose its own political and economic regime’. Cassese, supra note 9, at 101.

29 Mahalingam ‘takes to imply a purported right of secession’. Mahalingam, supra note 26, at 126. Besides that, merging states and breakup empires can be included in external self-determination if these are determined by people.

30 Indeed, it is also part of external self-determination but in comparison with external self-determination it is only belonged to the people of colonies.
determination. Hasani affirmed that in declaring ‘to set common standards of achievement in, human rights for all people of all nations’ the 1948 Declaration of Human Rights did not openly sanction any external self-determination of people.  

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

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

Lawmakers define the term self-determination in Covenants both internally and externally. Article 1.1 of Covenants grants to peoples the rights to determine their political destiny such as choosing their own governing system or legislators and meanwhile, determine their economic, social and cultural development. These were all internal rights of people under sovereignty and territorial integrity of states.

The rights of minority groups were also placed in Covenant within the principle of territorial integrity. As such, Article 27 of Civil and Political Rights granted individuals who are from different ethnic, cultural, religious minorities rights to self-determination. Cassese describes that it is not within the rights of minorities to determine their external status but they were

31 Hasani, supra note 8, at 94.

granted the right to determine their own cultural, religious and linguistic freedom so as to maintain their identities.\textsuperscript{33} Besides, it was also applied to individuals or groups as in the 1948 Declaration rather than referring to them collectively and territorially.

During the drafting of the Covenants between 1948 and 1966, there were endless disputes between Soviet Communists and the Liberal West on framing and defining the boundaries of self-determination. Scholars from Soviet Union called for the inclusion of self-determination rights to colonial people and minorities due to its political objections. Along with the Soviet Union, other socialist bloc countries advocated this view and claimed it “was a precondition for the respect of individual rights”.\textsuperscript{34} An established Special Committee supervised the implementation of UN resolution about human rights, including self-determination of people. The views of scholars on the works of this committee is not clear. Until 1970, the activity of this committee for Hasani ‘was sterile as a result of Soviet Union's use of this organ for Communist propaganda’,\textsuperscript{35} while Cassese rationally emphasises the necessity of Soviet efforts to champion the rights of self-determination for colonial peoples despite its extremely ideological nature. Third World and developing countries’ approaches to self-determination were similar to the Soviet Union and were not surprisingly great advocates of colonial self-determination. With this broad supporting coalition, in 1960, Soviet Union dictated debates over colonial self-determination and which helped cement the Declaration on the Granting of Independence to Colonial Countries and Peoples which marked formally the end of colonialism and independent movements.

\textsuperscript{33} Cassese, \textit{supra} note 9.

\textsuperscript{34} Cassese, \textit{supra} note 9, at 47.

\textsuperscript{35} Hasani, \textit{supra} note 8, at 95.
The declaration was strengthened with the 1966 Human Rights Covenants in which colonials were described as dependents. The group of countries under the Soviet wing were trying to restrict the implementation of self-determination to colonial contexts. This framing was broken by the *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations* which for the first time referred to self-determination outside the colonial context. Despite that, once more, the principle of self-determination was versed there, territorial integrity and sovereignty of states were enshrined as an inviolable principle within the same declaration as well. This was repeatedly emphasised in the following documents of international law. In Helsinki Final Act in 1975 it was manifested as “the participating States will respect the territorial integrity of each of the participating States”36 and in that case the principle of self-determination is eligible.

In 1993, The Vienna Declaration and Programme of Action were adopted as a consensus between the members of General Assembly that was to reassess the self-determination of people but differed from previous documents which did not discriminate people due to their “race, creed or colour”.37 It was strongly emphasised that representing the role of government belonged to all people, and if it was not provided by government, people had to apply for an internal form of self-determination for representation of their destiny before secession.


Consequently, as Marxsen stressed ‘people … [can] be granted autonomy within that political entity, but [this] does not allow for complete political separation in all these decrees.\(^{38}\) Getting through the legal status of self-determination, Philpott claims that except colonial self-determination, ‘self-determination is not a right and is understood by most international lawyers to be subordinate to territorial integrity’.\(^{39}\)

The different dimension of self-determination was reflected in the above resolutions and declarations of the UN. However, in front of today’s political map of the world, neither there are any colonial nor non-self-governing territories that are in need of these documents. Rather, these form the basis of legal development and reformation of self-determination or territorial integrity.

After the cold war, in the turmoil of mapping the new borders of Soviet Union and Eastern Europe, a great deal of the political fragilities were related to the principle of self-determination and territorial integrity of the state. Ethnic and external self-determination replaced colonial and internal self-determination in the discourses of scholars and international documents respectively. Throughout the 90s, all over the world, states confronted the dilemma of external self-determination of people such as Chechens, Armenians and Yugoslavians. At the beginning of 21st century it was followed by Georgia, Kosovo and today, Crimea.

Consequently, from the legal decrees it is obvious that all people have primary rights to internal self-determination. In external self-determination, only the rights of colonial people were


\(^{39}\) Philpott, *supra* note 4, at 124.
manifested plainly. Nevertheless, who has rights to external self-determination and details about the territory are blurred in all decrees and needs to be reformed.

3. Theoretical Framework

A. Theories of Self-Determination

In spite of volumes of discourse about the legal and political status of self-determination and territorial integrity as depicted above, these are not enough to clarify the political circumstance and, thus, always need to be interpreted by theorists. Apart from their interpretive functions, by furthering their conception, theorists, also serve to understand and accelerate the evolution of international law. These interpretations did not develop linearly and led to a wave of new debates and discussions on the rights of self-determination. These theoretical discussions raise hugely important issues that international community is currently facing today.

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

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

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

**B. Remedy Theory or Just Cause Theory**

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

Moore states that after publishing his theory, ‘he began by pointing out that the issue of the morality of secession has received very little consideration from a normative standpoint’ whilst today Buchanan’s discourse provides the groundwork for subsequent debates on the theme.40 However, there is a need to rejuvenate the debate, in the context of current conditions.

Secession is generally a strong version of self-determination, that for Buchanan and other international legal scholars, should only be applied if there are no other solutions. As external self-determination, Borgen points out that ‘there is no right to such “remedial” secession’.41 Buchanan further notes that International law stands on the fence in terms of secession – neither supporting it nor reflecting it. The International Court of Justice gives a narrow justification for secession in two cases; ‘(1) classic decolonisation and (2) ‘the reclaiming of state territory


that is subject to unjust military occupation’.\textsuperscript{42} The decision of ICJ is weighted as Advisory Opinion and has been exercised a few times in international domain. Despite that, the decision of the ICJ faced international uproar such as in the Kosovo case.

Scholars of moral theory propose and develop few assumptions on the ground of external self-determination. Towards the secession, Buchanan argues that external self-determination should not be applied to all nations and must avoid classifications of people as special religious or ethnic group or indigenous. In Buchanan’s assertion there is just one index that can defend the aspiration of nations to secede – arguments of justification. These are classified in his chapter such as ‘violation of human rights or structural violence’, ‘discriminatory redistribution’ and ‘Cultural self-preservation?’\textsuperscript{43}

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

The author in the part of discriminatory redistributions implies that when states deal with people of territory in terms of distribution of ‘taxation schemes’, ‘regulatory policies’, or ‘economic program’ it ought to be implemented fairly and without any discrimination or any privileges to them.\textsuperscript{44} With regards to cultural self-preservation, the belief of Buchanan was that secession can be a potential solution as it would be dramatic and can be resolved in the frame


\textsuperscript{43} Moore, supra note 39. Buchanan, supra note 9.

\textsuperscript{44} Buchanan, supra note 9, at 354.
of internal self-determination (‘special minority group rights, a looser federalism, constitutional rights of groups of group veto or nullification’).\textsuperscript{45} If these could not be faced, secession might be conducted.

Additionally, historical grievance is also noted from the range of justifications in Buchanan’s analysis but is not compelling as above. Supporting Moore’s discourse, it is shown that ‘historical grievance and distributive justice concerns are interrelated’ and ‘multiple decolonization movements across the planet have been driven by the perception of historical discrimination’.\textsuperscript{46} However, it is the opinion of the author that historical discrimination is not a rational justification in today’s political situations where every group of people may have historical grievance; scholars and theorists should avoid boosting their ideas through that in order to not give ground to mass-scale protest for secession. At least, historical grievance can form the basis of the internal dimension of self-determination such as federal units and autonomy.

Along with Buchanan, other Just Cause theorists such as Norman, Locke and Seymour follow the same vein as Buchanan in terms of needed justification for secession whilst their frame of justification is different; ‘some on prior occupation and seizure of territory; some on serious violations of human rights, including genocide’\textsuperscript{47} while some of them such as Seymour and Libarona see the infringing internal self-determination as a strong proof for justification and criticise Buchanan’s narrow approach to justifications.

\textsuperscript{45} Buchanan, \textit{supra} note 9, at 357.

\textsuperscript{46} Moore, \textit{supra} note 39, at 223.

\textsuperscript{47} Moore, \textit{supra} note 39, at 7.
Consequently, Remedial Rights Only or Just Cause Theories for its critics put burden on states and make conditional of their sovereignty. Whilst from a positive aspect, these coercive actions by people make states responsible towards the human rights of people, and besides that ‘it suggests a strong internal connection between the right to resist tyranny (exploitation, oppression, genocide, wrongful seizure of territory) and the right to self-determination’. ⁴⁸

**C. Primary and Choice Theory**

In contrast with Remediation, Primary Right conception as the name may suggest, asserts the rights as primary to secede and repudiates any justification and proof for secession. What Buchanan tries to convey is that the ‘theory of self-determination ought to be consistent with well-entrenched, morally progressive principles of international law’ while it’s ‘more permissible view’ towards the secession is unacceptable in terms of triumphing territorial integrity without any reasons and as such is always considered a threat to the existence of state. ⁴⁹ Going deeper, Allen Buchanan, from nationalistic prism, points out that it can be resulted with indefinite fragmentation of the world community ‘bring with it quite unacceptable moral costs, in the form for instance of the disruption, displacement, or even annihilation of communities that turn out to be territorially in the wrong place’. Additionally, Philpott, by advocating that argument claims that ‘there is no reason that a Primary Right Theory of self-determination, even if defensible as just, must be converted into law or policy’. ⁵⁰

However, in one point that both Buchanan and Philpott were disregardful, they neglected the implementation of Primary rights in an internal dimension of self-determination. In discourse

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⁴⁹ Philpott, *supra* note 4, at 123.

⁵⁰ Philpott, *supra* note 4, at 114.
of Seymour it is directly demonstrated and contrary to Buchanan, he claims that nation have a primary right to internal self-determination\textsuperscript{51} and if it is violated by elites, the determined group have the primary rights to secede.

Seymour’s assertions on Primary Rights to secede was reflected more liberally in Harry Beran’s proposal. Beran claims that ‘states are voluntary associations and the conclusion that anyone may leave a state if he or she wishes to secede’.\textsuperscript{52} Indeed his theory differs very much from Remedial and Primary logics. Some scholars assess the Beran’s theory as Primary right theory to secede. Whilst it is rationally related with secession, due to its unclear understanding. Beran’s Primary right of people to secession was intended as individual rights of people to choose their destiny while it comes down to the determination of territory where an individual lives making his theory unclear and irrational.

Philpott coins it Choice Theory rather that Primary theory because of its individualist feature. As Primary theorists, they also claim that people need not justification to secession and they can easily express their wish to secession by ‘referendum or plebiscite’.\textsuperscript{53} Choice theorists comprehend secession as individualistic choice rather than collective ones by groups or area. Moore and Horowitz, as in Beran’s theory, see irrationality of Choice Theory in explaining the territorial claim to secession. Consequently, despite these deep differences between current theories of self-determination, they all represent a common desire that is an intended liberal form of secession by democratic referendum and plebiscite.


\textsuperscript{52} Freeman, supra note 22, at 161.

\textsuperscript{53} Moore, supra note 39.
4. Data Analysis

A. Historical Grievance of Crimea in Term of ‘Self’ and ‘Territoriality’

Since the 90s the principle of self-determination became a frequently debatable subject in the international community. To be precise, it did not randomly appear but it was explicitly related with fall of Soviet Union and Yugoslavia that had encompassed hundreds of nations and ethnic groups to reignite the right of self-determination again.

The president of Russian Federation Vladimir Putin called, the breakup of Soviet Union as ‘the greatest geopolitical catastrophe of the twentieth century and led to the deprived of ‘co-citizen’ and ‘co-patriot’ outside of Russian territory’. However, it was not only tragedy of Russians but alongside, tens of millions of people were forced to flee their motherlands in Baltic, Eastern Europe, Caucasus and Middle Asia. If it would be judged historically, Soviet Union and its harsh political line was a major culprit of today’s turmoil. Crimea is a prime example.

In term of identifying self - people, Crimea peninsula is perhaps even the most perplex one with its unstable proportion of ethnic composition of population throughout the history. Malyarenko and Galbreath define causes of this perplexity with its ‘politicising factors’ and see it as a reason of current political disputes. Supporting that, Evison, when he narrates the Crimean crisis, emphasises that history of Crimea and its evolution of ethnicities led to the

current crisis. In the case of Mayarenko and Galbreath, they account this politicising factor of migration from Soviet’s mass deportation of Tatars and moving Russian and Ukrainian there.

Indeed, utilising demographic structure of territory by exiling people is not new phenomena of Soviet Union on Crimea but it was one point of the long-term plan, inherited from Russian Empire called Russification. According to the historians, it is apparently seen that the sharp change of composition of Crimea’s population was directly rooted from early Russian Empire’s policy. Fisher’s work on the history of *The Russian Annexation of the Crimea 1772-1783* elucidates it clearly. By citing document from the letter Catherine to Potemkin, Fisher makes clear that Catherine stated that whoever does not choose Russian citizenship is free to leave Crimea. It was undoubtedly, the tactic of Russia to relocate non-loyal mass from peninsula and move Russians or other loyal group such as Armenians to the land. Herewith, Tsar was succeeded and due to census of 1774 Russian scholars such as Sumarokov, calculated that total of 300,000 people, in computation of Mordvinov two-thirds of the Crimean population had fled after the Treaty of Kucuk Kayanarca (1774). Instead of absence places non-Muslims settled and in few years the compositions of peninsula changed sharply. To expressing this change, Fisher emphasised that ‘English visitor to the Crimea…expressed astonishment at how quickly Russian with their serfs had taken over large areas of the peninsula’.

During the reign of Stalin Crimean minority, especially Tatars, Greeks and Bulgarians were all victims of his brutal deportation after WWII and instead, these areas became populated by

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Russians. Condemning Soviet Union’s brutality, Anton Bebler points out that ‘they still have not been compensated for the losses of life and property’.\(^{57}\)

All had aimed the Russification of Crimean peninsula from Catherine Great to her successors, and by Stalin it was concluded with fully Sovietization which was defined in Fisher’s case ‘no more no less than Russification’.\(^{58}\)

Consequently, demographic structure made Russians owners of peninsula and in last calculation in 2001, ‘the Slavic (Russian and Ukrainian) population of Crimea are approximately 58.5% and 24.4% respectively’.\(^{59}\) Politically, all of them are pro-Russian of Crimea and proportionally, are more powerful than that of group who are inclined towards Ukraine. It implies that just only having different political views distinguish them from each other and there is not any extreme discrimination in terms of ethnicity, culture or religion in Crimea today. Crimea’s Russian origin population links with Russian Orthodox Church, while the minority Muslim Tatars adheres Sunni Islam which they accepted from Ottoman Empire. These Muslims, compared to nowadays Turkey’s Sunnis, are secular and as such in Crimea, in religious terms, there is no big difference between the Muslim and Christian. Also, this secularity led them to accrete each other well in cultural terms.

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As its people, territorial status of Crimea has not been affixed under a one form of regulation but shifted few times. From Middle Ages, being under rule of Ottoman Empire, Crimea achieved short-term independence from 1773 Treaty of Kucuk Kaynarca until 1783 annexation of Russian Empire. Russian domination lasted until 1954 event when Khruchiew handed it as a gift to Ukraine. From 1921, Crimea had possessed the Autonomy from Soviet Union and subsequently it was provided by Ukraine until 2014. Despite in 1991, there was effort to obtain independence or to merge with Russia, it was averted by Ukraine at expense of giving wide autonomous status to Crimea. Whereas Crimean people separatist eagerness and Russia’s, commencing from 1991, plan to annex Crimea was ignited more and more. Bebler acknowledged that ‘annexation of Crimea have likely been prepared and regularly updated since, at least, two decades ago’.60

Crimean Autonomous Republic with its strong Russian orientation was not satisfied with its political status under the administration of Ukraine and for repeating its effort to secession government, especially, try to cavil to justification of secession. This historical moment, indeed, had come six years ago, in April 2008 Bucharest where NATO suggested MAP (Membership Action Plan) to Ukraine that was regarded as a milestone of Ukraine’s direction from Russia to the West. However, ousting pro-European leader of Ukraine Timoshenko and replacing with pro-Russian Victor Yanukovich reduced the anger of Russian’s supporters with his Russian-oriented policy and delayed the annexation of Crimea to 2014.

Toward the end of 2013, Yanukovich shifted his incredible Russian oriented desire to the balanced politics and smoothed his relations with EU countries. Indeed, the majority’s desire to integration with EU had forced him to warm relation with the West. In practice, it was

60 Bebler, supra note 57, at 39.
expected to sign DCFTA\textsuperscript{61} draft in Vilnius Summit in 2013 November which was intended to diffuse to EU economically, politically whilst avoiding Russia. However, all desires of people of mainland Ukraine were dashed after Victor Yanukovych’s rejection and it caused thousands of people to protest in the Maiden movement and eruption of Civil War between people who were pro-Russian and pro-European. This turmoil was a historical moment for elite and Russian population of Crimea to secede from mainland Ukraine.

The Supreme Council\textsuperscript{62} of Crimea censured the protester of Euro-Maiden and illegitimately announced to hold referendum on the future status of Crimea by the inviting Russian government to assure it. In reality that invitation manifested formality whilst Russian ‘little

\textsuperscript{61} Supreme Council of Crimea is the parliament of Crimea Autonomous Republic that was directly regulated by central Kiev, and besides having its own election of parliament, all decisions were accepted by mainland Ukraine. In 2014 March, declaring to hold referendum about the destiny of Crimean Peninsula were out of Supreme Council's order and as such plebiscite was illegal.

\textsuperscript{62} ‘The EU and Ukraine signed the Deep and Comprehensive Free Trade Area (DCFTA) on 27 June 2014 as part of their broader Association Agreement (AA)’. ‘To avoid further destabilisation of the country and in particular to guarantee Ukraine's access to the CIS market under the Ukraine-Russia bilateral preferential regime, in September 2014 the EU postponed implementing the DCFTA until January 2016’. European Commission, Ukraine (2014), available at http://ec.europa.eu/trade/policy/countries-and-regions/countries/ukraine/ (last visited 3 September 2015).
green man’ was there since Euro-Maiden movement and later Putin ‘admitted deploying troops on the peninsula to "stand behind Crimea's self-defence forces”.

A month later, Russia declared the annexation of Crimea to the Russian Federal unit as in the administrative form of Crimean Autonomous Republic and City of Sevastopol.

So that on 16 March, 2014 two referendums were held in 2 different places - Crimean Autonomous Republic and in city of Sevastopol. According to the result ‘96.77 percent of them [Crimean citizens] voted for its separation from Ukraine and for reuniting with Russia’. Furthermore, due to Russian news agencies 96.77 number is out of over 80% of residents of Crimea. However, some people denied it and claimed that it was exaggerated by Russian authorities. According to the Washington Post, Evgeny Bobrov, a member of Human Rights Council in Russia, posted on his blog that ‘only half voted for annexation – meaning only 15 percent of Crimean citizens voted for annexation’. In spite of being questioned about the


result of referendum of Crimea, this paper examines the legal aspect of that even whether it was 96.77% or whatever.

**B. Legal Assessment of Crimean Secession**

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

This statement was remarked by the foreign minister of Russia, Lavrov at the Munich Security Conference after Crimea’s invasion. Unlike Lavrov, the term self-determination, involved in the UN Charter, Declaration on Principles of International Law, the Declaration on the Granting of Independence to Colonial countries, the International Covenant on Civil and Political Rights, Helsinki Final Act, Paris and Vienna Declarations, was not simply interpreted, but rather a narrower, debatable matter.

As discussed in previous chapters, outside its colonial meaning there is not any verse in international decrees to justify territorial fragmentations directly. Territorial integrity, sovereignty of states are *jus cogens* norms that is listed above all of international and constitutional jurisprudences. Particularly, this inviolability of the principle of territorial

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integrity verses in all international covenants and norms. In bare condition that if there is no other remedies to treat the situation; the area was occupied forcefully by any military group; there is a consensus with parent state - territorial integrity might be infringed. However, none of them being in the Crimean situation.

If believed that neither the United States nor other African or South American nations had permission from the mainland states when they became independent it can be reasonably assumed that the status of Crimea is not in compliance with such colonial nations but is merged to Ukraine, and after independence of Ukraine it was recognized as an integral part of it. Whether it is supposed to be colony and be claimed that people have a right to secede according to 1960 UN declaration, Evison asserts that ‘Ukraine can claim under uti possidetis\(^{68}\) that Crimea is part of its sovereign territory’\(^{69}\) due to the rule of uti possidetis.

In Crimea, the violation of territorial integrity had begun even from the procedure of the referendum which has not been consistent with either Ukrainian constitution or with ‘the high democratic standard’.\(^{70}\) In regard with Ukrainian constitution ‘any changes to the territory of

\(^{68}\) Literal meaning of uti possidetis, from Latin, is “as you possess” and ‘the principle of uti possidetis juris mandated that the borders of former colonial entities became international borders of the state following decolonisation. A. Pavkovic and P. Radan, ‘In Pursuit of Sovereignty and Self-Determination: Peoples, States and Secession in the International Order’, 3 Macquarie Law Journal (2003) 1.


\(^{70}\) Bebler, \textit{supra} note 57, at 42.
Ukraine shall be resolved exclusively by the all-Ukrainian referendum"71 and as can be seen in history, it is rarely seen whereby parent states’ grant permission to the secession of its own unit. Unlike Quebec in Canada or Scotland in the UK, it has not allowed Crimea to determine their destiny separately in Ukrainian constitution. From that viewpoint, Marxsen perceives attempts of Crimean population to the referendum upon secession from Ukraine, as the first illegal act that violated Ukraine’s integrity.72

Following that from international law the content of referendum in Crimea was not democratic and clear: contains the two options that did not offer people status quo option which is the main condition of democratic referendum;

1. Reunifying Crimea with Russia as a subject of the Russian Federation;
2. Supporting the restoration of the 1992 Crimean constitution and the status of Crimea as a part of Ukraine.73

In the 1992 constitution of Ukraine, Crimea’s status was autonomous republic that is inconsistent with status quo. Furthermore, regarding that referendum about self-determination of people, international community also acknowledged the ‘yes’ or ‘no’ options in international


72 Marxsen, supra note 37, at 11.

practice. To exemplify a model pattern, the Scottish referendum is flawless and clear as shown in a particular instance whereby this question was asked “Should Scotland be an independent country? Yes/No”.

Yet another incoherence with international law was the time that Bebler stated that time shortage did not allow for a real and substantive public debate over a momentous issue as such. Regarding Bebler’s statement, democratic plebiscite is not easily prepared in a few weeks or months but rather requires long preparation such as a Scotland referendum that was held in September of the same year where it took decades for the Scottish to hold that referendum after achieving consensus with central London.

Unlike Bebler, some of the scholars have identified intervention of Russia as a basis of infringement of territorial violability rather than an attempt of Crimea population to plebiscite. It shows somehow, as Vidmar notes, the referendum and the declaration of independence in Crimea neither creates territorial illegality, nor territorial entitlement for Russia. Territorial illegality is rather created by Russia’s military involvement. Needless to say, it is a stronger argument to prove illegality of secession. Regarding Vidmar’s assessment, it can be noticed that Moscow’s legal argumentation on Crimea, mostly, were discussed with the principle of self-determination in mind rather than the justification of Russia’s intervention. Simply

74 Marxsen, supra note 37.
76 Bebler, supra note 57, at 42.
because Russia’s intervention categorically, was illegal and Moscow, mostly, tries to avoid this crucial point at all costs.

Along with the international consensus on the sovereignty and territorial integrity that guarantees inviolability of states’ frontiers, in the case of Ukraine and Russia, this inviolability was more reliable with adopted bilateral agreements between themselves after the collapse of Soviet Union. Due to Marxsen, ‘Ukraine and Russia in few bilateral agreements affirmed the inviolability of the borders between both states and provided that both parties’ such as the 1994 Budapest memorandum, The 1997 Treaty on Friendship, Cooperation, and Partnership and Kharkiv Accords about Black Sea Fleet Status. He concludes that these documents had to be seen as legal obligations between states in which Russia had adopted ‘to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine’ thus instead of possessing vessels in Black Sea, Nuclear weapons of Soviet Union were abandoned to Russia. However, all of them were infringed by the annexation of Crimea.

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

C. Theoretical Assessment of Crimea’s Secession

78 Marxsen, supra note 37, at 4.

79 Marksen, supra note 37, at 4.
As aforementioned in the previous chapter, current highly contested theories of self-determination are affixed into three main conceptions - Remedial Theory, Just Cause Theory and Primary Theory. It was demonstrated that even though they had different interpretation of secession, all practitioners of these theories share a common point of view in which they all choose to consider the feasibility of secession under democratic circumstances and liberal value. Contrary to this feature, in the case of Crimea, the way of self-determination of people was undermined by Russia’s intervention and procedural legitimacy of Crimean referendum.

Since 1991, Buchanan, a political philosopher at Duke University, developed his arguments on remedial theory, ‘argues that provinces might justify seceding if they are discriminated against’.\(^8\) Regarding his Remedial Right Theory, Buchanan concluded that it cannot be subjected to Crimean dispute which does not fall under any urgent violation against the Crimean people. Going further, considering the loss of Crimea would have devastating effect and cause ‘gravely harm’ on Ukraine in terms of economy, tourism, geostrategic location, Buchanan thinks ‘Ukraine have right to force Crimea to stay’.\(^9\)

Contrary to that thought, the president of Russian Federation Vladimir Putin in his speech, after Crimean referendum, attempted to indicate the remedial argument for harrowing Russia’s intervention to peninsula.

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\(^9\) Ibid.
“The new so-called authorities began by introducing a draft law to revise the language policy, which was a direct infringement on the rights of ethnic minorities.” 82

While it was full of absence, if there were any tiny discrimination against the Crimea people; firstly, it will have to be characterised as oppression against the government rather than in reference to any ethnic group; secondly this oppression of Ukraine cannot be compared to the Milosevic genocide involving the Kosovars. Hence, implementation of Remedial theory is clearly unfounded in Crimean case.

Criticising Buchanan’s non-general and conditional approaches to self-determination the scholars of modern Choice theory, Catala is well-known with her explicit standpoint, whereas Macclaren sees right of secession either in term of Crimea as rights of individual. But in both conception of theorists, procedure of referendum and its compliance with legal standard are stressed as crucial factors while Crimea was far from that. Even, in the conception of Macclaren he coins ‘democratic secessionism’ which brings the rights of individual to the first row 83 and sees possibility of territorial secession under condition of democratic referendum. MacLaren then identifies this independent referendum as one of the legal essence for external self-

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determination whilst implying it under questions—‘I.e. what constitutes a clear question, a fair process, and a decisive majority—and who exactly is to set these terms?’.

Whether regarding Choice Theory as a relevant moral treatment for secession of Crimea, that is to say, it also fails to be implemented due to enshrining democratic referendum as a basic condition of conception. As Amandine Catala identifies ‘any plausible moral case for secession previously requires a peaceable and transparent referendum’ which she stresses further that the Crimean referendum was ‘neither peaceable nor transparent’.

Placing Primary theory into consideration, Crimean people were able to utilise their primary rights to internal self-determination just as all Ukrainians do. Externally speaking, Primary Right Theory, should be emphasised despite its permissive nature to secession, whereas in previous theories democratic plebiscitary is the main proviso.

These hot debates were not limited to the highly contested discussion between Russia and Ukraine but after annexation of Crimea it was carried over to the agenda of supranational bodies, especially in regards to the UN. Right after UN resolution on 27th of March 2014 about territorial integrity of Ukraine, it was a controversial moment in the international community. So that 100 member states of General Assembly reaffirmed the territorial integrity of Ukraine while Armenia, Belarus, Bolivia, Cuba, North Korea, Nicaragua, Russia, Sudan, Syria, Venezuela and Zimbabwe voted rejection of territorial integrity of Ukraine, 58 states abstained, the rest 24 states was absence during the voting time. It, once again, was proved that this was

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an ambiguous term and that each state had its own interpretation of self-determination when it came to Crimea.

It is clearly seen that the states who rejected resolution and those that took abstention and remained absent are the supporters of annexation and explicitly under wing of Russia in terms of interpretation of self-determination while the rest of them are against - who support the doctrine of the West (EU and US).

5. Findings and Discussions

A. Polarisation on the Interpretation of Self-Determination

“There is a strong belief that Russia’s action is violating international law. I know President Putin seems to have a different set of lawyers making a different set of interpretations, but I don’t think that’s fooling anybody”86

On 4th March 2014, US President Barack Obama’s statement about the Crimean crisis, explicitly indicates that towards the case of Crimea, United States and Russia have their own legal rhetoric. This dissension was not unknown to international law but as discussed in previous chapters, was launched from the early twenties century by the confrontation between Wilson and Lenin. This was then followed by Soviet and the West, especially upon the interpretation of self-determination and territorial integrity. Inherited from Lenin there was always suspicion and an uncertainty against the Western legal interpretation and as such it encouraged Russian lawmakers to establish its own language of international law. Even

establishing the UN in 1945 could not remove dissensions or create common grounds in international law. Borgen classifies these great powers as “norm makers” and claims that by utilising their own rhetorical language they can easily “change the rules of the game and, ultimately change law” according to their political interest. The weaker states were drawn towards the hegemonic powers and, according to Borgen, called “norm takers” who side with either one of this great powers and ultimately they form a horizon of great power.

After the breakup of the Soviet Union, there was the notion that this confrontation had ended and the West’s legal rhetoric prevailed. However, Soviet nostalgia resurged and Soviet interpretation was then ‘overtaken by a new assertiveness of Russian prerogatives and Russian conceptions of legality’. So that Russia, after Soviet Union, could fill the vacuum and by keeping its matrix, attempted to juxtapose herself to the West as a lawmaker of those under her wing where the Soviet once dominated. Even in 2009, the foreign Minister of Russia Lavrov asserted that

“Indeed, international law is our ideology in international affairs. To use Fyodor Tyutchev’s phrase, we want “once and for all to establish the triumph of law, of historical legality over the revolutionary mode of action”.

Many scholars approved the notion of Russia as a rising power and her willingness to interpret

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88 Ibid, at 31.

89 Borgen, supra note 40, at 237.

90 Borgen, supra note 87, at 26.
international law to her liking. Even some scholars such as Burke-White, by citing from scholars on rising powers, emphasized that ‘the present redistribution of power in the international political system has brought an end to that transatlantic moment in international law’. As a result of this change, Russia and its new owners attempted to shape their own legal understanding of international law and take on the international arena again. Despite Russia attempted to be as a lawmaker of international law right after Soviet Union and recover Soviet’s status again. It was pointed out by Burke-White that ‘in Crimea, Russia is, perhaps for the first time since the fall of the Soviet Union, asserting itself as a renewed hub for a particular interpretation of international law’. To assess the Russia’s legal activity pre-Crimea will assist in understanding the Russia’s Crimea’s trick. Even though Moscow’s legal language in pre-Kosovo and in Kosovo negated each other, Russia could carry on to maneuver its legal construe. Pre-Kosovo’s independence, Russia supported (overtly or covertly) separatists under name of self-determination in Transnistria, Nagorno-Karabakh and South Ossetia and Abkhazia. However, in Kosovo, Moscow amended its legal rhetoric by initializing the vitality of territorial integrity and claimed inviolability of territory whilst prevailing on the principle of self-determination. In Crimea, Moscow shifted its legal interpretation once more, by exploiting the ambiguity of the principle of self-determination as a *jus cogens*, and tried to justify its actions by referencing from UN Charter.

After defeat in Kosovo, Russia claimed that EU countries who recognized the independence of Kosovo from Serbia, had to oblige to recognize the secession of South Ossetia and Abkhazia from Georgia. On the other hand, the West deviated from the recognition which ignited


Russia’s antagonism against the EU’s juridical conception and her desire to create her own legal framework. In Crimea, with Russia’s declaration of its own hub in international law and an uncertainty against the West interpreters, this battle on the ground of construing self-determination accelerated to its peak point. After Crimea, Russia’s officials criticised European legal scholars and their domination. Even, The Deputy Secretary for Russia’s Security Council proposed that ‘a global conference should be organized in order to rewrite international law’.\textsuperscript{93}

For all scholars Russia’s legal language is not simply intended to justify its oppression in Crimea, more than that ‘to reassert its role as a leader in a multi-hub international legal order’.\textsuperscript{94} Additionally, it served ‘to create sufficient uncertainty in the international community’\textsuperscript{95} and to gather her supporters around Russia’s jurisdiction. The figure of resolution about the integrity of Ukraine resulted in countries such as Armenia, Belarus, Bolivia, Cuba, North Korea, Nicaragua, Russia, Sudan, Syria, Venezuela and Zimbabwe voted rejection of territorial integrity of Ukraine, while 58 states abstained, the remaining 24 did not even attend the conference. It would be a prime indicator of the true supporters of Russia. Considering the result, there were 93 suspicions and uncertainties which amounts to almost half of the world communities. These states somehow were supporters of Russia’s rationale of self-determination and denied the West’s territorial integrity on the ground of the Ukraine’s legal


\textsuperscript{94} Burke-White, \textit{supra} note 91, at 67.

status or at least in the case of Crimea they proved that they were not pro-West. Bolstering that thence, it can be safety claimed that Russia has own legal interpretation but as Borgen asked how successfully did she utilise her legal language in Crimea should be discussed.

**B. Legal Battleground: Russia vs The West**

There was never an universal legal interpretation of the international law and in the case of Crimea the gap of this dissociation was especially large between Russia and the West. If for Russia, intervention in Crimea is regarded as self-defence, in the West it was regarded as a violation of sovereignty. Whether, contrarily, if the intervention of the NATO to Kosovo was regarded as humanitarian, Russia accused the West on the violation of boundaries.

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

Moiseienko was right at that point that so far Russian academics and practitioners have largely remained in the shade. At least on the international arena and mostly on the legal arena, Moscow’s official, ahead the president of Russia Vladimir Putin executed the legal interpretation. If it is accepted truly, then, it automatically verifies Allison’s assertion that ‘an assessment of Moscow’s legal rhetoric, with a focus on Crimea, also improves our

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understanding of Russian policy’.\textsuperscript{97} Moreover, on the Russian version of Crimea Putin’s speech on 18th March, as Burke notes, ‘should be read as more than a mere justification of Russia’s annexation of Crimea’\textsuperscript{98} and on that note justification on Crimea’s secession and annexation, more political enthusiasm can be felt than pragmatism. Expressing that as Russian scholar Sarkisov identifies ‘Crimean Peninsula lived in our hearts but not in our minds’.\textsuperscript{99} It implies that on 18th March speech, Putin’s allegations were more weighted in historical, cultural and political contents, while in legal assertion Putin’s intention of speech, mostly, was to distort legal reality and negate the western legal interpretation.

In president Putin’s address on historical ties with Crimea peninsula he pointed out that ‘Crimea was originally part of Russian territory’ and ‘without consulting the citizens’ it was gifted to Ukraine.\textsuperscript{100} Meanwhile, by recalling demographic structure of Crimean Peninsula as ‘2.2 million people, of whom almost 1.5 million are Russians, 350,000 are Ukrainians who predominantly consider Russian their native language, and about 290,000-300,000 are Crimean Tatars, who ... also lean towards Russia’\textsuperscript{101} he was monitoring the pro-Russian people of Crimea and the compliance in merging area to Russia.

\textsuperscript{97} Allison, \textit{supra} note 95, at 1259.

\textsuperscript{98} Burke-White, \textit{supra} note 91, at 73.


\textsuperscript{101} Burke-White, \textit{supra} note 91, at 70.
The oddity lied in the fact that besides the Russian president, even his critics and other political figures in Russia backed Crimea annexation. Maria Baronova protested against Putin, however, in the case of Crimea, she strongly criticised the West. Referring to the case of Kosovo in 1999, she felt that the West prevailed over Russia, and remarked ‘watching that gave us a deep inferiority complex’.\textsuperscript{102} Russia’s most prominent lawyer Mark Feygin who was, by the time, against Putin, also favours Putin’s annexation of Crimea and sees Crimea under Ukraine as “a historical injustice” that was gifted to Ukraine “some kind of toy”.\textsuperscript{103} Even further, the former leader of Soviet Union, Gorbachev not only bears out the invasion of Crimea but defines that ‘all of southern Ukraine … is Moscow’s rightful dominion’ because of ‘its population is Russian like Crimea’.\textsuperscript{104} Furthermore, in the speech of Russia ambassador to UN, Vitaly Churkin identified Crimean annexation as repairing a ‘historical injustice’.\textsuperscript{105}

Contrary to these historical arguments, either international legal doctrines of territorial integrity and self-determination or the scholars such as Buchanan do not give weight to historical grievances. In legal viewpoint, Russian legal machine had destined its activity of justification to two basic tasks in Crimea; (1) advocating principle of self-determination of Crimea’s population and (2) defending its right on intervention to peninsula under name of self-defence of its Russian population.

Intending second point (self-defence or intervention), self-defence has been placed in article 51 of UN Charter as ‘nothing in the present Charter shall impair the inherent right of collective


\textsuperscript{103} \textit{Ibid.}

\textsuperscript{104} \textit{Ibid.}

\textsuperscript{105} Borgen, supra note 40, at 256.
or individual self-defence if an armed attack occurs against a member of the United Nations.106

Also, Moscow based upon the historical examples such as - Afghanistan, Iraq, Libya – which had previously taken place by the United States. Russia was thus able to confidently act out in Crimea since Russia’s excuse for its intervention was an allegation in the name of self-defence, which ‘were indefensible on a factual basis’.107 Whereas, the US action in Afghanistan, Iraq and Libya cannot be exemplified for Crimea. Firstly, there was not any form of peril or threat against the Russian citizens in Crimea, which the UN emphasised as conditional. Second of all, as dictated in Charter, it should be reported immediately to Security Council or raised in General Assembly of the UN. The US did so when it intervened Afghanistan, Iraq and Libya. Olson identifies Russia’s intervention as it was not the first action that infringed elements of UN charter ‘but it is arguably the first to treat the UN as literally irrelevant to its actions’.108 Meantime, this action contradicts Putin’s September discourse to New York Times:

We need to use the United Nations Security Council and believe that preserving law and order in today’s complex and turbulent world.109

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

Unlike self-defence, the principle of self-determination was not clearly placed in the UN documents and this ambiguity laid the groundwork for Moscow’s rhetorical self-seeking policy


107 Allison et al., supra note 93, at 2.


109 Burke-White, supra note 91, at 73.
on the interpretation of this principle. Despite what either Remedial or Primary theorists have already concluded, in the case of Crimea there is not any compliance with the elements of these theories in Russian moral jurisdiction and as such secession of Crimea cannot be embraced in both theories.

As a Primary right of self-determination, President Putin on defending Crimea’s secession stated that ‘Crimean situation, including the referendum, was a simple matter of self-determination’\textsuperscript{110} and ‘referred to the United Nations Charter, which speaks of the right of nations to self-determination’.\textsuperscript{111} In the explanation of self-determination as a Primary right, president referenced an irrelevant precedent by comparing Ukraine’s independence from USSR as a similar pattern with what the Crimean population did. For many reasons, these cannot be compared, at least because Ukraine was an unified republic within Soviet Union, while Crimea is an integral part of Ukraine due to \textit{uti-poseditus} principle - which claims that Crimea was under the rule of Ukraine before Soviet Union’s dissolution. Bolstering that, Evison claims that ‘an examination of Kruschev’s gift of Crimea to Ukraine, Ukrainian statehood, and domestic law all demonstrate the applicability of \textit{uti-posidetis} to Crimea’.\textsuperscript{112}

It is possible to say that Russia’s strongest vindication on Crimea secession is consistent with Kosovo, referenced from Remedial theory. Until 2010, if International law had uncertainty towards the secession, it was broken down by an acceptance of Kosovo Advisory opinion which plainly validated independence of Kosovo from Serbia and stated that ‘the declaration

\textsuperscript{110} Olson, \textit{supra} note 108, at 40.

\textsuperscript{111} Official Internet Resources of the President of Russia, \textit{supra} note 82.

\textsuperscript{112} Evison, \textit{supra} note 69.
of independence of the 17th of February 2008 did not violate general international law’.\footnote{\textit{International Court of Justice, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo Summary of the Advisory Opinion} (2010), available at \url{http://www.icj-cij.org/docket/files/141/16010.pdf} (last visited 14 August 2015).} Despite the Russian judge rejecting that advisory opinion, Russia was definitely counter to that decree and in Crimea, Russians exerted that document as a reference:

“We, the members of the parliament of the Autonomous Republic of Crimea and the Sevastopol City Council, … taking into consideration the confirmation of the status of Kosovo by the United Nations International Court of Justice on July, 22, 2010, which says that unilateral declaration of independence by a part of the country doesn’t violate any international norms, make this decision”.\footnote{\textit{RT}, \textit{supra} note 64.}

Putin certified that declaration quoted from ICJ which he had rejected in the case of Kosovo and claimed that if ‘Kosovo Albanians…were permitted to do’, why Russians, Ukrainians and Crimean Tatars in Crimea are not’.\footnote{\textit{Official Internet Resources of the President of Russia}, \textit{supra} note 82.} Further to this, the president brought an accusation against western countries on “blunt cynicism” as ‘calling the same thing white today and black tomorrow’.\footnote{\textit{Official Internet Resources of the President of Russia}, \textit{supra} note 82.} Putin, by saying cynicism, was accusing the US and European countries of opportunism and being unequitable to Crimea as being in Kosovo.

The common thoughts of Russian scholars on the case of Kosovo was the generalisation, and Moscow sees an implementation of that on Crimea as eligible and rational. Contrary to that argument, the West claims that secession of Kosovo under Remedial Rights is a special case
and that they were religiously, ethnic and territorially different Albanians who were threatened by the harsh regime of Belgrade. Hence, Kosovo cannot be precedent to Crimea or any other secession but rather is *sui-generis* - unique situation - that applies only to Albanians who factually have been victimized in the genocide by Milosevic. Whereas in Crimea, due to “OSCE Human Rights assessment mission in Ukraine” it was affirmed that there was ‘no increase in the manifestation of intolerance or escalation of violence against the Russian-speaking population was observed in the regions’.\(^{117}\) Russia on remedial claims, traditionally, asserts its political and historical argument that Mamlyuk identifies as how Russia sees Ukrainians as ‘ultra-nationalists, whom Russia brands fascists or neo- Nazis’ who would threat to Crimean Russian.\(^{118}\) Whether they claimed that if Crimea would not be annexed, Russian would be threatened like what happened in Abkhazia and Ossetia which has still not been recognised by any international bodies. Concluding that Moscow’s legal construction, stood on remedial logic, it is so far from authenticity without its welding.

Lastly, the President by asserting the referendum and its result, claimed that ‘the people of Crimea clearly and convincingly expressed their will and stated that they want to be with Russia’.\(^{119}\) As noted before, firstly, referendum was not democratic because of Russia’s intervention. At best, if it would be supposed that Russia did not intervene and referendum is highly consistent with the international law, can Crimea’s secession be counted as credible?


\(^{119}\) Burke-White, *supra* note 91, at 70.
The answer is resounding no. Neither Quebecois nor the Scottish can be exemplified to this situation. Simply because secession ought to be approved solely as a last resort, and as Bebler affirmed before, (1) it may be needed long-term discussion, (2) requires permission from Kiev as to be complied both in Scotland and Canada.

According to Russia’s critiques Moscow rhetoric on Crimea did not succeed and even disclosed its hypocrisy on legal grounds. It was also seen in Russia’s approach. Hausler and Mccorquodale by criticising Putin’s discourse on ‘we believe that preserving law and order in today’s complex and turbulent world is one of the few ways to keep international relations from sliding into chaos. The law is still the law, and we must follow it whether we like it or not’ was expressed few months ago during the Syrian crisis.¹²⁰ This directed the UK and US intervention to Syria and Russia soon followed up with an illegal intervention in Crimea. This biased actions unfolded Russia’s “blunt cynicism” exoterically.

In general, either Russia’s primary use of self-determination by exemplifying Ukraine’s secession from Soviet Union or Remedial use of self-determination by resorting Kosovo’s secession from Yugoslavia are groundless justification for Crimea.

6. Concluding Remarks with Different Semantics

A. The Fuzzy Logic of Self-Determination and Territorial Integrity

The initial cause of confusions on the interpretation of self-determination and territorial integrity or the legal battlegrounds between the West and Russia over Crimea, besides their political interests, is consistent with their absolute understanding of these principles. For example, as noted before, for Lavrov, the principle of self-determination is directly interpreted as the secession of Crimea whilst for the West there is strong and inviolable territorial integrity of Ukraine. They both see these two principles in contradiction with each other and for the West if there is territorial integrity of Ukraine, the right of external secession cannot be a subject matter. Today’s confusions eventuate from that absolute comprehension on the reconciliation of self-determination and territorial integrity.

Primary theory is absolute in its context to secession (external self-determination) and is not appropriate to be addressed and reconciled in regards to the confusion between the self-determination and territorial integrity. Buchanan’s vision, contrary to Primary theory, embraces different options until secession and defines secession as a form of last resort and as a strong version of self-determination. Like Buchanan, Shany, by regarding the right of self-determination from the international law, asserted that ‘the right of all peoples to self-determination was never understood as being absolute’\textsuperscript{121} in international decrees and therefore self-determination or territorial integrity cannot be viewed separately in absolute. Same instance, in Catala’s discourse, it was noted as ‘political self-determination is a matter of degree and does not necessarily require full political independence or sovereignty’\textsuperscript{122} Catala


\textsuperscript{122} Catala, \textit{supra} note 85, at 239.
exemplifies this degree of self-determination as a “federalism” in the larger states such as provinces of Canada or states of the United States.

Consequently, political interpreters, suggest various theories on the reconciliation of self-determination and territorial integrity connoting that until the infringing of its territorial integrity of states by secession, there are various other options that can be appealed to. Otherwise, this vagueness of self-determination and territorial integrity cannot be viewed in absolute meaning which polarises the opponents into different sides resulting in the confusion between them similar to Russia’s strong support of Crimea’s self-determination while the West’s back territorial integrity of Ukraine.

This is not a unique situation that happened in Crimea or one that is related with only self-determination and territorial integrity but is a matter of “binary logic” of philosophy – simultaneously when one exists while the other does not. Binary logic was considered as a principle of mathematics and Aristotle introduced it as two-valued logic in social sciences. In mathematical terms, it was come up with one rule that differentiated black and not black, B or not B and there is not any spacing between them. In political and philosophical meaning, the Greek philosopher has defined it clearly in “Rhetoric for Alexander”.\footnote{L.I. Perlovsky, ‘The Mind vs. Logic: Aristotle and Zadeh’, 1 \textit{Critical Review} (2007) 3.} In his logical arguments, Aristotle defined ‘political issues’ as ‘declaring war or making peace, signing treaty or refusing it, trusting or mistrusting a witness, whether or not to use torture to obtain trustworthy evidence, etc.’.\footnote{\textit{Ibid.}} On the relation of self-determination and territorial integrity, binary logic could derives that there is either territorial integrity or self-determination and there


\textsuperscript{124} \textit{Ibid.}
is no interval when implementing this binary logic on such kinds of situations. Like red or not red semantics, they contradict each other and cannot exist simultaneously in the same object.

In 1960, fuzzy paradigm was introduced by Lotfi Zadeh as an alternative that could explain that vagueness of the world even though its application was more in mathematics, life sciences and economics. The founder of fuzzy logic, Lotfi Zadeh, emphasised that every statement is a matter of degree and there is values between "completely true" and "completely false" or between red or not red and as such this interval was coined ‘fuzzy logic’. He further carried on to prove that ‘any logical system can be fuzzified’. Taking this into consideration, fuzzy logic could be plausibly applied to solving current problems, decision-making, law-making etc. and contrary to Aristotle, fuzzy logic naturally provides more alternatives on each of these fields.

On the matter of self-determination and territorial integrity Buchanan’s, Catala’s, Shany’s discourses, indeed, embrace the fuzzy logic easily as there is not strong territorial integrity or self-determination. Both of them (self-determination and territorial integrity) can be applied at the same time and matched roughly in the middle by forming cultural, economic independence, autonomy or a new form of state-confederation. Imposing that Crimea would be satisfied with the highest federal unit within Ukraine such as confederation, it promotes internal self-governing or cultural independence until secession. By doing so, both territorial inviolability and the will of Crimea people would be realised and on legal basis both the West and Russia would be satisfied by fuzzing that contradiction in international law and therefore politics.

7. Conclusion

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125 Aziz, supra note 1.

126 Aziz, supra note 1.
Politics and international law have always been side by side, and where international law is flabby, the exploitation of its norms are more so. The principle of self-determination and territorial integrity is an area where politics examines the fragility of law. The principle of self-determination is the most controversial verse of international law because firstly it can be seen as violating the principle of territorial integrity. The study on the precedent of Crimea clearly demonstrated the conflict within Russia and the West’s confrontation. Secondly, evident in the lack of description of the principle of self-determination in international legal documents. This research demonstrated that with rare exception of Kosovo Advisory Opinion, there is not any evidence in international documents about the external self-determination or secession. 2010 Kosovo Advisory Opinion, as seen from the name, could not be defined as the principle, or jus cogens norm, rather were suggested as advisory opinion and bears only upon the Kosovo case, which could not be generalised for resolution of the series of conflicts. As Allison pointed out ‘international law is generally neutral on the questions of territorial secession and external self-determination’. 127

Indeed, being mute, and this neutrality of international law has always been exposed to exploitation of politics and gave ground for debates of political figures rather than professional lawmakers. Thus, in external self-determination, secession could be identified as a political paradigm rather than conception of international law. Referring to the Crimean crisis, an incapability of international law to address the conflict from a legal prism was visible.

Enshrinement of the right of self-determination in French domestic law thus far, has shown one unvarying dilemma that as the French utilised the right of self-determination for their political aims, today Russians cloak this for the secession of Crimea. Briefly, by utilising its fragility, states used this page of international law as an instrument for their politics. The next

127 Allison, supra note 95, at 1266.
unwavering aspect was that both in early twentieth century and in the Crimean crisis, legal interpreters were Russian and the Western scholars. Besides, even their conceptions upon the right of self-determination have stayed constant. Putin’s legal interpretation mirrored Lenin’s notion of self-determination, while the Wilsonian paradigm of self-determination combined the values of liberalism (right of people to self-governing, democratic referendums on self-determination) was accepted as the ancestor of the Western countries. The interpretation of self-determination was developed on two lines- Soviet vs. the West’s understanding of self-determination due to the differing ideological and political orientation. In Crimea, this tendency did not disappear, despite the one language of international law they interpreted the principle of self-determination in two different legal languages. Eventually, both the Lenin and Wilson lines of interpretation contributed to the legal basis of self-determination and territorial integrity but could not resolve the ambiguity of the principle, and as such the different theoretical prepositions upon self-determination set forth on demanding the tens of secessionist conflicts, including Crimea. Putting the three most discussed (Remedial Right Only, Primary Right, Choice theories) conceptions upon the principle of self-determination into consideration, none of them enabled an address of the Crimean conflict, and proved that Russia’s justification of Crimea was not only outside the legal degrees of international law, but could not be construed in the language of theories. Primary and Choice theories were afar from implementation in the case of Crimea, there was only the theory of Buchanan- Remedial Right that had conditionality as the reasons for the justification of secession, such as any violating act against the ethnic groups. However, Crimean people had not undergone violation for their ethnic difference since 1954 (under rule of central Kiev) rather, the ‘human rights situation in Crimea has seriously deteriorated since the region’s annexation by Russia in March’
the Council of Europe claimed. The people who were terrorized, were mainly Tatars and Ukrainians of Crimean peninsula. This fact approves Russia’s ethnic cleansing from the early days of invasion and lets us easily imagine the future condition. In general, the deficiency of the legal grounds entailed the ambiguity of the principle of self-determination that created the vacuum for the state’s exploitation and eventually resulted with the crisis of Crimea and similar territorial conflicts.

In closing, this dissertation set out to resolve the dispute of the principle of self-determination and territorial integrity with the logic of fuzzy that suggested the middle way of solution. Despite fuzzy being used as the logic of mathematical science, the meaning remains the same for social sciences - neither intending absolute self-determination nor absolute territorial integrity and finding the scope where both of these can be maintained.