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RUSSIAN APPROACHES TO THE RIGHT OF PEOPLES TO SELF-DETERMINATION: FROM THE 1966 UNITED NATIONS COVENANTS TO CRIMEA

Master's Thesis

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INTRODUCTION

The right of peoples to self-determination has developed from an ambiguous political principle into a firm right in international law throughout the 19th and 20th centuries. As of today, the right is codified in a number of international treaties and conventions and has evolved into a rule of customary international law.[1] Yet, self-determination remains one of the most controversial norms of international law.[2] The controversy has been reflected in the arbitrary interpretation and the voluntary use of the right by various actors. For example, among many others, such actors were the Union of Soviet Socialist Republics (USSR) in the past and its successor, the Russian Federation (RF) nowadays. To illustrate, when in light of the decolonisation processes the discussions on the right of peoples to self-determination began in the United Nations (UN), the USSR insisted on the freedom of the former (Western) European colonies but prioritised the concept of state sovereignty and territorial integrity for itself, maintaining that self-determination had already been articulated within the USSR.[3] Eventually, the Soviets were able to promote self-determination so that it was included in two major UN treaties: the International Covenant on Economic, Social and Cultural Rights (ICESCR)[4] and the International Covenant on Civil and Political Rights (ICCPR).[5] The clause on self-determination in these major human rights documents was interpreted in the context of decolonisation and the so-called Salt Water thesis, which favoured the Soviets greatly.[6] Hence, the Soviets used different standards domestically and internationally, refusing to acknowledge the existence of similar issues within their territories.

As for contemporary Russia, the contradictions and inconsistencies related to the understanding and the application of the right of peoples to self-determination have once again reappeared this time in the case of Crimea. To be specific, while Russia has been consistent in supporting the territorial integrity of states for years, in 2014 it changed its attitude by trying to justify Crimea's annexation and incorporation into Russia based on the right of peoples to self-determination.[7] This was followed by extensive legal discussions that predominantly pinpointed the illegality of Russia's actions in Crimea and the lack of legal basis for Crimea's secession

[1] M. Sterio. The Right to Self-determination Under International Law: "selfistans", Secession and the Rule of the Great Powers. London and New York: Routledge 2013, p. 9.
[2] J. Klabbers. The Right to Be Taken Seriously: Self-Determination in International Law. – 28 Human Rights Quarterly, 2006(1), p. 186.
[3] L. Mälksoo. The Soviet Approach to the Right of Peoples to Self-determination: Russia's Farewell to jus publicum europaeum. – 19 The Journal of the History of International Law 2017, p. 17.
[4] International Covenant on Economic, Social and Cultural Rights. New York 13.12.1966, e.i.f. 03.01.1979.
[5] International Covenant on Civil and Political Rights. New York 16.12.1966, e.i.f. 23.03.1976.
[6] Mälksoo 2017, *op.cit.*, p. 17.
[7] T. Christakis. Self-determination, territorial integrity and fait accompli in the case of Crimea. –75 ZaöRV/Heidelberg JIL 2015(1), p. 1.

based on the international legal norms on self-determination. Nevertheless, there was little or no attempt to examine the change of Russia's approach to the right of peoples to self-determination in light of the Soviet approach. In other words, in this context, most discussions missed the analysis of issues related to Russia's international legal thinking, which is deeply rooted in the Soviet past. Hence, this study intends to fill this gap by focusing on the analysis of Russia's current approach to the right of peoples to self-determination in light of the Soviet approach. This research presupposes a link between the Soviet and Russian approaches to self-determination based on the legal ties between post-1991 Russia and the Soviet Union, established on the doctrine of state succession or even continuity. The legal ties between these two entities also entail links on the subject of self-determination since Russia retained "(…) the Soviet Federal Formula and, with it the Soviet understanding of self-determination."[8]

To continue, this study focuses on two decisive moments of the development of the right of peoples to self-determination in Russia: the Soviet approach to the right of peoples to self-determination in the decolonisation period as manifested in the 1966 UN Covenants and Russia's approach to the right following the 2014 annexation of Crimea. Hence, the research problem lies at the contradiction found in Russia's contemporary approach to the right of peoples to self-determination as manifested in the case of Crimea and the way it might be related to the Soviet approach to self-determination in the decolonisation period. The Crimea case, among other things, marks the departure of Russia from her pre-Crimea approach to the right of peoples to self-determination, which was characterised by consistent and continuous support of the principle of territorial integrity of states. With this contradiction, Russia, just like the Soviet Union in 1966, challenged the universality of the right of peoples to self-determination.

Given what was discussed above, the objective of the research is to look at the theory and practice of the right of peoples to self-determination in Russia from a historical-legal perspective to trace the roots of the contradictions found in Russia's current approach there. In particular, the analysis aims at understanding the specifics of the Soviet approach to self-determination and discusses the case of Crimea in light of the analogies between the past and present approaches to the right. Moreover, relying on the Crimea case, the thesis aims at establishing what exactly Russia meant by saying that they supported the right of the peoples of Crimea to self-determination. The study primarily focuses on the official narratives presented by state officials. Nevertheless, while the issue of the use of force is also central to the Crimea case, the given study focuses solely on the issues of self-determination and secession. In other words,

[8] T. Lundstedt. The Changing Nature of the Contemporary Russian Interpretation of the Right to Self-Determination under International Law. – P. S. Morris(ed.). Russian Discourses on International Law. Routledge 2018, p. 197.

the in-depth analysis of the issue of the use of force by Russia in Crimea is beyond the scope of this study and is only done to supplement the discussions on self-determination.

The study hypothesises that the current Russian approach to the right of peoples to self-determination resembles the Soviet approach in its legal flexibility characterised by self-interest, hypocrisy, and double-standards. To verify the hypothesis systematically, the research puts forward two interconnected research questions:

- What are the characteristics of the Soviet approach to self-determination in the 1960s and that of Russian following the annexation of Crimea?
- What are the links between the Soviet approach to self-determination in 1966 and that of Russia following the annexation of Crimea, if any?

The thesis argues that while all major countries are somewhat hypocritical, however, in the discussed situations, the USSR and Russia respectively have been less consistent and more hypocritical than the Western powers. Nevertheless, the study does not pretend or attempt to establish any measurable causal links between the past and present factors but rather argues that history should not be undervalued while discussing the Russian approaches to the right of peoples to self-determination in particular. The value of historical perspective in the analysis of the Russian approaches to international law has been emphasised and justified by different scholars. As Isaeva argues, it is vital "(…) to reconstruct the bonds between the past and present to grasp the essence of the subject."[9] Specifically, she contends that "the role of the Soviet heritage should not be neglected during any meaningful and complex study of the peculiarities of Russian understanding and the use of law."[10] Hence, this study is vital, given the scarcity of attention paid to the analogies between the Soviet and Russian approaches to the right. Another important question that needs to be addressed in advance is whether such a study will not contribute to the fragmentation of international law. The answer is that "the universality of international law is still contested."[11] Hence, each state deserves and needs to be discussed separately. This is especially true for Russia, given its complex history.

The research is topical as Russia is still involved in different regional secessionist conflicts where self-determination is used as a key argument for separation, including

[9] A. Isaeva. Contradictions and Incompleteness in Russian Legal Discources, – P. S. Morris(ed.). Russian Discources on International Law. New York and London: Routledge 2019, p. 44.
[10] *Ibid.*
[11] *Ibid.*

Transnistria, South Ossetia, Abkhazia, and Nagorno-Karabakh.[12] For example, Russia has ambiguously styled herself as a mediator for the Nagorno-Karabakh conflict and understanding Russia's approach to the right to self-determination may help to comprehend and predict the dynamics of the peace talks. Thus, the theoretical and practical importance of the thesis is apparent. Besides, the research is relevant in light of the revived interest in secessionist movements. What is more, the study contributes to the continuing discussions on the development of the right of peoples to self-determination. Most importantly, the research brings a fresh approach to the discussions of the Crimea case from a new legal-historical perspective.

To demonstrate the novelty and the relevance of the study, it is important to highlight what has already been said regarding the subject in the academic literature and point out the gaps that this study intends to fill in. The examination of self-determination in international law has preoccupied the interest of legal scholars for a long time. To name a few, Casesse analyses the legal complexities evolved around the right to self-determination in international law at each period of its development.[13] Similarly, Sterio provides a thorough account of the evolution of self-determination in international law, starting with the Wilsonian idea of self-determination and ending with the analysis of the most famous legal cases regarding the subject.[14] Moreover, Castellino focuses on the clash between self-determination and territorial integrity, and Hannum raises serious questions regarding the state of self-determination in the postcolonial period.[15] Meanwhile, while Nanda and Vidmar explore the complexities of secession in international law, Buchanan offers a perspective on the remedial secession theory.[16]

Nevertheless, there are very few studies focusing on the right of peoples to self-determination more narrowly in the context of the Soviet and Russian legal thinking. For instance, Mälksoo examines the Soviet approaches to the right, exploring the ways it differed from the Western liberal approach.[17] However, the article focuses on the Soviet approach primarily, leaving out the analysis of modern Russian thinking and practices. Meanwhile, the author looks at this issue in another publication, where specific attention is paid to the discussion on self-determination by the Russian legal scholarship.[18] Furthermore, another work,

[12] C. J. Borgen. Law, rhetoric, strategy: Russia and self-determination before and after Crimea. – 91 International law studies 2015(1), p. 266.
[13] A. Cassese. Self-determination of peoples: a legal reappraisal. Cambridge University Press 1995, p. 279.
[14] Sterio, *op. cit.*, p. 9.
[15] J. Castellino.Territorial integrity and the right to self-determination: an examination of the conceptual tools. – 33 Brook. J. Int'l L. 2008, p. 513; H. Hannum. Rethinking self-determination. – 34 Virginia Journal of International Law 1993(1), p. 11.
[16] V. P. Nanda. Self-Determination Under International Law: Validity of Claims to Secede. – 13 Case W. Res. J. Int'l L., 1981(2); J. Vidmar. Remedial Secession in International Law: Theory and (Lack of) Practice. – 6 St Antony's International Review 2010(1); A. Buchanan. Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law. Oxford: Oxford University Press 2004.
[17] Mälksoo 2017, *op. cit.*
[18] L. Mälksoo. Russian approaches to international law. USA: Oxford University Press 2015, p. 12.

which is central to this study, is a recent contribution to a monograph by Lundstedt, published in 2019.[19] This work traces the changes and the continuities in contemporary Russian legal thinking regarding the right of peoples to self-determination, taking into consideration the Soviet interpretation of the right. Nevertheless, here the author provides a very broad and general analysis. As for the analysis of the Crimea case, two works are worth mentioning. First, the analysis by Borgen, which examines the use of international legal arguments concerning self-determination in Ukraine by Russia as a part of its foreign policy strategies.[20] Second, the work of Rotaru and Troncotă, which focuses on the instrumentalisation of the Kosovo argument in the Crimea case in light of Russia's foreign policy goals.[21]

Overall, while there is extensive literature on the right of peoples to self-determination and some attention is also paid to the Russian approaches to the right, these studies focus either on different aspects of the issue or draw attention to specific periods or have completely different research questions or methodology. In contradiction, the given thesis brings freshness and novelty with the help of a different hypothesis, research questions, and a clearly defined methodological approach. The current study discusses international law, not with the classical methods of international legal research. It rather utilises a legal-historical method to connect the dots between the past and present, a comparative method to understand the differences between the Soviet and Western approaches and to draw links between the Soviet and current Russian approaches to self-determination and Qualitative Content Analysis (QCA) for the systematic analysis of Russia's justification narratives of the annexation of Crimea. To carry out the QCA analysis the study uses the leading MAXQDA software for qualitative data analysis. It looks at fifty-one official documents comprised of both primary and secondary sources mainly published on the official website of the MFA of the RF. The analysis reflects the most relevant speeches and interviews of Russia's high-ranking officials on the justification of Crimea's annexation from the 2014-2020 period. Regarding this, the strength of the study is the author's knowledge of the Russian language, which allows interacting with primary sources in their original language. Overall, this study systematises, improves and refines the discussions on the Russian approaches to the right of peoples to self-determination.

To continue, the thesis adheres to the following structure. The first chapter looks at the development of self-determination in international law in 3 main periods: 1) Wilsonian, 2) decolonisation, 3) post-colonial, with a focus on the development of the right of self-determination in treaty law. Furthermore, it discusses the controversies evolved around the issue

[19] Lundstedt, *op. cit.*
[20] Borgen. 2015, *op. cit.*
[21] V. Rotaru & M. Troncotă. Continuity and change in instrumentalizing 'The Precedent'. How Russia uses Kosovo to legitimize the annexation of Crimea. – 17 Southeast European and Black Sea Studies 2017(3).

of the interpretation of the "self" in self-determination by looking at treaties, *opinio juris* and the works of renowned scholars of international law. Moreover, it looks at the interaction of self-determination and secession, with a specific focus on remedial secession theory. To complete the picture, the final part of the first chapter discusses several important cases found in international jurisprudence on the subject, with a specific focus on the practice of the *ICJ*. Furthermore, the second chapter examines the specifics of the Soviet approach to the right of peoples to self-determination. First, it examines the aspects of Lenin's understanding of the right to delineate the foundational differences with the Wilsonian, liberal-democratic idea of self-determination. This is followed by an analysis of the theoretical and practical implications of the Soviet Peace treaties of 1920 and culminates in a discussion with the Soviet approach to the right of peoples to self-determination in the 1966 UN documents. The final chapter deals with Russia's current approach to the right of peoples to self-determination with a special focus on the Crimea case. It starts the discussion by establishing the links between the legal thinking of Soviet Union and contemporary Russia simultaneously analysing the influence of the Soviet ideology on modern Russian thinking. Furthermore, it discusses the key foreign policy factors influencing Russia's approach to self-determination, then continues with establishing Russia's approach to self-determination in the 1991- 2014 period. The final part focuses on the analysis of the Crimea case and the change of the narrative following the annexation of Crimea in 2014. It at the same time attempts to connect the dots between the Soviet and Russian thinking on self-determination. The conclusion discusses the main findings in light of the hypothesis and the research questions posed in the introduction.

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Keywords: national self-determination, sovereignty, national boundaries, interventions, occupied territories

1. THE DEVELOPMENT OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION IN INTERNATIONAL LAW

1.1. The Evolution of Self-determination in International Law

1.1.1. The Wilsonian Period

Self-determination has traditionally been deemed to be "inextricable from democracy."[22] The forefathers of the liberal-democratic idea of self-determination are figures such as "Mill and Mazzini, Wilson and Russeau."[23] While the Bolsheviks have also contributed to the development of the concept, Lenin's idea of self-determination was different from the liberal-democratic one as it was "based on violent secession to liberate people from bourgeois governments."[24] Even though the notion of self-determination was not novel to the philosophical circles in the period preceding the 20th century, it found its unique place in international law amidst the developments following the WWI. Subsequently, the evolution of self-determination from a vague principle into a firm right in international law is traced throughout the 20th century in 3 main phases: 1) Wilsonian, 2) decolonisation, 3) post-colonial.[25] Each evolutionary stage is signified with its specific issues and controversies concerning the meaning and the application of self-determination coupled with the adoption of new terminology and changing definitions. [26]

The Wilsonian phase signals the entry of self-determination into the realm of international law as it gained global acknowledgment and value following the development of WWI. Above all, the idea of self-determination was placed well within the US President Woodrow Wilson's vision for the "postwar world" order.[27] In the initial stage, the Wilsonian self-determination entailed self-government and the right to select state authorities and political leaders, nevertheless, this changed in line with the development of the WWI: gradually self-determination took external dimension. The external dimension, in its turn, entailed four different variations of self-determination: 1) the right of the people to choose its government, 2) the restructuring of the states of Central Europe, 3) self-determination as a criterion governing territorial change; 4) the settlement of the colonial claims taking into consideration

[22] D. Philpott. In defense of self-determination. –105 Ethics 1995(2), pp. 352-353.
[23] *Ibid.,* p. 355.
[24] Sterio,*op. cit.,* p. 9.
[25] Hannum, *op. cit.,* p. 66.
[26] *Ibid.*
[27] E. Manela. The Wilsonian moment: self-determination and the international origins of anticolonial nationalism. Oxford University Press 2007, p. 21.

the interests of the colonial powers.[28] Eventually, the Wilsonian concept of self-determination became a guiding principle during the negotiations of great powers on the future of the collapsed Austro-Hungarian and Ottoman Empires.[29] In this paradigm, self-determination was envisaged in the context of a situation "(…) where a large empire ceases to exist and new states inhabited by distinct peoples are created."[30] Notwithstanding, as history illustrated, the Wilsonian idea of self-determination remained a political concept and apart from the promise of promoting democracy and satisfying senses of national aspirations, it did not recognise the right of all peoples to govern their life free from external domination."[31]

The Wilsonian idea of self-determination has been subjected to criticism primarily due to its vague formulation as "no one knew exactly what it meant."[32] As Wilson's secretary of state Lansing famously warned, self-determination was "loaded with dynamite"[33] and Wilson himself was not aware of the possible implications of his theory.[34] Serious concerns were raised that it may escape the entailed context of the Austro-Hungarian and Ottoman Empires and feed independence movements elsewhere.[35] Moreover, the Wilsonian idea of self-determination did not entail universality.[36] To illustrate, the fact that the great powers failed to meaningfully apply the concept of self-determination outside of European situations reveals that it was applied to Europeans only. Still, Wilson did not exclude the colonial peoples from the paradigm of self-determination, instead, he envisaged it as a gradual process of achieving self-government supervised by the so-called civilised power as reflected in Wilson's attempts to establish the League of Nations "mandates" over the colonial territories. Nevertheless, during the Paris Peace Conference, Wilson's main focus remained on the issues of European situations.[37]

Another criticism pinpointing the hypocrisy of the Wilsonian idea of self-determination is directed to Wilson's attitude "towards the United States' imperial possessions and his views on race relations."[38] Having never challenged his racial assumptions, he disapproved of social mixing between different races.[39] Most importantly, Wilson rejected the application of internal

[28] Cassese, *op. cit.,* pp. 19-21.
[29] Sterio, *op. cit.,*, p. 10.
[30] *Ibid.,* p. 27.
[31] Hannum, *op. cit.,* p. 68.
[32] L. M. Graham. Self-Determination for Indigenous Peoples After Kosovo: Translating Self-Determination 'Into Practice' and 'Into Peace'. – 6 ILSA Journal of International & Comparative Law 2000(2), p. 456.
[33] Klabbers, *op. cit.,* p. 187.
[34] Cassese, *op. cit.,* pp. 19-21.
[35] Graham, *op. cit.,* p. 456.
[36] Hannum, *op. cit.,* p. 22.
[37] Manela, *op. cit.,* p. 25.
[38] *Ibid.,* p. 26.
[39] Manela, *op. cit*., p. 26.

self-determination to the United States.[40] Thus, the Wilsonian idea of self-determination was far from being universal.

Given what was discussed above, it is not surprising that the clause promising the application of self-determination was left out of the final draft of the Covenant of the League of Nations. In contrast, the right of the existing states to territorial integrity found its firm place in the document. The ideas suggested in the Versailles did not culminate in the development of a general norm of international law.[41] Nonetheless, the essentially political concept of self-determination became an important basis for fortifying political commitments to anticolonial agendas, not necessarily the way that Wilson had envisioned.[42] Nevertheless, the post-WWII era marked the development of self-determination into a clear right in international law, reflecting the struggles of colonial and marginalised peoples.

1.1.2. The Decolonisation Period

While the Wilsonian idea of self-determination was idealistic and political at its core and failed to become a legal instrument offering a clear solution to the issues of different groups of peoples in the post-WWI period, it still greatly inspired and redefined the struggles of these peoples for their political future in the subsequent periods. This was reflected in the post-WWII phase when self-determination eventually acquired the status of a legal right. Even though the UN was not willing to recognise self-determination as a fundamental right in its initial stage of activity, given the analogy with "Hitler's attempts to reunify the German "nation,"[43] self-determination eventually found its place in the UN Charter. The Charter mentions self-determination twice, in the context of developing friendly relations among nations and the principle of equal rights.[44] Apart from stating that member states should allow the self-government of minorities within the range of their possibility, the Charter did not elaborate on various forms of self-determination, i.e. internal and external, and did not pose any legal obligation on member states. In other words, it still failed to provide a comprehensive definition of the right. Nonetheless, it is well-understood that the UN Charter did not foresee any right to external self-determination for minority groups and colonised peoples. However, the inclusion of self-determination in such an important multilateral treaty is essential in codifying the progress of self-determination from a political principle into a "legal standard of behavior."[45]

[40] *Ibid.*
[41] Sterio, *op. cit.*, p. 10.
[42] Manela, *op. cit.*, p. 222.
[43] Hannum, *op. cit.*, p. 11.
[44] Charter of the United Nations, San Francisco on 26. 06.1945, e.i.f. 24.10.1945, Art 1., para. 2.
[45] Sterio, *op. cit.*, p. 9.

The transformation of self-determination continued during the decolonisation period, when political developments in the UN, starting in the 1960s, became the pretext for the evolution of the right in question. In this phase, self-determination was utilised in the context of granting the colonised peoples the right to freely decide their political fate.[46] This was first captured in two UN General Assembly (UNGA) resolutions: the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by GA resolution 1514,[47] and Resolution 1541,[48] which contained an annex specifying the modalities of self-determination for colonised peoples. According to the Article 2 of the resolution 1514: "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[49] Nevertheless, the 1960 declaration was accompanied by ad hoc restrictions: the so so-called Salt Water thesis stipulated that self-determination could be invoked only by those territories that were geographically separate from the colonising power or the ones divided by blue water.[50] Hence, the Salt Water thesis in itself involves double-standards that accompanied the process of the decolonisation in the UN. Be it as it may, the legal reading of the 1960 Declaration ought to be carried out in its historical context, having in mind the nature and the intent of the Declaration, the particular issues it dealt with and the timing thereof.[51] Hence, the Declaration provided for the possibility of the right to external self-determination only for colonies.

While the UNGA resolutions indicated the development of self-determination in the colonial context reflecting the political consensus amongst the UN member states on the issue of colonialism, they did not pose any obligations on member states. This changed in 1966 when self-determination was championed in two major UN treaties: ICESCR and ICCPR.[52] These documents marked a critical point for the advancement of self-determination into a commonly accepted right in international law.[53] The language of the Covenants, which delineates the contemporary understanding of the right of self-determination in a legally binding manner, is the most definitive one currently existing.[54] According to common Article 1 of the Covenants:

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[46] *Ibid.*, p. 10.
[47] Declaration on the Granting of Independence to Colonial Countries and Peoples, UN General Assembly A/RES/1514(XV), adopted 14.12.1960, Art. 2.
[48] Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter, UN General Assembly A/RES/1541, adopted 15.12.1960.
[49] Ibid.
[50] J. Corntassel. Toward Sustainable Self-determination: Rethinking the Contemporary Indigenous-rights Discourse. – 33 Alternatives 2008(1), p. 108.
[51] Nanda, *op. cit.*, p. 257.
[52] ICCPR, *op. cit.*; ICESCR, *op. cit.*
[53] C. J. Borgen. The language of law and the practice of politics: great powers and the rhetoric of self-determination in the cases of Kosovo and South Ossetia. – 10 Chi. J. Int'l L. 2009 (1), p. 7.
[54] Nanda, *op. cit.*, p. 18.

> "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 (…) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."[55]

The Covenants granted a new meaning to the right to self-determination. Specifically, while obliging member states to respect a people's right to some form of democratic self-governance, the Covenants clarified the format of self-determination for colonised and non-colonised peoples. In particular, non-colonised peoples were entitled to a form of internal governance within their mother state, however, they did not acquire the right to seek independence. As for the colonised peoples, they were granted the right to freely decide their international status and to determine their political fate. The Covenants entailed three possible outcomes for colonised peoples: 1) forming an independent state, 2) remaining a part of their coloniser, 3) association with another state. In contrast, non-colonised peoples could not rely on the Covenants to exercise their right to self-determination and to seek a legal separation from their coloniser through remedial secession.[56]

All in all, towards the end of the decolonisation movement in the early 1970s in international law, colonised people obtained the right to self-determination and were subsequently entailed to decide their political future. What is more, the right belonged to a people as a whole, in a territorial sense and no referendum was entailed for this. Most importantly once a colonised people exercised its right to external self-determination, meaning decided on the possible outcome, that right expired. As for non-colonised peoples, they could rely on this right to argue for the establishment of autonomy or regional political governance but had no right to seek independence from their mother states based on self-determination.[57]

[55] ICCPR, *op. cit.,* Art. 1.
[56] Sterio. *op. cit.,* p. 11.
[57] *Ibid.,* p. 12.

1.1.3. The Postcolonial Period

While it is considered that at the end of the decolonisation period the issue of self-determination was clarified and resolved once and for all, in reality, some discussions continued to evolve even after the 1970s. The most important questions at the time were whether self-determination had any significance in the postcolonial context.[58] If the answer was yes, then the next question was, who was qualified to claim a right to self-determination.[59] The development of the right of people to self-determination in the postcolonial period has been captured by UNGA declarations and other political documents. One such document is the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (FRD), which reflects the promotion of self-determination as a human right.[60] It the context of the previous articles, FRD *inter alia* criticises the use of force directed against the actualisation of the right to self-determination.[61] Nevertheless, it also prioritises the principle of territorial integrity of states over the right of self-determination.[62]

Meanwhile, some interesting discussions developed from the interpretations of the safeguard clause of the FRD, which reinstates that the text of the declaration should not encourage actions against the territorial integrity and sovereignty of those states "(…) conducting themselves in compliance with the principle of equal rights and self-determination of peoples (…)."[63] The inverted reading of the safeguard clause gave rise to the remedial secession theory, which is discussed thoroughly in the following parts of the research.[64] To replicate the discussion briefly, the proponents of the so-called remedial secession theory assume the possibility of secession for a group of people in exceptional circumstances in case several grievances are present. Nevertheless, the theoretical and practical foundations for such a theory are very weak.[65] Notwithstanding the shortcomings of the remedial secession theory, its emergence in itself reflects the ongoing debates around self-determination in international law. International law is expected to come up with a more comprehensive and fresh approach to self-determination addressing the needs of the postcolonial period.

The fact that self-determination still mattered in the postcolonial world societies was later reflected by the inclusion of a provision on self-determination in the Helsinki Final Act in

[58] Castellino, *op. cit.*, p. 513.
[59] *Ibid.*
[60] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations UN General Assembly A/RES/26/25 (XXV). 24.11.1970.
[61] *Ibid.*
[62] *Ibid*
[63] Declaration on Friendly Relations, *op. cit.*
[64] see *infra* chapter 1, pp. 18-21.
[65] Vidmar 2010, *op. cit.*, p 50.

1975.[66] While a political document, it still matters as it represents the understanding between the Western and Soviet blocks on several issues, including self-determination.[67] Given that the era of colonialism was ended in Europe by the time of the adoption of the Helsinki Final Act, the need to include a provision on self-determination in this document was inspired by non-colonial realities, such as the question of divided Germany, Northern Ireland, Quebec in line with the issues of different groups of minorities living in the authoritarian European States, etc. These issues illustrated that the UN texts did not properly address the issues of self-determination of these groups. Hence, a provision on self-determination was included in the Helsinki Final Act by the proposal of the Federal Republic of Germany.[68] In the end, the final text reflected the modern-day view of these states on self-determination, which, *inter alia,* states that *"*(…) by virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status (…)."[69]

The Helsinki language is seen as expansive, nevertheless, it does not infer an external right to self-determination to national minorities and must be read in the context of the principles of the inviolability of frontiers and the territorial integrity of states, which are clearly stated in the document.[70] Meanwhile, the Helsinki Declaration is indicative of a new trend towards wider recognition of self-determination.[71] This view was later confirmed in the 1990 Paris Charter, which is also a political document.[72] Finally, the reluctance to accept secession outside the decolonisation context has also been reflected in the discussions on the right of indigenous peoples to self-determination, which eventually resulted in the adoption of the 2007 UNGA Declaration on the Rights of Indigenous Peoples.[73] While Article 3 entails the self-determination of indigenous people, however, the limitation to internal autonomy or self-government is entailed in Article 4.[74] What is more, four major Western countries such as Australia, Canada, New Zealand, and the United States voted against the resolution. While this is not a binding instrument, it still indicated that these countries explicitly and without hypocrisy stated their position towards the issue, meanwhile, Russia abstained.[75]

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[66] Final Act of Helsinki, Organization for Security and Co-operation in Europe (OSCE), Conference on Security and Co-operation in Europe (CSCE). 01.08.1975.
[67] Hannum, *op. cit.,* p. 28.
[68] Final Act of Helsinki, *op. cit*
[69] *Ibid.*
[70] Hannum, *op. cit.,* p. 29.
[71] Cassese, *op. cit.,* p. 302.
[72] Charter of Paris for a New Europe, the Conference on Security and Co-operation in Europe (CSCE). Paris 21.11.1990, p. 5.
[73] Declaration on the Rights of Indigenous Peoples , UN General Assembly, A/RES/61/295, adopted 2.10.2007
[74] *Ibid.,* Art. 3, 4.
[75] Anonymous. On the United Nations Declaration on the Rights of Indigenous Peoples. Department of Economic and Social Affairs Indigenous Peoples. UN 2007. Accessible: https://cutt.ly/6yweCLN (10.01.2020).

Overall, in the post-colonial era self-determination is more about granting people the right to govern themselves based on the norms of democracy. Here, the notion of internal self-determination is intertwined with human rights norms, in particular the rights of minorities and indigenous peoples.[76] In other words, self-determination in the postcolonial period is understood as a procedural right that may not amount to a right to internal or external self-determination.[77] Nevertheless, scholars continue discussing issues such as the modalities between moral and legal norms on self-determination,[78] the tension between identity-based and territory-based self-determination,[79] and the issues of indigenous self-determination,[80] continuing to actualise the need for a new framework for self-determination.

To conclude, the discussion on the evolution of self-determination in international law indicated that initially, self-determination was a vague political principle. Nevertheless, while it did not constitute a legal tool for addressing the issues of different groups of peoples following the WWI, it did genuinely inspire and affect the struggles of those peoples in the following periods. Eventually, in the UN era self-determination acquired a status of a legal right by being incorporated first in the UN Charter and later in some other UNGA resolutions and finally, in the 1966 human rights Covenants. Most importantly self-determination at this stage was formulated in the context of decolonisation. In other words, it is the colonial people that were granted the possibility to decide their political future externally. As for other groups, self-determination was foreseen only internally. Moreover, the discussion indicated that while the decolonisation was considered to be complete at the end of the 1970s, the discussions on self-determination continued as many issues remained unresolved. Specifically, these discussions indicated that while territorial integrity of states was prioritised at this stage, still, some scholars considered the importance of the discussions on secession in exceptional circumstances as a remedy of last resort. Nonetheless, this is a marginalised approach as self-determination in the postcolonial period is understood to be a procedural right, which does not involve the right to external self-determination.

[76] S. Chesterman *et al*. Law and practice of the United Nations: documents and commentary. Oxford University Press 2016, p. 441.
[77] Klabbers, *op. cit*,. p. 189.
[78] A. Moltchanova. National Self-Determination and Justice in Multinational States. Springer (2009).
[79] J. Waldron. Two Conception of Self Determination. – S., Besson & J. Tasioulas(eds.). The Philosophy of International Law. Oxford University Press (2010).
[80] S. Wiessner. Indigenous self-determination, culture, and land. – E. Pulitano (ed.). Indigenous Rights in the Age of the UN Declaration, Cambridge University Press 2012.

1.2. Self-determination and Remedial Secession

The discussion on the evolution of the right of self-determination indicated that at each phase of its development it has been in a constant clash with the principle of territorial integrity of states, which has traditionally been prioritised over the principle of self-determination.[81] Territorial integrity lies at the core of the contemporary international legal system and is based on the doctrines of *uti possidetis juris* and *terra nullius*. Both *terra nullius* and *uti possidetis juris* became prominent in international law in the context of "the European expansion into the Americas."[82] Initially *terra nullius* referred to empty territories that were free for colonisation, however, unlike *uti possidetis juris*, it has limited contemporary significance as it gradually took "racist overtones."[83] As for *uti posseditis juris*, it protects the shareholders' rights to the land and has been used in the practice of ICJ and other judicial bodies in cases concerning territoriality.[84] The best example of the use of the doctrine is in the *ICJ*'s opinion in *Frontier Dispute* (*Burkina Faso v. Mali*), where the court stated that the primary aim of the principle was to secure respect for the territorial boundaries while achieving independence.[85] As for *terra nullius*, it is reflected in the ICJ judgment in the *Western Sahara Case*, where the court determined that Western Sahara was not *terra nullius* before the Spanish arrival.[86]

The clash between self-determination and territorial integrity is significant in the case of external self-determination, i.e. secession. In practice, the right of peoples to self-determination can be actualised internally or in some cases externally. An example of internal self-determination would be the autonomy of a group of people within a central state: autonomy is understood as having the "rights to self-government, political autonomy, cultural, religious and linguistic freedoms."[87] As for external self-determination, it entails independence of the group and has traditionally been only applied to people under colonial domination or some kind of oppression.[88] Secession is the most dramatic outcome of the self-determination claim as states traditionally disapprove it given that the encouragement of territorial separation is perceived to be dangerous and unacceptable by states.[89] Understandably, if secession was granted easily, it would eventually result in chaos and anarchy.[90] Hence, states have

[81] S. Wolff, & A. P. Rodt. Self-Determination After Kosovo. – 65 Europe-Asia Studies 2013(5), p. 806.
[82] Castellino, *op. cit.*, p. 520.
[83] *Ibid.*, p. 540.
[84] *Ibid.*, pp. 526-527.
[85] Frontier Dispute (*Burk. Faso v. Mali*), 1996 I.C.J. 554, 566 (Dec. 22).
[86] Western Sahara, Advisory Opinion, I.C.J. Reports 16.11.1975, p. 12.
[87] Sterio, *op. cit.*, p. 17.
[88] *Ibid.*
[89] Nanda, *op. cit.*, p. 264.
[90] C. Tomuschat, Secession and self-determination. – M. G. Kohen (ed.). Secession: international law perspectives. Cambridge University Press 2006, p. 24.

demonstrated hostility towards such cases of secession by applying the regime of collective non-recognition.[91] Be it as it may, the discussions on self-determination go hand in hand with discussions on secession, as both are considered to be "siamese twin(s) at birth."[92]

While talking about secession, it must be noted that it is not a recognised right in international law, however, secession is not prohibited either.[93] Nevertheless, secession is regulated by the legal provisions on self-determination and territorial integrity. One must distinguish constitutional or consensual secession from the unilateral act of secession. In the case of consensual secession, the situation is straightforward: international law does not prohibit it as long as it is exercised under constitutional processes.[94] In contrast, non-consensual or unilateral secession is allowed only in the context of decolonisation and arguably in case of reclamation of a territory subject to unjust military occupation.[95] Nonetheless, nowadays some additional theories discuss the possibility of secession under other circumstances. For example, while some scholars uphold to the territorial view of secession, submitting that "separatist movements cannot be understood or evaluated without reference to claims to territory,"[96] the proponents of "choice theory"[97] argue that secession is possible for any geographically defined group as long as it is the choice of the majority, hence entailing a larger possibility for secession. Besides, remedial secession presumes the possibility of secession in exceptional circumstances such as grave violations of human rights by the mother state.[98] Nevertheless, it is the discussions on remedial secession theory that gained particular attention recently given its attempt to provide a middle ground in the postcolonial era.

The scholarly discussions on the remedial secession scheme revolved around the issue of whether the non-compliance of the mother states with the norms outlined in the safeguard clause of FRD gave any room for secession. Thus, the legal foundation of the remedial secession scheme is based on the inverted reading of the final paragraph of the FRD. The remedial secession scheme relies on "just cause" theory and its proponents dismiss the possibility of absolute right to self-determination in favour of allowing the possibility of secession in the presence of several condition.[99] Buchanan, for example, is one of the most active proponents of remedial secession theory and considers that it offers the best way for

[91] E. Berg & M. Mölder. The Politics of Unpredictability: Acc/secession of Crimea and the Blurring of International Norms. – 34 East European Politics 2018 (4), p. 402.
[92] Klabbers, *op. cit.,* p. 205.
[93] Hannum, *op. cit.,* p. 42.
[94] Buchanan, *op. cit.,* p. 338.
[95] *Ibid.,* p. 333.
[96] L. Brilmayer. Secession and self-determination: A territorial interpretation. – 16 Yale J. Int'l L. 1991(177), p. 201.
[97] Philpott, *op. cit.,* p. 353.
[98] Sterio, *op. cit.,* p. 17.
[99] Vidmar 2010, *op. cit.,* p. 44.

international law to respond to secession in modern times.[100] He deems the following list of grievances to be sufficient for allowing non-consensual secession outside the decolonisation context: 1) large-scale and persistent violations of basic individual human rights, 2) the unjust taking of a legitimate state's territory 3) serious and persistent violations of intrastate autonomy agreement.[101] According to this scheme, the right to secession is actualised in two stages: 1) the recognition of a right of a group to overthrow the mother state's authority in case the respective grievances are evident, 2) the entity should make efforts to meet the criteria of legitimate statehood. The two-staged approach indicates that the right to secession is understood more weakly. Here secession is understood as a remedy of last resort and can be considered only in case the other options of internal self-determination are deemed impossible.[102] Nevertheless, the theory of remedial secession is widely subjected to criticism. For example, while the theory is discussed by some scholars, the academic proponents of remedial secession express their support cautiously without taking a firm stance on whether this right exists or not.[103] Another counter-argument is that a theory built on an inverted reading of a clause is problematic. Specifically, Shaw claims that "such a major change in legal principle cannot be introduced by way of an ambiguous subordinate clause."[104]

The practice of judicial bodies also does not strongly support the possibility of remedial secession. One of the most famous legal cases, which arguably relies on the inverted reading of the safeguard clause of FRD is *Reference Re Secession of Quebec.*[105] Here, while deciding on the fate of Quebec the Supreme Court of Canada stated that apart from the colonial context secession is possible in case "(…) a people is subject to alien subjugation, domination or exploitation outside a colonial context."[106] Besides, in the 1997 case of *Loizidou v Turkey*, before the European Court of Human Rights, Judges Wildhaber and Ryssdal implied the possibility of remedial secession.[107] Nonetheless, these few examples are marginalised and do not reflect the general view on remedial secession in jurisprudence as no judicial body has accepted remedial secession as an entitlement in any particular case.

To continue, the practical application of remedial secession is also controversial.[108] The analysis indicates that usually, a successful secession requires the recognition of the parent

[100] Buchanan, *op. cit.,* p. 353.
[101] *Ibid.*
[102] *Ibid.*, p. 335.
[103] Vidmar 2010, *op. cit.*, p. 40.
[104] N. S. Malcolm. Peoples, Territorialism and Boundaries.– 8 European Journal of International Law 1997(3), p. 483.
[105] Judgement of the Supreme Court of Canada in re Secession of Quebec, 20.08.1998, 2 S.C.R. 217
[106] *Ibid.*, para. 133.
[107] ECtHR 15318/89, Loizidou v Turkey.
[108] J. Summers. Relativizing Sovereignty: Remedial Secession and Humanitarian Intervention in International Law. – St Antony's International Review 2010(1), p. 30.

state, which is already a consensual secession rather than a remedial one. For example, Eritrea and East Timor were eventually granted independence as their parent states recognised them, also these entities were separate colonies previously.[109] What is more, Bangladesh was recognised universally only once Pakistan recognised it first, thus counting as a consensual secession.[110] Finally, when it comes to the Soviet Union, its dissolution is generally considered to be rather a consensual act that was supported by all republics in the first place, which entails that it cannot be interpreted as an example of practical application of remedial secession.[111]

All in all, while some writers actively support and promote the remedial secession theory, its theoretical and practical foundations remain controversial. Theoretically, it is questionable whether remedial secession can be founded on the inverted reading of the safeguard clause of the FRD. Also, while the doctrine has been discussed in some judicial decisions, no international judicial body has ever upheld the remedial secession argument concerning a specific attempt at unilateral secession.[112] Moreover, there is not enough evidence supporting the usage of remedial secession in state practice.

1.3. The Issue of the "Self" in Self-determination

One point that the UN treaties and other regional and international documents have remained silent about is the definition of the "self" or "people" in self-determination. At each period the ambiguity of the language and the vagueness of the definition of "people" was resolved by *ad hoc* practical interpretations. Nevertheless, such interpretations left room for opportunistic behavior.[113] In addition to the UN treaties, the UN bodies also remained silent on the matter. In particular, the UN Committee on Human Rights (HRC) has been criticised for not attempting to provide any governing criteria.[114] Nevertheless, in *Lubicon Lake Band v Canada* case the HRC concluded that individuals are not entitled to the right to self-determination, meaning that "people" were to be understood as a group or collective of individuals. However, the HRC did not define the collective or group as such.[115]

[109] J. Ker-Lindsay. Preventing the Emergence of Self-Determination as a Norm oSecession: An Assessment of the Kosovo 'Unique Case' Argument. – 65 Europe-Asia Studies 2013(5), p. 842.
[110] Vidmar 2010, *op. cit.*,p. 43.
[111] *Ibid*., p. 45.
[112] *Ibid.*, p. 50.
[113] A. M. Marshment. A State of One's Own: Self-determination and the Legal Discourse of Identity. Toronto: Master of Law. University of Toronto 2001, p. 39.
[114] D. McGoldrick. The Human Rights Committee: its role in the development of the International Covenant on Civil and Political Rights. Oxford University Press 1991, p. 247.
[115] Lubicon Lake Band v Canada (1990), Comm. No. 167/1984, UN Doc. Supp. N0.40 (N451'40).

Meanwhile, traditionally a two-part test has been applied to determine whether or not a group qualifies as a "people." The first part of the test entails the examination of the common traits of a group such as their racial background, ethnicity, language, religion, history, etc. The second part is about evaluating the way the people within the group perceive themselves as distinct "people."[116] Such an approach was visible during the Wilsonian time, and the issue was supposed to be sought out by the help of expert commissions. Nevertheless, the decisive factor at this stage was the dividing line, depending on which a "(…) community aspiring to nationhood can become either a people, entitled to full self-government, or a minority."[117] As for the decolonisation period, this question was secondary, given the significant degree of political consensus on the scope of the application of the right. In particular, at this stage, the general understanding was that the "self" was the colonial population and the "self" was subordinated to the already fixed colonial administrative boundaries. The territorial definition of the peoples, however, has been subjected to criticism, specifically in the case of African countries, where lines were drawn without considering the opinion of inhabiting people.[118]

Unsurprisingly, during the post-colonial era, the main question was whether the term meant more than just the populations of colonies.[119] The territorial understanding of the "self" was dissatisfactory in light of the renewed attention towards the rights of indigenous populations in Canada and Australia. In the 1998 *Quebec* case, the Supreme Court of Canada held that the definition of "peoples" was not precise.[120] Meanwhile, Cassese argues this is not a primary issue as the lack of formal definition of "peoples" does not prevent the interpreter from making inferences based on the context of the legal framework. Hence, depending on such a context, the "self" is either colonial people, people living under foreign domination, racial group or the whole population of each Contracting State.[121]

1.4. The Right of Self-determination in International Jurisprudence

The scope of self-determination amidst the developments of the WWI was clarified in the *Aaland Islands* case. Following Finland's independence in 1917, the Aalanders, who considered themselves ethnically Swedish, wanted to secede from Finland to reunite with Sweden. Finland and Sweden brought this issue before the League of Nations. The appointed

[116] Sterio, *Ibid.*, p. 17.
[117] A. Whelan. Wilsonian self-determination and the Versailles settlement. – 43 International & Comparative Law Quarterly 1994(1), pp. 102-103.
[118] Castellino, *op. cit.*, p. 553.
[119] K. Knop, Diversity and Self-Determination in International Law. Cambridge University Press 2002, p. 51.
[120] Re Secession of Quebec Judgement, *op. cit*., para. 12.
[121] Cassese, *op. cit.*, pp. 19-21.

International Committee of Jurists *inter alia* reached several important conclusions regarding self-determination.[122] First, the Committee stipulated that "positive International Law does not recognise the right of national groups, as such, to separate themselves from the State of which they form a part by the simple expression of a wish."[123] Furthermore, the Committee determined that under normal circumstances, issues regarding national groups living within existing states are matters of domestic jurisdiction.[124] However, this came with exceptions, which implicitly entailed the possibility of international involvement to protect the human rights of a minority group, if those rights were abused by the mother state.[125] Moreover, the Committee stated that under both domestic and international law, "(…) the formation, transformation, and dismemberment of States as a result of revolutions and wars create situations of fact which, to a large extent, cannot be met by the application of the normal rules of positive law."[126] Thus, if read invertedly, in these exceptional instances the principle of self-determination of peoples may become relevant.[127]

After establishing the jurisdiction of the League of Nations over the Aaland Islands issue, the League appointed a Commission of Rapporteurs to recommend a solution to the problem. The Commission concluded that the precedent of Finland could not be invoked for the Aaland Islands as they had not been treated the same way as Finland was treated by Russia.[128] Moreover, the Commission refused to accept a general right to external self-determination for minority groups, but explicitly stipulated the possibility of secession as "(…) a last resort when the State lacks either the will or the power to enact and apply just and effective guarantees."[129] Here one may see the first seeds of the notion of remedial secession.[130]

After a few decades, the issue of self-determination was discussed by the *ICJ* in the famous *Namibia* case. While self-determination was not the central issue of the case, it was still important given the continuing relevance of the case for international law.[131] The *ICJ* affirmed the existence of the right to self-determination in positive international law, stating that it applied to Namibia, presumably suggesting that the process of decolonisation could be

[122] Sterio, *op. cit.,* p. 28.
[123] Report Of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands question. League of Nations Official Journal, Special supplement no. 3. 1920, pp. 7-10.
[124] *Ibid.*
[125] *Ibid.*
[126] *Ibid.*
[127] Sterio, *op. cit.,* p. 29.
[128] The Aaland Islands Question: Report Submitted to the Council of the League of Nations by the Commission of Rapporteurs", League of Nations Doc. B7.21/68/ 106, 1921.
[129] *Ibid.*
[130] Sterio, *op. cit.,* p. 30.
[131] M. Pomerance. Case Analysis: The ICJ and South West Africa (Namibia): A Retrospective Legal/Political Assessment. – 12 LJIL 1999, p. 426.

explained in terms of the application of the right to self-determination.[132] While the ideas on self-determination stipulated in this case are not deemed "terribly consequential,"[133] they portrayed self-determination as a substantive right primarily in the context of decolonisation.[134]

A few years after the *Namibia* case the court had a chance to comment on the right to self-determination in its *Western Sahara* advisory opinion, adopting a different approach.[135] The *Western Sahara* case is crucial for understanding the scope of the application of self-determination in the decolonisation period.[136] To be precise, the UNGA requested an advisory opinion from the *ICJ* on *Western Sahara*, posing two questions before the court: "whether the territory of Western Sahara was at the time of colonization by Spain terra nullius, a territory belonging to no one, and, if the answer to the first question was in the affirmative, what legal ties existed between Western Sahara, Morocco, and Mauritania."[137] The *ICJ* determined that Western Sahara was not *terra nullius* at the time of Spain's colonisation, remaining silent on the legality of Morocco's or Mauritania's territorial claims to Western Sahara.[138] Furthermore, the court concluded that the people of Western Sahara had the right to self-determination, which had not been affected by any territorial claims to this region by Morocco or Mauritania.[139]

The inability of the court to provide a more decisive framework on self-determination vs. territorial integrity claims was seen as a significant drawback in the activity of the court.[140] It has been criticised by several judges issuing concurring and/or dissenting opinions. While the judges agreed with the premise that the people of Western Sahara possessed the legal right to self-determination, they pushed for more precise legal reasoning and a potential ruling on the territorial claims of Morocco and Mauritania.[141] Another issue was that while referring to self-determination the Court conceptualised it as a principle rather than a right, thus departing from the *Namibia* approach. In the opinion of Klabbers, here the court presumably changed its conception of self-determination as it became cautious and mindful about the possible implication of the right in the postcolonial context.[142]

To continue, the *ICJ* had another occasion to comment on self-determination in the 1986 *Frontier Dispute* case. In this case, the Court's Chamber was asked to decide partly based on

[132] Advisory Opinion of on the Legal Consequence for States of the Continued Presence of South Africa in Namibia (South West Africa), I.C.J., 21.06.1971, para. 52.
[133] Klabbers, *op. cit.,* p. 191.
[134] *Ibid.*
[135] *Ibid.,* p. 193.
[136] Sterio, *op. cit.,* p. 89.
[137] Western Sahara, Advisory Opinion, I.C.J. Reports 16.11.1975, p. 12
[138] *Ibid.*
[139] *Ibid.*
[140] Sterio, *op. cit.* , p. 92.
[141] Ibid., p. 91.
[142] Klabbers, *op. cit.,* p. 195.

the principle of *uti possidetis*, and in laying down the general acceptance of the *uti possidetis* principle, it invoked self-determination in support.[143] Here also, just as in the case of *Western Sahara*, self-determination was construed as a principle and seen in a territorial manner, which indicates the cautiousness of the court.[144] Furthermore, the 1995 *East Timor (Portugal v. Australia)* case is another important example for the *ICJ* jurisprudence on self-determination. While the Court dismissed the case, it noted that the principle of self-determination exists in positive international law and may even be viewed as having an erga omnes character.[145]

Meanwhile, other bodies, such as the Supreme Court of Canada have also referred to self-determination, specifically by emphasising the lack of enforceability.[146] In its opinion on *Quebec* the Supreme Court of Canada held: "international law expects that the right to self-determination will be exercised by peoples within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those states."[147] Nevertheless, the court highlighted that only self-determination would lead to secession in highly exceptional situations.[148]

Overall, the development of self-determination in international law has been well reflected in international jurisprudence. The fact that at the Wilsonian period self-determination was not yet a legal principle was reflected in the *Aaland Islands* case. Meanwhile, self-determination eventually transformed into a firm right in the decolonisation period, as seen from the decisions on *Namibia, Western Sahara,* and *East Timor*. The relevant case law indicates the way self-determination was conceptualised to be in favour of secession in the decolonisation context to colonial peoples only. Thus, within the practice of the *ICJ* self-determination has been reinstated as a substantive right in international law. Meanwhile, the relevant case law states that self-determination should not be considered "(…) exclusively a hard, substantive, and enforceable right that could ultimately include a right to secede, but that self-determination has been given a more limited meaning."[149] Regarding the postcolonial phase, the *Quebec* case indicated the reluctance of international law to allow secession outside the decolonisation context, while arguably leaving room for remedial secession. Nevertheless, as discussed, remedial secession has weak foundations, both, in theory, and practice and is a matter of further discussions.[150]

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[143] Frontier Dispute (Burk. Faco v. Mali), *op. cit.*
[144] Klabbers, *op. cit.*, p. 196.
[145] Case Concerning East Timor (Port. v. Austl.), 1995 ICJ 90, para. 18.
[146] re Secession of Quebec Judgement, *op. cit.*
[147] *Ibid.*, para. 133.
[148] *Ibid.*, para. 133.
[149] Klabbers, *op. cit.*, p. 198.
[150] see *supra* chapter 1, p. 21

2. TOWARDS THE 1966 SOVIET APPROACH TO THE RIGHT OF PEOPLES TO SELF-DETERMINATION IN INTERNATIONAL LAW

2.1. Self-determination and the Bolsheviks

2.1.1. The Soviet Ideology and International Law

To contextualise the Soviet approach to self-determination, it is important to briefly discuss the ideological foundations of the Soviet legal thinking. Following the 1917 revolution, the Soviets tried to implement the Marxist ideology. They took significant steps to organise a world revolution, introduce the policy of military communism and nationalised large enterprises and banks, etc. Nonetheless, most of these policies failed before the death of Lenin. While the Soviet system lived until the collapse of the Soviet Union, "the real power belonged to the bureaucratic elite and not the people itself."[151] In fact, the USSR implemented only some of the Marxist objectives by creating new imbalances and ignoring some points of the Marxist ideology completely.[152] Nevertheless, the Marxist foundations of Soviet legal thinking created difficulties for the Soviet legal thinking. This is because the Marxist thinking saw the law as an instrument of oppression of one social class by another one holding: "(…) the state and law accordingly should wither away."[153] Nevertheless, the interplay of law and Marxian ideology was interpreted differently by various legal scholars.[154] Thus, the provisions of law in general and international law, in particular, were subjected to Soviet interpretations. As a result, the Soviets developed a unique anti-Western understanding of international law.

The Soviets challenged the universality of international law and claimed the existence of a regional international law by claimimg that a distinct 'Soviet' or 'socialist' international law existed.[155] One of the main challenges related to the Soviet legal thinking was the gap between theory and practice as "actual life often did not correspond to legal texts as e.g. in the case of the right of peoples to self-determination."[156] Some of the most important principles of contemporary international law were generated by the contradictions of Soviet international.[157]

[151] V. L. Tolstykh, The Nature of Russian Discources on International law. – P. S. Morris(ed.). Russian Discources on International Law, New York and London: Routledge 2019, P. 7.
[152] *Ibid.,* p. 8.
[153] Isaeva, *op. cit.,* p. 31.
[154] *Ibid.,* p. 32.
[155] Mälksoo 2015, *op. cit.,* p. 4.
[156] *Ibid.,* p. 6.
[157] B. Bowring. Positivism versus self-determination: the contradictions of Soviet international law. – S. Marks (ed.). International Law on the Left: Re-examining Marxist Legacies. Cambridge: Cambridge University Press 2008, p. 2.

Thus, the complexities of the Soviet legal thinking were reflected in their understanding of self-determination, which is discussed in the following sections.

2.1.2. The Bolshevik Approach to Self-determination

While discussing the Wilsonian idea of self-determination it was slightly mentioned that Lenin was also one of the earliest proponents of self-determination.[158] In fact, he was the first to propagate the establishment of self-determination as a right for the liberation of peoples.[159] At the time the distinctions between Lenin's and Wilson's understandings of self-determination were not clear as both criticised imperialism and advocated peace based on the principle of self-determination. The most significant difference, however, was that Wilson was at the time more powerful and capable of influencing international relations than Lenin.[160] Until 1919 Wilson was the only one who had both the will and the power "(…) to produce a settlement that would implement self-determination as a principle of the international order."[161] Hence, the discussions on self-determination are greatly associated with Wilson rather than Lenin.

Nevertheless, Lenin's understanding had little in common with the Wilsonian liberal democratic concept of self-determination since the advancement of civil and political rights was not the main concern of the Bolsheviks.[162] The features of Lenin's ideas of self-determination are well structured already in his early works. For example, in December 1913 he discussed the subject in a short article called "The Cadets and The Right of Nations to Self-Determination" where he emphasised the way the right to self-determination differed from secession, maintaining that the "(…)advocacy of the right to self-determination is very important in the fight against the abscess of nationalism in all its forms."[163] Furthermore, Lenin advanced his understanding of the principle in another article, claiming self-determination to be understood as the right to secede and to achieve independence.[164] Thus, from the very beginning, Lenin's understanding was that self-determination entailed secession.

The same ideas resurfaced in his later works and speeches, amongst which the 1916 "Theses on the Socialist Revolution and the Right of Nations to Self-Determination" is of high

[158] See *supra* chapter 1, p. 1.
[159] Cassese, *op. cit.*, p. 15.
[160] Manela, *op. cit.*, p. 43.
[161] *Ibid.*, p. 53.
[162] Mälksoo 2017, *op. cit.* pp. 4-5.
[163] V. Lenin 'The Cadets and "The Right of Nations to Self-Determination", *Proletarskaya Pravda* No.4, 11.12.1913, *Collected* Works (1977) vol.19, 525-527.
[164] V. Lenin 'National-Liberalism and the Right of Nations to Self-Determination' *Proletarskaya Pravda* No.12, 20.12.1913, *Collected Works* (1972) vol.20, pp.56-58.

importance.[165] Here, Lenin explicitly stated that "the right of nations to self-determination means only the right to independence in a political sense, the right to free, political secession from the oppressing nation."[166] In the same work, Lenin stipulated that the proletariat across the globe should base their struggle on the right to self-determination.[167] Finally, elsewhere Lenin contended that the realisation of self-determination in imperialist countries and the liberation of colonial peoples would be possible only with revolutions.[168]

To continue, already in March 1917, Lenin declared that the peace plan of the Bolsheviks would be the "(…) liberation of all colonies; the liberation of all dependent, oppressed, and non-sovereign peoples."[169] Nevertheless, given that self-determination was "the political extension of Lenin's primarily economic analysis of imperialism," the presumed liberation of the oppressed peoples would eventually contribute to the success of the socialist revolution.[170] This is crystallised in "The Declaration of the Rights of the Peoples of Russia" adopted by the Bolshevik party on 15 November 1917.[171] In this document, the Bolsheviks explicitly recognised the right to secession from Russia, nevertheless, as Mälksoo argues, the final goal was to reconstruct the Tsarist Empire based on Marxist- Leninist principles.[172]

Overall, Lenin's understanding of self-determination could be invoked in the following cases: 1) by ethnic or national groups to decide their future, 2) in the aftermath of the conflict between sovereign states for the allocation of territories to one or another power, 3) to lead the liberation of all colonial countries.[173] Nevertheless, while Lenin saw secession as a means to achieve independence, the ultimate goal was the integration of nations in a socialist world and not the independence of those nations itself.[174] Thus, after all, Lenin's idea of self-determination was based on socialism, in contrast to the Wilsonian idea of self-determination, which was based on liberal-democratic thought. Also, while for Lenin self-determination was a revolutionary principle instrumentalised against the European empires, Wilson hoped that self-determination would become a tool against revolutionary challenges to existing orders.[175]

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[165] V. Lenin, The Socialist Revolution and the Right of Nations to Self-Determination THESES, *Sbornik Sotsial-Demokrata, No. 1.*, October 1916, Collected Works,[19xx], Moscow, Volume 22, pp.143-156.
[166] *Ibid.*
[167] *Ibid.*
[168] V. Lenin. The Discussion on Self-Determination Summed Up.*Sbornik Sotsial-Demokrata* No.1, October 1916, *Collected Works* (Moscow: Progress 1974) Vol.22, pp.320-360,
[169] Manela, *op. cit.*, p. 37.
[170] Cassese., *op. cit.*, p. 15.
[171] V. Lenin, Declaration of the Rights of the People of Russia.–1 The Nation 1919, Soviet History Archive. London 2006
[172] Mälksoo 2017, *op. cit.*, p. 6.
[173] Cassese., *op. cit.*, p. 16.
[174] *Ibid*, p. 17.
[175] Manela, *op. cit.*, p. 43.

2.1.3. The Bolshevik Practice of Self-determination

When it comes to the Bolsheviks practice to self-determination, it is noteworthy that after coming to power, they started criticising the European Allies for their hypocrisy. To illustrate, Trotsky claimed that the imperial powers could not claim to be fighting for the rights of small nations in Europe while oppressing other national groups within their empires.[176] Nevertheless, while the Bolshevik criticism of the Western approach to self-determination is not unfounded and has been discussed in the previous section,[177] similar criticism is relevant regarding the Bolshevik approach to self-determination. A counter-argument to the Bolsheviks' anti-imperial criticism is that the Bolsheviks themselves were hypocritical while using self-determination as it was meant to further advance their ideological and political agenda.[178] Lenin himself had indicated that self-determination was in a subordinate position in his *Theses* where he postulated the necessity to subordinate the struggle for self-determination to that of the revolutionary struggle to achieve socialism.[179]

The contradictions of the Bolshevik anti-imperial rhetoric of self-determination and the practice are well articulated by a prominent scholar of Soviet history, Ronald Suny, who argues that the Soviet Union was "(…) the most unique empire in the twentieth century,"[180] which became an empire even though its founders had different intentions. Most importantly, Suny notes that while Lenin imagined the Soviet Union as a structure maintaining "nonexploitative relations among nations, a model for further integration of the other countries and the fragments of the European empires,"[181] in practice "the Soviet Union replicated imperialist relations,"[182] where the center had a greater power vis a vis the periphery. More specifically, this was evident in the effort to regather Russian lands "in conditions of civil war, foreign intervention, and state collapse by a relatively-centralized party and the Red Army."[183]

To continue, the Bolsheviks imagined the application of self-determination in 2 stages: 1) proclamation of independent Soviet Republics in separatist regions, 2) recognition of the representative of the subject nation by the Bolshevik government in Moscow. In other words, the process was understood as the recognition of the Bolshevik leadership of the subject nation by the Russian Bolsheviks. This is how the Soviet Russia recognised the independence of

[176] *Ibid.,* p. 38.
[177] see *supra* chapter 1, pp. 11-12.
[178] Cassese, *op. cit.*, p. 18.
[179] Lenin, October 1916, *op. cit.,* pp.143-156.
[180] R. G. Suny. The empire strikes out: Imperial Russia,'national'identity, and theories of empire. – A state of nations: Empire and nation-making in the age of Lenin and Stalin. (2001). The University of Chicago, p. 53.
[181] Suny, *op. cit.* p. 53.
[182] *Ibid.*
[183] *Ibid.*

Estonia, Latvia and Lithuania in December 1918. Nevertheless, the independence of those nations was achieved militarily. In other words, the Soviets did not easily let go of the imperial territories and did not easily grant secession based on the principle of self-determination.[184]

To illustrate, in Estonia proclaimed Bolshevik national formations faced military resistance from those nationalists who wanted self-determination in the "bourgeois fashion."[185] Estonia's war of secession was characterised by the remarkable fact that she initially fought the Red Army side by side with the Russian Whites.[186] In their act of recognition of the independence of the three Baltic states, the Soviets emphasised that these states would eventually voluntarily merge based on self-determination and of the acquisition of power by the working class.[187] Interestingly, when Estonia's independence was proclaimed on 24 February 1918, and after the Bolsheviks established the Provisional Government in November 1918, the Red Army stood ready to put an end to Estonia's new independence. While the Bolsheviks were able to set up a Moscow-controlled puppet government, the "Estonian Worker's Commune," it lasted only a few months.[188] As the following section indicates, revolutionary Russia, later crushed "(…) the freedom of the working class in particular."[189]

2.1.4. The Promise and the Practice of Self-determination in the Soviet Peace Treaties of 1920

The Soviet practice of self-determination indicates that while propagating the principle of self-determination publicly, they took a different approach in practice. This is exemplified by the history developed around the 1920-1921 Soviet Peace treaties, where self-determination was used as a basis for the recognition of the independence of certain states.[190] These treaties are significant from the perspective of international law as it was the first time that "(…) secession was *expressis verbis* recognised based on the right of peoples to self-determination."[191] As discussed, at the time of the Aaland Islands dispute self-determination did not have such status under the League of Nations.[192] Thus, the Soviets were ahead of the

[184] Mälksoo 2017, *op. cit.,* p. 8.
[185] *Ibid.*, p. 7.
[186] K. Brüggemann. Defending national sovereignty against two Russias: Estonia in the Russian Civil War, 1918–1920. – 34 Journal of Baltic Studies 2003(1), p. 23.
[187] Mälksoo 2017, *op. cit.*, p. 7.
[188] K. Brüggemann."Foreign Rule" during the Estonian War of Independence 1918–1920: The Bolshevik Experiment of the "Estonian Worker's Commune". – 37 Journal of Baltic Studies 2006(2), pp. 213-214.
[189] Brüggemann 2003, *op. cit*., p. 214.
[190] Mälksoo 2017, *op. cit*., p. 8.
[191] L. Mälksoo. Which Continuity: The Tartu Peace Tready of February 1920, the Estonian-Russian Border Treaties of 18 May 2005, and the Legal Debate about Estonia's Statue in the International Law. – 10 Juridica International 2005, p. 148.
[192] see *supra* chapter 1, p. 23.

rest of the world by including the principle in their bilateral international treaties with the Baltic states and Georgia. To illustrate, Article 2 of the Tartu Peace Treaty, signed between Soviet Russia and the Republic of Estonia on 2 February 1920 proclaimed the recognition of Estonia's Independence based on the right of peoples to self-determination, which granted Estonia the right to secession, renouncing Russia's sovereignty over Estonia's territories.[193]

It is argued that self-determination was included in these Peace Treaties only because these nations had fought for independence militarily and the Soviets had no choice but recognise it. Moreover, self-determination was used tactically to explain the loss of these territories domestically. Be it as it may, the real problem was that the Russian Bolsheviks did not uphold this standard in practice.[194] For example, throughout the whole period of Estonia's independence the Russian Bolsheviks, in cooperation with the local Bolsheviks used "legitimate, semi-legitimate, and secret underground channels" to subvert the power in Estonia"[195] Estonians, well aware of the situation, made it clear that the highest power belonged to them and did not tolerate political disloyalty towards the Estonian state. The Estonian newspapers continuously accused the Russians of "having chauvinist Russian monarchist hopes,"[196] of "lamenting their lost hegemony."[197] Everything was pointing to the direction that the Soviets did not appreciate the practice of self-determination of Estonians, which they had themselves included in the Tartu Peace treaty.

As time went by, the Soviet moves towards Estonia became more aggressive. To illustrate, on 1 December 1924 attempted to stage a coup but failed to achieve their goal. The attempts of the Soviets to subvert the power in Estonia demonstrate the hypocrisy and the tactical use of the principle of self-determination by the Bolsheviks. As Mälksoo argues in case the coup was successful Soviet Estonia "(…) would have petitioned to join the USSR – and Estonia would have maintained both 'sovereignty' and 'self-determination'; only that instead of capitalists, the workers themselves would have come to power."[198] This is the way the Soviets would advance their interests by instrumentalising the language of international law.

Nevertheless, the Soviets eventually achieved their desire of Sovietising Estonia in line with Latvia, Lithuania and Romania's Bessarabia on 23 August 1939 when they concluded the Molotov-Ribbentrop pact.[199] Most importantly, the Soviets tried quite hard to create the

[193] The Tartu Peace Treaty, Tartu 02.11.1920, e.i.f. 30.03.1920, Art. 2.
[194] Mälksoo 2017., *op. cit*. p. 10.
[195] S. P. Forgus. Soviet subversive activities in independent Estonia (1918–1940). – 23 Journal of Baltic Studies 1992(1), p. 29.
[196] K. Alenius. Under the conflicting pressures of the ideals of the era and the burdens of history: Ethnic relations in Estonia, 1918–1925. – 35 Journal of Baltic Studies 2004 (1), p. 37.
[197] *Ibid.*
[198] Mälksoo 2017, *op. cit.,* p. 15.
[199] *Ibid.,* p. 12.

appearance that the so-called reunification "(…) was entirely voluntary, an expression of the will of their peoples."[200] For example, on 22 September 1939, the Estonian Minister of Foreign Affairs, Karl Selter, left for Moscow to sign a Soviet-Estonian trade treaty. The Estonian side had no alternative but to conclude a Mutual Aid Pact authorising the Soviets a great power in Estonia. Shortly after this, the Soviet army crossed the Estonian border.[201] Estonia formally became a member of the USSR on 6 August 1940, following Estonia's petition for admission to the USSR. In the end, communism came to Estonia only when the Soviets threatened to use military force.[202]

Following the realisation of the Molotov-Ribbentrop pact, the Soviet authorities fabricated an official narrative, according to which they have liberated these states from fascism. A specific role was given to the line of the narrative of a popular revolution headed by "Zhdanov, Vyshinsky and Dekanozov (and sinister agents such as the Estonian Karl Säre)."[203] Moreover, to support this line of arguments, the Soviets pointed towards the 21 July 1940 pronouncements issued by the legislators of the Baltic states, which approved the incorporation. Nevertheless, they remained silent about the fact that this was based on "mock-elections conducted in violation of the constitutions of the Baltic States."[204] Most importantly, the Soviets refused to admit that in 1940 the Baltics states acceded the Soviet Union under the pressure of the Soviet ultimatum of "approval or annihilation."[205] Nonetheless, most Western States refused to recognise the validity of the Soviet incorporation of the Baltic States.

Going back to the fate of Georgia, things developed faster than in Estonia. Following the conclusion of the Moscow treaty in 1920, the Bolsheviks annexed Georgia with the invasion of the Red Army in February 1921.[206] With this move, the Russian Bolsheviks set aside the principle of self-determination and advanced their plans for restoring the imperial borders.[207] While Georgians established the Georgian National Liberation Movement following the incorporation of their country into the Soviet Union in December 1922, their efforts were defeated by the Bolsheviks.[208] It is worth mentioning that while the Bolshevik policy in the 1920s encouraged the policy of *korenizatsiya*, i. e. national consciousness among the

[200] *Ibid.*, p. 13.
[201] Forgus, *op. cit.*,p. 40.
[202] *Ibid.*, p. 41.
[203] D. Kirby. Incorporation: The Molotov-Ribbentrop Pact. – G. Smith (ed.).The Baltic States. London: Palgrave Macmillan 1996, p. 77.
[204] Cassese, *op. cit.*,p. 258.
[205] *Ibid.*
[206] Mälksoo 2017., *op. cit*. pp. 10-12.
[207] S. Pirani. The Russian revolution in retreat, 1920-24: Soviet workers and the new Communist elite. Routledge 2008, p. 236.
[208] T. Gudava & E. Gudava. 2. Georgia: A Historical Survey of the Georgian National Liberation Movements. – 17 Nationalities Papers 1989(2), p. 228.

nationalities, and in some cases created nations,[209] it was less advantageous "(…) for the more nationally conscious Georgians (and Armenians), who had deeply rooted national traditions and had experienced a recent period of embattled independence."[210] In the following years the regime became ever more centralised and the relationship between center and republics was one of subordination.[211]

Altogether, the Bolsheviks interpreted the practice of self-determination in light of the goals of Communism rather than the ideals of independence of nations. Their understanding of self-determination had strong propaganda and tactical elements and the practice was directed towards "restoring the borders of the Russian Empire."[212] This was exemplified by their practice of the Soviet peace treaties. The Bolsheviks saw no contradictions in their application of the right as they thought that the Russian Empire was rebuilt as a union of sovereign states where people enjoyed the right to self-determination fully.[213] The kind of thinking that the issue of self-determination was resolved in the Soviet Union was crystalised in the decolonisation period when the USSR took the lead of promoting the right on an international level.

2.2. The USSR and Self-determination in the Decolonisation Period

2.2.1. The USSR's Understanding of Self-determination upon the Decolonisation Period

The discussion on the development of self-determination in the decolonisation period provided a timeline of the evolution of self-determination in international law in general terms.[214] Nevertheless, this part of the analysis specifically focuses on the way the Soviets contributed to this process. Hence, it is important to first understand the political climate, which made the Soviet influence on the matter possible. To illustrate, the Post-WWII decolonisation period was characterised by the universal acceptance of nation-statehood as the alternative to imperialism**.**[215] Besides, serious issues of race and identity reappeared in the southern and central African regions in the late 1940s.[216] Meanwhile, by the end of WWII, the role of the USSR was getting stronger internationally and it had great control of Eastern European countries. What is more, with the rise of the bi-polar system in international relations, the voice

[209] Suny, *op. cit.*, p. 56.
[210] S. Jones, The establishment of Soviet power in Transcaucasia: The case of Georgia 1921–1928. – 40 Soviet Studies 1988(4), p. 634.
[211] Suny, *op. cit.*, p. 55.
[212] Mälksoo 2017, *op. cit.*, p. 16.
[213] *Ibid.*, p. 15.
[214] see *supra* chapter 1, pp. 10-17.
[215] M. Collins. Decolonisation and the "Federal Moment". – 24 Diplomacy & Statecraft 2013(1), p. 21.
[216] *Ibid.*, p. 22.

of the Soviets mattered more than ever before. Furthermore, the politics at the time was defined by the growth of mass character with the participation of "110 million people from 72 states."[217] Besides, at the time the UN in contrast to the League of Nations was more resourceful and had more effective instruments at hand and was willing "(…) to create on the basis of new principles (human rights, self-determination, sovereign equality of states) a powerful and effective international legal system."[218]

Another important factor explaining the Soviet confidence in promoting the right to self-determination internationally was that During the Cold War, the USSR saw itself having fulfilled the self-determination aspirations of numerous peoples with autonomic units in a federal structure and with reforms and promotion of national cultures in the USSR, and perceived self-determination applicable to other states only.[219] Nevertheless, the reality was different as "in the Western liberal sense (emphasizing democracy and human rights) there was no 'internal self-determination' within the USSR either, presumably not even for the Russian people."[220] Despite this, the USSR started promoting self-determination, as a tool to further advance their policy goals, becoming the original instigator of decolonisation.[221]

Overall, it is under such political climate and self-assessment of the internal reality that the Soviets gained confidence in their power to advance the principle of self-determination internationally in cooperation with the socialist states and Third world countries, having a major influence on international law.[222] When an article on self-determination was included in the UN Charter it was done based on the proposal of the Soviet delegation.[223] Furthermore, the role of the Soviets was also decisive in the creation of the 1960 UNGA Declaration on the Granting of Independence to Colonial Countries and Peoples, which entailed the acceptance of self-determination as a right in the colonial context.[224] This culminated in 1966, "when self-determination was codified as a qualified right under the 1966 UN Covenants."[225]

[217] Bowring, *op. cit*, p. 28.
[218] *Ibid*.
[219] Lundstedt, *op. cit.* pp. 197-199.
[220] Mälksoo 2017, *op. cit.*, p, 17.
[221] Tlundstedt, *op. cit.*, pp. 197-199
[222] Cassese, *op. cit.*, p. 19.
[223] Lundstedt, *op. cit.*, p. 202.
[224] *Ibid.*
[225] Hannum, *op. cit*., p. 23.

2.2.2. The Soviet Union and the Debates on Self-determination in the 1966 Covenants

The preceding analysis indicated that following WWII the Soviets applied different legal and political norms domestically and internationally.[226] The USSR objected to any criticism similar to the anti-imperial and anti-colonial criticism directed towards the "West European states and their former colonial empires.[227] In fact, the USSR insisted that self-determination had already been expressed in the USSR, for itself prioritising state sovereignty and territorial integrity.[228] Meanwhile, the West was not ready to accept the right to secession, however, eventually acknowledged its possibility in the colonial context.[229] The Soviets suggested adding a provision on self-determination to the Covenant in the Third Committee of the UNGA already in 1950. They were primarily concerned by the right of self-determination of colonial peoples, the secondary concern was the right of minorities. The proposal was rejected and Afghanistan and Saudi Arabia took the initiative in their hands by introducing a draft resolution suggesting the Commission on Human Rights to study the subject and take measures accordingly. Nevertheless, the Saudis and other third world countries focused on colonial peoples, whereas, Afghanistan and other Asian, African and Latin American states insisted that the right should also apply to peoples oppressed by despotic governments.[230]

Under these circumstances, the Soviet Union continued to insist that self-determination should be limited to colonial peoples only. Hence, they drafted new proposals, the first one addressed to the GA in 1951 and the second one dealt with in the Commission on Human Rights in 1952. This was endorsed by socialist states and the majority of Third World countries. Meanwhile, the Western states particularly the United Kingdom, France, Belgium opposed any provision on self-determination. These states were pursuing their colonial interests but tried to justify their opposition by relying on other arguments such as that self-determination is merely a political principle rather than a legal right and did not fit into the Covenant as it was a collective right. One of the gravest concerns including the right in the Covenants was about the way the possible inclusion of the right in the Covenant would affect the territorial integrity of states. Most importantly, they stressed that if included the right should apply to the people of sovereign states suppressed by their own governments.[231]

[226] see *supra* chapter 2, p. 39.
[227] Mälksoo 2017, *op. cit.*, p. 16.
[228] *Ibid.*, p. 16.
[229] H. Quane. The United Nations and the evolving right to self-determination. – 47 International & Comparative Law Quarterly 1998(3), p. 543.
[230] Cassese, *op. cit.*, p. 48.
[231] *Ibid.*, p. 51.

ICCPR and ICESCR were adopted by the UNGA in 1966 and have since been ratified by the overwhelming majority of UN Member States.[232] However, as discussed, the context was decolonisation and the Covenants allowed secession for colonies only and internal self-determination to minorities.[233] Following the inclusion of self-determination in the 1966 documents, the UNGA ensured the recognition of the national liberation movements "as the "sole legitimate representatives" of the relevant peoples."[234] Nevertheless, as Bowring argues, it was not the result of the Soviet propaganda only but "the logic of the new international law developed through the efforts of the USSR and its allies."[235]

Meanwhile, the history that followed indicated that the Soviets once again challenged their approach to self-determination themselves. It all started with a political crisis in Czechoslovakia, which developed into a "struggle for a more pluralistic concept of socialism."[236] The developments in Czechoslovakia were seen as problematic and dangerous by the Soviets.[237] Henceforth, the Communist leaders met to discuss the situation and the possible solution. The proposals of the Communist leaders were eventually accepted, following "a studiously prolonged Warsaw Pact exercise on the Czechoslovak territory, and Russian troop maneuvers near the Czech border," [238]. Nevertheless, a few weeks later, the agreement was broken by the military invasion of Czechoslovakia.[239] The Warsaw Pact invaders directed "highly intense coercion against the territorial integrity and political independence of Czechoslovakia."[240] As a justification, the Soviets produced an unsigned document implying that Czech leaders "invited" the Warsaw Pact forces to enter Czechoslovakia."[241] This was indeed not the same as the right of self-determination in the Western liberal sense, however, "(…) the Soviets did not want to see the irony and the contradiction in their policies."[242]

When it comes to the the Soviet legal scholars, they either paid no attention to the importance of self-determination or replicated the official stance portraying the Soviets as the liberators of colonial peoples. For example, while discussing the attitude of some of the most famous Soviet scholars, Bowring claims that Pashukanis did not recognise the significance of

[232] Quane, *op. cit.*, p. 558.
[233] see *supra* chapter 1, p. 14.
[234] Bowring, *op. cit.,* p. 32.
[235] *Ibid.*, p. 31.
[236] J. Valenta, The bureaucratic politics paradigm and the Soviet invasion of Czechoslovakia. – 94 Political Science Quarterly 1979 (1), p. 59.
[237] *Ibid.*
[238] R. M. Goodman, The Invasion of Czechoslovakia: 1968. –The International Lawyer 1969, p. 48.
[239] D. W. Paul. Soviet foreign policy and the invasion of Czechoslovakia: a theory and a case study. – 15 International Studies Quarterly, 1971(2), p. 178
[240] Goodman, *op. cit.*, p. 57.
[241] *Ibid.*, p. 44.
[242] Mälksoo 2017, *op. cit.*, p. 15.

self-determination for international law.[243] Meanwhile, he concludes that Tunkin pointed the great role of the Soviets for liberating the colonies with the advancement of the right of peoples to self-determination in the decolonisation period, later linking "(…) the "struggle for international peace and security" with the "struggle for the freedom and independence of peoples."[244] Nevertheless, following the collapse of the Soviet Union the situation changed as some scholars such as Blischenco started suggesting to rethink the formation of the history of conotemporary international law and that of self-determination not within the frames of the 1917 October Revolution but the French bourgeois revolution.[245]

Thus, by the end of the decolonisation period, the Soviets and the Western countries had different understandings of the right of peoples to self-determination. The Soviet use of self-determination remained situational and conflicting.[246] The key difference between the Soviet and Western approaches to self-determination was first of all ideological. While the Soviets acknowledged self-determination and even promoted it as allowing secession way before anyone else in international law, their end goal was not the independence of national groups, but rather the goals of communism. While in theory, the Soviets allowed secession for the highest levels of the SSRs, this was limited in reality as, in practice, the Soviets took all efforts to restore the borders of the Russian Empire.[247] The Soviets used self-determination instrumentally and hypocritically as a means to achieve their foreign policy goals. What is more, they applied double-standards at home and abroad, contending that the issue of self-determination was resolved in their territory. The paradox and hypocrisy of the Soviet thinking were exemplified by their support for the decolonisation of the (West) European colonies and lack of self-reflection and self-criticism. While the Soviets were convinced that the issue of self-determination was resolved in their territories and started propagating the liberation of the West European Colonies the practice had indicated that the actual implementation of self-determination was impossible in the Soviet Union.[248]

[243] Bowring, *op. cit*, p. 26.
[244] *Ibid.*, pp. 30-32.
[245] *Ibid.*, p. 36.
[246] Mälksoo 2017, *op. cit.*, p. 17.
[247] *Ibid.*, p. 16.
[248] Lundstedt, *op. cit.*, p. 202.

3. TOWARDS THE RUSSIAN APPROACH TO THE RIGHT OF PEOPLES TO SELF-DETERMINATION IN CRIMEA

3.1. The Soviet Legal Thinking and Russia

While talking about the link between the Soviet and Russian approaches to self-determination one may wonder whether it is justified to search for answers regarding the contradictions found in Russia's current understanding of the right to self-determination in the Soviet past. Answering this question is essential, considering that following the collapse of the Soviet Union, Russia resorted to capitalism, presumably leaving behind the Soviet ideology based on Marxism. Hence, one must first find out whether or not during the transition period Russia completely left behind the Soviet legal thinking or no, and if the answer is in the negative, identify the ways the Soviet ideology influenced the Russian legal doctrine. This will reinstate the validity and the importance of the historical-legal approach adopted by this study.

One of the most important issues during the transition of Russia from the Soviet Union was the question of state succession and continuity. After the collapse of the Soviet Union, Russia's President Yeltsin proposed the doctrine of state continuity, among other things claiming that it would continue the membership of the Soviet Union in the UN.[249] Despite some concerns and disagreements, Russia's claim to membership was accepted eventually. [250] While the legal doctrine of state continuity was problematic, the P5 members did not challenge Russia's proposal as they did not want to open the Pandora's Box of the SC.[251] Despite the legal debates revolved around Russia's proposed doctrine of state continuity, the main point is that by invoking it Russia pledged to maintain legal continuity with the Soviet Union inheriting the rights and obligations of the Soviet Union.[252] What is more, it retained the Soviet federal formula and the understanding of self-determination. At the time Russia thought of the issue of self-determination to be solved within the federation and was only applicable to other states.[253]

Nevertheless, the transition of Russia from the USSR to the RF in 1990 was accompanied by the declaration of sovereignty and the precedence of Russian law over that of the USSR.[254] In other words, while Russia became the legal successor of the Soviet Union, or even maintained state continuity with it in terms of international law, it went on a capitalist path

[249] M. P. Scharf. Musical chairs: The dissolution of states and membership in the United Nations. – 28 Cornell Int'l LJ 1995(29), pp. 46-48.
[250] *Ibid.*
[251] Chesterman *et al*, *op. cit.*, p. 215
[252] W. E. Butler. Foreign Policy Discources as Part of Understanding Russia and International Law. – P. S. Morris(ed.). Russian Discourses on International Law. Routledge 2018, p. 177.
[253] Lundstedt, *op. cit.*, p. 197.
[254] F. Feldbrugge. Russia and the Rule of Law (eds.) K. Malfliet, S. Parmetier, Russia and the Council of Europe: 10 years after. Palgrave Macmilan 2010, p. 58.

abandoning the Soviet ideology in favour of the capitalist one.[255] As a result, the end of the Cold War signaled the end of the bipolar system and capitalism remained absolute since there was no opposing ideology such as communism.[256] This trend was also reflected in the 1993 Russian Constitution,[257] which signified "(…) a complete departure from the Communist dictatorship and a passage to democratic government."[258] Nonetheless, as history illustrated, the assumptions that Russia abandoned the Soviet past overnight, completely freeing herself from Marxist ideology, were hasty. While Russia's transition was very smooth, the Soviet past followed it long after. As Isaeva contends, it would not be correct to confidently claim that after the collapse of the Soviet Union and the ousting of communist ideology the post-Soviet space completely adopted the western model of liberalism.[259]

The arguments that the ghost of the Soviet legal thinking could not abandon the post-Soviet space immediately are based on the uniqueness and complexities of Russia's history.[260] The uniqueness of history is indeed an important factor, given that the legitimacy and the complexity of Russia's statehood are found in its history of succession without a break from the Kievan Rusan empire.[261] When it comes to the Soviet past specifically, Feldbrugge argues: "(…) the fact that Stalin's Russia was victorious in WWII, made the Stalinist past less easily digestible."[262] Some other factors, which define the distinctiveness of Russia's history and are influential on Russia's current legal thinking are well articulated by Mälksoo:

> "In Russia's case, the country's historically unique on and off and periodically hostile relationship with Europe and nowadays the West, its historically established tendency of authoritarian government, relative weakness of the rule of law inside the country, and the utmost desire to preserve the territorial integrity of Russia as the world's largest territorial state have decisively shaped post-Soviet Russia's approaches to international law."[263]

Another point which makes the historical perspective valid is that the constant line throughout the long period of Russia's history is the construction of Russia as a Great Power.[264] Besides, Putin's Russia has seen a "(…) come-back of arguments on historical, cultural, and

[255] Tolstykh 2019, *op. cit.,* p. 10.
[256] Isaeva, *op. cit.,* p. 38.
[257] Constitution of the Russian Federation, Moscow e.i.f. 25.12.1993.
[258] G. M. Danilenko.The New Russian Constitution and International Law. – 88 American Journal of International Law 1994(3), p. 451.
[259] Isaeva, *op. cit.,* p. 39.
[260] *Ibid.,* p. 43.
[261] Feldbrugge, *op. cit.,* p. 60.
[262] *Ibid.*
[263] Mälksoo 2015, *op. cit.,* p. 3.
[264] *Ibid.,* p. 9.

civilizational distinctiveness in debates about international law."[265] Thus, it is evident that Russia's history and specifically the transition from the Soviet Union had serious consequences for Russia's legal thinking in general and the further development of Russia's approach to the right of peoples to self-determination in particular. To name a few, due to the conflict of the past and present ideologies, internal cotradictions accompanied the Russian theory of international law.[266] What is more, upon the transition from the Soviet Union, the new western ideas and concepts were not either simplified or distorted, resulting in the lack of a high level of legal rhetoric. Most importantly, the Russian doctrine did not participate in the Western discourse as an equal member, thus not influenced it.[267] These observations also play out in the historical analysis of Russia's approach to the right of peoples to self-determination.

Another point, which makes the analysis of the right of peoples to self-determination from a historical-legal perspective important is that the neglect of fundamental theoretical issues related to the history of international law and self-determination is one of the biggest problems of the current Russian legal doctrine. These topics are not subjected to serious analysis resulting in the formation of scholasticism and false theories.[268] Hence, it can be inferred that the lack of new discussions, in line with the lack of challenge and self-criticism towards Russia's past thinking on the matter might have as well reinstated the Soviet legal thinking, In other words, the contradictions found in Russia's current legal approach to the right of peoples to self-determination may be a result of the Soviet thinking disguised under the Western or universal approach. A similar point is made by Mälksoo who, while talking about the Soviet approach to self-determination claims: "it seems that the flexible approach to key legal categories has not disappeared from post-Soviet Russia either."[269] Thus, it is not only valid to analyse the Russian approaches to self-determination from the perspective of the Soviet approach, but also necessary, given the lack of critical legal scholarship on the matter.

All in all, the conclusion is that Russian has a unique understanding of self-determination "which is not exactly western in its essence." Most importantly, the Soviet legal doctrine, "goes to the heart of the peculiarities of modern Russian legal thinking."[270] Altogether, one must not neglect or undervalue the role of Soviet thinking while discussing Russia's understanding as history only adds to the complete picture of the study.[271] As Mälksoo argues, the study of contemporary Russian approaches to international law requires a meaningful points

[265] *Ibid,*, p. 10.
[266] Tolstykh 2019, *op. cit.*, p. 11.
[267] *Ibid.*
[268] Tolstykh 2019, *op. cit.*,p. 15.
[269] Mälksoo 2015, *op. cit.*, p. 7.
[270] Isaeva, *op. cit.*, p. 44.
[271] *Ibid.*, p. 44.

of comparison, hence, the comparison of the Russian Federation to its predecessor, the USSR is justified.[272]

3.2. Russia's Approach to Self-determination before the 1999 NATO intervention to Kosovo

To understand the development of Russian approaches to self-determination following the annexation of Crimea, one must inevitably look at the situation before Crimea, specifically before the escalation of the conflict in Kosovo. Hence, the discussion in this part focuses on the key trends and the foreign policy imperatives, which shaped Russia's contradictory narratives on the secession/right to self-determination, marking the trend of the relativisation and politicisation of international law.[273] The general picture is that throughout the 1991-2013 period Russia strongly opposed the interpretation of self-determination outside the colonial context.[274] In other words, Russia did not approve unilateral secession outside the decolonisation context. Russia's approach in this period and following Crimea has been shaped by several foreign policy factors such as ethnofederalism, Russian diaspora, the sphere of influence and a policy of passportisation.[275]

In the 1990s Russia's main concern was the secessionist aspirations of its nationalities, Chechnya in particular, and this concern was reflected in its domestic jurisprudence.[276] Russia tried to maintain its territories by the 1992 Federal Treaty and later 1993 Constitution, the latter took a very strong stance against unilateral secession, emphasising on the importance of territorial integrity of states.[277] Despite these efforts, Chechnya and Tatarstan attempted secession. While Russia was able to conclude a Treaty of a peaceful settlement with Tatarstan, the situation with Chechnya ended with two bloody wars and eventually, Russia re-established its control on the ground.[278] At this period Russia's position was visible in its periodic reports submitted to the Human Rights Committee in 1995, 2002, 2008 and 2013 respectively.[279] The analysis of these reports indicates that Russia understood self-determination outside the decolonisation context to be allowed only internally. Eventually, the Russian Constitutional

[272] Mälksoo 2015, *op. cit.*, p. 12.
[273] Rotaru & M. Troncotă, *op. cit.*, p. 4.
[274] Christakis, *op. cit.*, p. 1.
[275] Lundstedt, *op. cit.*, p. 205.
[276] Borgen 2015, *op. cit.*, p. 245.
[277] Constitution of Russia 1993, *op. cit.*
[278] Lundstedt, *op. cit.*, p. 206.
[279] HRC, Fourth periodic report of Russia, CCPR/C/84/Add.2, 22.02.1995; HRC, Fifth periodic report of Russia, CCPR/C/RUS/6, 9.12.2002; HRC, Sixth periodic report of Russia, CCPR/C/RUS/6, 5.02.2008; HRC, Seventh periodic report of Russia, CCPR/C/RUS/7, 29.01.2013.

Court reinstated this position in its two major decisions concerning Tatarstan and Chechnya concluding against the possibility of secession.[280]

Furthermore, going back to the other factors, which shaped Russia's approach to self-determination, one sees that following the collapse of the Soviet Union, over 25 million Russians became a minority in the former Soviet countries, specifically in the autonomous Units and SSRs, thus resulting in a more pro-Russian political elite.[281] Hence, following the collapse of the Soviet Union one of Russia's key foreign policy goals was to become the defender of the compatriots abroad.[282] To achieve the policy objectives, Moscow often resorted to the provisions of domestic and international law. In this context, Russia assumed the existence of serious security threats directed against the Russian-speaking people, and presumably served to legitimise Russia's military intervention.[283] Apart from this, Russia developed the so-called concept of the Russian Sphere of Influence. Specifically, the idea was introduced in 1992 and implied that Russia will not leave the territories that have been under its influence for centuries. The discourse on the sphere of influence transformed into one of interest in the 2000s, when for example, Putin called CIS the sphere of Russia's interest.[284] Last but not least, Russia's policy of passportisation, has also contributed to Russia's complicated relations with the former SSRs. Russia's liberal law on Nationality, allowed the citizens of the former USSR to apply for citizenship, which was rejected by countries such as Ukraine, Georgia and Moldova.[285]

Nevertheless, even though Russia's foreign policy agenda created the focal points for Russia's expansionist policies, causing some tensions in the region, Russia did not take any direct steps against the territorial integrity of these states.[286] While Russia contributed to the regional conflicts, it did not recognise secessionist claims to independence in the region, remaining committed to the inherited borders.[287] At this period Russia understood people as a population as a whole, rather than the separatist unit.[288] Russia's commitment to the territorial integrity of states was emphasised in the 1995 "Memorandum on the maintenance of peace and stability in the CIS" which was submitted by Russia to the Heads of State of the Commonwealth of Independent States.[289] In this document, the CIS States declared to take measures against

[280] Christakis, *op. cit.,* p. 9.
[281] Lundstedt, *op. cit.,* p. 206.
[282] Rotaru & Troncotă, *op. cit.,* p. 3.
[283] *Ibid.*
[284] Lundstedt, *op. cit.,* p. 206.
[285] *Ibid.,* p. 207.
[286] *Ibid.*
[287] *Ibid.,* p. 208.
[288] *Ibid.,*
[289] Christakis, *op. cit.,* p. 10.

separatism.[290] Nevertheless, the situation changed throughout time in line with major geopolitical changes in the region, which is discussed in the following section.

3.3. Russia's Approach to Self-determination after the 1999 NATO Intervention to Kosovo

The 1990s and early 2000s were significant for interesting geopolitical trends both in the West and Russia. To be specific, the period was signified for institution building and expansion, especially in Europe. The EU expansion continued by the addition of new members from Eastern Europe, moreover, NATO expanded by admitting former members of the Warsaw Pact.[291] While the West was optimistic that Russia would become a member one day, Russia perceived this as a threat and Russia's foreign policy narratives were dominated by the frustration of the expansion of NATO and the EU. This theme was reiterated in the statements of state officials.[292] As for Russia, the country's internal situation was signified by the transition from the rule of Yeltsin to the rule of Putin. Yeltsin's Russia had become an internationally insignificant player and domestically it turned into a "(…) rudeless and powerless conglomerate of completing clans and regions, with the president as the only fixed point."[293] Given that Yeltsin's popularity was dwindling significantly and there was a popular demand for order and predictability, "Putin gave the nation what they wanted."[294]

It is in light of these geopolitical developments that the secessionist conflict escalated in Kosovo in 1999, which was followed by the NATO intervention. Specifically, the situation deteriorated following the 1998 launch of an offensive by the Kosovo Liberation Army.[295] After several massacres of ethnic Albanian civilians and the failure to reach an agreement at Rambouillet, NATO intervened without the UNSC authorisation.[296] NATO tried to justify the intervention in humanitarian terms and the UNSC resolution 1244 of 10 June 1999, authorised the provisional government. The status talks were carried out by the UN Special Envoy Martti Ahtisaari, who, however, avoided mentioning "independence" or "territorial integrity of

[290] *Ibid.*
[291] Borgen 2015, *op. cit.,* p. 264.
[292] *Ibid.,* p. 265.
[293] Feldbrugge, *op. cit.,* p. 61.
[294] *Ibid.,* p. 62.
[295] A. J. Kuperman. The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans. –52 International Studies Quarterly 2008(1).
[296] V. Pavlakovic, and S. P. Ramet. Albanian and Serb Rivalry in Kosovo: Realist and Universalist Perspectives on Sovereignty. –T. Bahcheli et al (eds.). De Facto States: The Quest for Sovereignty. London: Routledge. 2004, pp. 86–88

Serbia."[297] Following the failure of negotiations, Kosovo declared independence unilaterally on 17 February 2008.[298] The Declaration relied on remedial secession and earned sovereignty schemes, thus providing guidelines for the recognition of Kosovo.[299] Eventually, many countries recognised Kosovo relying specifically on the "Earned Sovereignty" scheme.[300]

The NATO intervention in Yugoslavia triggered the most alarming turn in Russian–Western relations since the end of the Cold War, as "Russia and NATO found themselves on opposite sides of an armed conflict."[301] Following Kosovo's declaration of independence, in 2008, Russian Foreign Minister Lavrov called Kosovo's potential separation from Serbia a subversion of all the foundations of international law. In Russia's view, even action by the UNSC could not legalise secession against the wishes of the pre-existing State.[302] In 2010 Serbia filed a request at the UN seeking the opinion of the *ICJ*, nevertheless, the *ICJ* decision caused dissatisfaction as the court concluded that the act of declaration of Kosovo's independence did not infringe the provisions of international law.[303] The opinion of *ICJ* has had profound relevance for other states including Russia.[304] Given Russia's strong relations with Serbia and the fears over similar interpretations in the case of Chechnya, Russia openly criticised the *ICJ's* opinion, refusing to recognise the independence of Kosovo.[305] Hence, Russia's approach at the time was that unilateral secession was not allowed outside the decolonisation context. In its written submission to the *ICJ* in the *Kosovo* proceedings, Russia interpreted the Safeguard Clause of the Friendly Relations Declaration as such:

> "the Russian Federation is of the view that the primary purpose of the "safeguard clause" is to serve as a guarantee of territorial integrity of States. It is also true that the clause may be construed as authorizing secession under certain conditions. However, those conditions should be limited to truly extreme circumstances, such as an outright armed attack by the parent State, threatening the very existence of the people in question.[306]

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[297] M. König. The Effects of the Kosovo Status Negotiations on the Relationship Between Russia and the EU and on the De Facto States in the Post-Soviet Space'. – OSCE Yearbook. Baden-Baden: Nomos 2008, pp. 37–50.
[298] Kosovo Declaration of Independence, Kosovo 17.02. 2008
[299] G. Bolton and G. Visoka. Recognizing Kosovo's independence; Remedial Secession or Earned Sovereignty? – 11 SEESOX Occasion Paper 2010 (10), pp. 1-24.
[300] S. Poghosyan. The politics of recognition: Exploring the arguments behind the recognition of Kosovo: MA thesis. University of Tartu 2018.
[301] O. Antonenko. Russia, NATO and European security after Kosovo. –*41Survival* 1999(4),p. 124.
[302] Borgen 2015, *op. cit.*, p. 246.
[303] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion). I.C.J. 22.07.2010
[304] H. Jamar, and M. Vigness, Applying kosovo: Looking to russia, china, spain and beyond after the international court of justice opinion on unilateral declarations of independence. –11 German Law Journal, 2010(7-8), p. 913.
[305] *Ibid.*, pp. 916-917.
[306] Borgen 2015, *op. cit.*, p. 245.

Here the main take is that for the first time Russia refered to the argument of remedial secession. Even though Russia did not accept the possibility of remedial secession for Kosovo, it did imply the possibility of secession under very strict circumstances in general.[307] What is more, following Russia's invasion of Georgia, there was a significant shift from arguments based on territorial integrity to those related to the protection of co-nationals or co-ethnics.[308] Russia formally recognised the independence of South Ossetia and Abkhazia on 26 August 2008. While the formal declaration mainly referred to political motives, it also contained legal arguments referring to international instruments on self-determination.[309] Nevertheless, the most significant moment was that Russia invoked remedial secession in support of the recognition of Abkhazia and South Ossetia.[310] For Russia, it seemed logical that the events in Kosovo would eventually lead to similar scenarios in these secessionist entities.[311]

All in all, following Kosovo's declaration of independence, Russia's stance on self-determination and secession changed dramatically.[312] While before 2008 Russia understood self-determination outside the decolonisation to be possible only internally, excluding the possibility of secession, however, after Kosovo declared independence, Russia shifted her long consistent narrative. In light of the events in Georgia and later Ukraine, Russia targeted the Soviet autonomous subunits and started linking remedial secession to referendums and the will of the people.[313]

3.4. The 2014 Annexation of Crimea: Background of the Case

The annexation of Crimea in 2014 followed a series of events, which Russia perceived as a threat directed against her positions in the so-called sphere of influence. Specifically, Ukraine's attempt to sign an Association Agreement with the EU was anything but acceptable to Russia. Ukraine was supposed to sign the Agreement with the EU in November 2013. Nevertheless, Russia warned that in such a case she would support "(…) the partitioning of Ukraine to protect ethnic Russians residing there."[314] Moscow believed that inciting a dispute framed as one of self-determination would hinder Ukraine's European integration.[315]

[307] *Ibid.*
[308] *Ibid.*, p. 246.
[309] C. Ryngaert & S. Sobrie. Recognition of states: International law or realpolitik? The practice of recognition in the wake of Kosovo, South Ossetia, and Abkhazia. – *24 Leiden Journal of International Law* 2011(2), p. 481.
[310] Borgen 2015, *op. cit.*, p. 245.
[311] Jamar & Vigness, *op. cit.*, p. 918.
[312] Christakis, *op, cit.*, p. 10.
[313] Lundstedt, *op. cit.*, pp. 197-199
[314] Borgen. 2015, *op. cit.*, p. 265.
[315] *Ibid.*

Russia annexed Crimea by a municipal law in March 2014, several events followed this act such as the armed intervention of Russian forces by the so-called "little green men,"[316] a referendum, and a declaration of independence in Crimea.[317] For the referendum two questions were presented: 1) Do you support the reunification of Crimea with Russia as a subject of the Russian Federation?; 2) Do you support the restoration of the Constitution of the Republic of Crimea of 1992 and the status of Crimea as a part of Ukraine?[318] Russia made sure that there are no obstacles in the path of the referendum by vetoing a draft UNSC Resolution which was aimed at declaring the referendum illegal.[319] Thus, the referendum went as planned and according to the officially reported results, 96.77 percent voted for the first option.[320]

To continue, Ukraine acted accordingly. To be specific, the acting president of the country suspended the Crimean decree that had called the referendum and later submitted a question to the Constitutional Court of Ukraine on the legality of the decree. The Court held that the territorial change would be possible only under an all-Ukrainian referendum and that only the parliament of Ukraine had the authority to call such a referendum. Consequently, the Constitutional Court mandated that the Crimean authorities repeal the referendum decree. Thus, the Crimea case revolved around the complexities of violations of domestic and international legal norms. Despite this, following the referendum, Russia's President Putin signed an executive order to recognise Crimea. The next step was informing the relevant bodies that local Crimean institutions had proposed joining the RF. This was followed by the signature of an agreement regarding the incorportation of the Republic of Crimea into the RF.[321]

The reaction of the international community was expressed in the announcement of many states of not recognising the Crimean independence referendum or subsequent annexation. The United States made its views known in multiple forums and countries such as France, the United Kingdom and Germany acted similarly. Moreover, Japan invoked "the municipal illegality of the referendum and the premature character of Russia's recognition of Crimea's putative independence and suggested that changes to the territorial status quo brought about by force are inadmissible."[322] Still, other states with outstanding territorial disputes or secessionist movements were particularly concerned to reject the putative act of

[316] S. Reeves & D. A. Wallace.The Combatant Status of the'Little Green Men'and Other Participants in the Ukraine Conflict. –91International Law Studies 2015,p. 393.
[317] T. D. Grant. Annexation of Crimea. – 109 The American Journal of International Law 2015(1), p. 68.
[318] *Ibid.*, p. 69.
[319] J.Vidmar.The Annexation of Crimea and the Boundaries of the Will of the People. – 16 German L.J 2015, p. 365.
[320] Grant, *op. cit.*, p. 69.
[321] *Ibid.*, p. 71.
[322] *Ibid.*, p. 88.

independence.[323] Overall, the main stakeholders constructed their legal positions differently: While the West uses the idea of human rights sovereignty, Russia resorts to the idea of the general will.[324]

Following this, Russia embarked on legitimising Crimea's cause for self-determination, which was a difficult task, given that the annexation of Crimea contradicted "(…) everything that has been written in Russia over the last twenty years."[325] Nevertheless, Russia embarked on this task with full confidence. The general line of Russia's argumentation, which is later repeated on different occasions, is found in the 18 March 2014 address of President Putin in the Kremlin. In this speech, among other things, Putin reinstated the respect for the norms of international law, made references to the history of Crimea, emphasised the importance of Russia's sovereignty and instrumentalises the Kosovo precedent for Crimea.[326] Thus, Putin spelled out Russia's current approach to self-determination putting forward legal and extra legal-arguments. Overall, Russia tried to instrumentalise the language of international law to justify the annexation of Crimea.

Nevertheless, whil the state officials embarked on the interpretation of international law actively, the legal scholars remained relatively passive.[327]According to several studies carried out on the matter, on the occasion of discussing the subject, Russian legal academics overwhelmingly repeated Russia's official line of reasoning, mainly mirroring the arguments used by President Putin. For example, a conference was held after the annexation of Crimea, where Russian legal scholars presented their position on self-determination. According to Moiseienko, amongst these scholars, Chernichenko invoked the arguments related to Crimea's history.[328] Furthermore, other senior scholars invoked the coup in Kiyev, the violations of the human rights of ethnic Russians by Ukraine, the history of Crimea, the Kosovo case as grounds justifying Crimea's right to self-determination and argued that the population of Crimea constituted a separate "nation".[329]

Another document produced by Russian experts in international law was an appeal to International Law Association, which was headed by the President of the Russian Association

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[323] *Ibid.*

[324] V. Tolstykh. Three Ideas of Self-Determination in International Law and the Reunification of Crimea with Russia. – 75 ZaöRV/HJIL 2015, p. 138.

[325] L. Mälksoo L. Crimea and (the Lack of) Continuity in Russian Approaches to International Law, EJIL: Talk! Blog of the European Journal of International Law 28.03.2014. Accessible: https://cutt.ly/Yt4OYvc (25.02.2020).

[326] Anonymous. Obrashhenie Prezidenta Rossijskoj Federacii. Oficial'nye setevye resursy Prezidenta Rossii, 18.03.2014 (The Address of the President of the Russian Federation. Official Internet Resources of the President of Russia. Accessible: https://cutt.ly/at8CG8E (10.02.2020).

[327] A. Moiseienko. Guest Post: What do Russian Lawyers Say about Crimea? OpinioJuris 29.04.2014. Accessible: https://cutt.ly/Vydwhop (02.02.2020).

[328] Borgen 2015, *op. cit.*, p. 256.

[329] M. Issaeva. Does "Russian international law" have an international academic future? EJIL: Talk! Blog of the European Journal of International Law 21.10.2015. Accessible: https://cutt.ly/xydqRPJ (02.02.2020).

of International Law.[330] The document, among other things, tried to justify Russia's annexation of Crimea in line with an argumentation narrative found in the official statements. The arguments presented in the document resonateed with Russia's official stance and presented the following points to justify the annexation of Crimea: 1) the support of the West for Ukraine's military coup, 2) the dangers arising from Ukraine's new government, 3) the respect of the rights of ethnic Russians as a precondition of political and legal stability, 4) the Kosovo Precedent as a ground authorising self-determination for Crimea.[331]

Furthermore, while Moiseenko discusses also several instances, where Russian legal scholars of younger generation, such as Davletbaev and Isaeva chose to contradict Russia's official line of reasoning in case of Crimea, he still notes that such critical approach is only marginal and does not present the mainstream of the Russian approaches regarding the annexation of Crimea.[332] Hence, the following section engages in an in-depth discussion of the arguments put forward by Russia's key high-ranking officials from a critical legal point of view, simultaneously trying to find analogies with the Soviet approach to self-determination.

3.5. Critical Analysis of Russia's Arguments on Crimea's Right to Self-determination

3.5.1. Overview of the Findings

As discussed previously, the analysis of Russia's official justification of the annexation of Crimea was carried out with the help of QCA method, following the steps outlined by Schreier.[333] Overall, 51 official documents were analysed, which included both primary and secondary sources mainly published on the official website of the President and MFA of the RF. The analysis focused on the most relevant speeches and interviews on the justification of the Crimea case throughout the whole period of 2014-2020. The statements present the arguments of President Putin, Minister of Foreign Affairs Lavrov and several Russia's ambassadors. The general picture of the analysis in line with explanation of the meaning of each theme and samples, is presented in a sample coding frame and reflects the dominant themes, which were repeated across the statements at least 10 times. The unit of the analysis, counted as a frequency, was thematic and included both sentences and paragraphs.[334]

[330] Moiseienko, *op. cit.*
[331] A. Kapustin. Circular letter to the Executive Council of the International Law Association, 2014.
[332] Moiseienko, *op. cit.*
[333] M. Schreier. Qualitative Content Analysis. — ed. U. Flick (ed.). The SAGE Handbook of Qualitative Data Analysis. London: SAGE Publications Ltd, 2014. pp. 1-18.
[334] see *Annex 1*, pp. 85-86.

All in all, the analysis identified that Russia's justification narratives included both legal and non-legal arguments. According to the code frequencies, the dominant themes are as follows: 1) Arguments Related to Self-Determination and Secession: Referendum, Ukraine's Violations of Human Rights, Kosovo Precedent, Self-determination; 2) Other Arguments: Political Crisis in Ukraine, Crimea after 2014, Blaming the West, Crimea's History, Protecting Compatriots. Interestingly, the identified themes were initially put forward primarily by Putin in his 2014 March 18 Address. The analysis indicated that across the statements the themes are synchronised with Putin's justification narratives, without any major deviation.

3.5.2. Arguments Related to Self-Determination and Secession

Self-determination: The analysis of the official statements indicated that for Russia the representation of the annexation of Crimea as a case of self-determination was an important but difficult task. To illustrate, while referring to the text of the Helsinki Final Act, Russia's ambassador to Switzerland at the time stated: "we cannot but pay attention to the wording that "the borders in Europe can be changed in accordance with international law, peacefully and by agreement"[335] (implying that) the entry of Crimea into Russia was legal. Similarly, Lavrov claimed that during the Cold War the two opposing blocs agreed on the principles enshrined in the Final Act, emphasising "(…) non- interference in internal affairs, respect for people's right to self-determination, respect for the sovereignty and territorial integrity of states, human rights, etc."[336] Furthermore, another document that is referred to by Russian officials to support Crimea's cause for self-determination is the UN Charter. To illustrate, president Putin insisted that the right is authorised by Article 1 of the UN.[337] Likewise, Russia's Ambassador to Indonesia at the time argued that the realisation of self-determination by Crimeans was achieved per Article 1 of the UN Charter.[338] These references imply that Russia did not see any contradictions with the annexation of Crimea and the norms of international law.

[335] Anonymous. Kommentarij Posla Rossii v Shvejcarii A.V.Golovina, opublikovannyj v shvejcarskoj gazete «Noje Cjurher Cajtung» 10 ijunja 2014 goda. MID Rossijskoj Federacii, 20.06.14 (Commentary of Russian Ambassador to Switzerland A.V. Golovin, published in the Swiss newspaper Neue Zürcher Zeitung. MFA of the Russian Federation). Accessible: https://cutt.ly/6t8XgUl (08. 02. 2020).
[336] S. Lavrov. Foreign Minister Sergey Lavrov's interview with An Evening with Vladimir Solovyov programme on Russiya-1 TV Channel, 25.12.2014. International Affairs.Accessible: https://cutt.ly/zt8COwa (10.02.2020).
[337] Anonymous. Meeting of the Valdai International Discussion Club. Official Internet Resources of the President of Russia, 24.10.2020. Accessible: https://cutt.ly/Gt8CW1d (10.02.2020).
[338] Anonymous. Vystuplenie Posla Rossijskoj Federacii v Indonezii M.Ju.Galuzina v Universitete Indonezii na seminare «Krizis na Ukraine i ego vlijanie na Jugo-Vostochnuju Aziju», g. Depok, 29 aprelja 2014 goda. MID Rossijskoj Federacii, 15.05.14 (Speech of the Ambassador of the Russian Federation to Indonesia M.Yu. Galuzin at the University of Indonesia at the seminar "The crisis in Ukraine and its impact on Southeast Asia", Depok, April 29, 2014. MFA of the Russian Federation). Accessible: https://cutt.ly/Kt8XYpn (08.02.2020).

Nevertheless, even though Russian officials used these documents instrumentally to present the case of Crimea in the frames of the right to self-determination, as discussed, these documents do not allow secession based on the general will of the people or for national minorities. To be specific, it was established that the Helsinki Final Act is a political document, which does not confer any legal obligations on states but must be read in the context of the principles of the inviolability of frontiers. As for the UN Charter, it did not foresee secession for national minorities. Moreover, although in the postcolonial period the discussions on self-determination continued, still, there is not enough support for secession outside the decolonisation context.[339] As for Crimea, it has never been considered a non-self-governing territory, hence, it falls outside the decolonisation.[340]

Interestingly, only a few statements touched upon the issue of territorial integrity and sovereignty of states, revealing interesting aspects of Russia's understanding of sovereignty in the context of Crimea. For example, while talking about the incorporation of Crimea into the RF Russia's Ambassador to Nepal at the time claimed that "two sovereign states took a sovereign decision, which concerns two of them and their people."[341] Another striking example is Putin's interpretation of sovereignty. While he stated that he has "never disputed that Ukraine is a modern, full-fledged, sovereign, European country,"[342] elsewhere he stipulated: "yes, we recognise its /Ukraine's/ sovereignty.(…) Joining any military bloc or any other rigid integration alliance amounts to a partial loss of sovereignty. But if a country opts for this and wants to cede part of its sovereignty, it's free to do so. (…) if Ukraine joins, say, NATO, NATO's infrastructure will move directly towards the Russian border, which cannot leave us indifferent."[343]

Thus, with the Crimea case, Russia departed from her previous understanding of sovereignty and boldly claimed Russia's sovereignty to be more important than the sovereignty of other countries. As Borgen argues, with the annexation of Crimea for Russia "state sovereignty loses its central place."[344] In other words, sovereignty was redefined in a way "(…) that aggrandises the scope of Russian sovereignty while minimising sovereignty claims of post-

[339] See *supra* chapter 1., p 17.
[340] Grant, *op. cit.*, p. 73.
[341] Anonymous. An Interview with Chargé d'Affaires a.i. of Russia in Nepal Mr. Yury Yuzhaninov on the 5th Anniversary of the Accession of the Crimea to the Russian Federation. Embassy of the Russian Federation in Nepal, 18.03.2019. Accessible: https://cutt.ly/Jt8CRG6 (10.02.2020).
[342] Anonymous. Meeting of the Valdai International Discussion Club. Official Internet Resources of the President of Russia, *op. cit.*
[343] Anonymous. Vladimir Putin's interview with Radio Europe 1 and TF1 TV channel. Official Internet Resources of the President of Russia, 04.06.2014. Accesible: https://cutt.ly/dt8Clpx (09.02.2020).
[344] Borgen 2015, *op. cit.*, p. 261.

Soviet States.[345] This is against the principle of territorial integrity of states, which has traditionally been prioritised by states.[346]

Referendum: In an attempt to prove that the unification of Crimea with Russia was legal and was conducted in compliance with the norms of international law, Russian officials often argued that the unification was the choice of the people of Crimea, reflected in a referendum. For example, it was stated that the reunification of Crimea with Russia took place after the Crimeans opted for self-determination in a referendum by an overwhelming majority.[347] Also, one of the statements asserted that there was no conflict but rather a transparent referendum, which took place in peaceful conditions.[348] Besides, some statements maintained that the referendum was a natural response to the "anti-constitutional coup in Kiev,"[349] hence, "holding a referendum on self-determination was the only possible way to protect the vital interests of the Crimean people in the face of the unacceptable actions of radical nationalists."[350] In other words, the incorporation of Crimea into the RF is presented to be a remedy of last resort.[351] Also, the officials stressed the numbers claiming that the high turnout and the choice of the people in favor of joining the Russian Federation, compelled Russia to accept Crimea.[352]

In reality, the way the referendum was held in Crimea was criticised widely. Specifically, the fact that the events leading to Crimea's referendum developed in three weeks and the date of referendum was changed three times was deemed problematic since the preparatory stage was shortened. Moreover, the whole referendum was organised in a manner

[345] *Ibid*, p. 272.
[346] see *supra* chapter 1, p. 18.
[347] Anonymous. Interv'ju Posla Rossii v Makedonii O.N.Shherbaka zhurnalu «Kapital» 5 ijunja 2014 goda. MID Rossijskoj Federacii, 06.06.14 (Interview of Russia's Ambassador to Macedonia, O. N. Shcherbak to the "Capital" magazine on June 5, 2014. MFA of the Russian Federation). Accessible: https://cutt.ly/6t8Xv3n (08. 02. 2020).
[348] Anonymous. Interv'ju Posla Rossii v Tirane Aleksandra Karpushina albanskomu telekanalu «Ora News», 24 oktjabrja 2016 g. MID Rossijskoj Federacii, 25. 10.2020 (Interview with Russian Ambassador in Tirana Alexander Karpushin to the Ora News Albanian Channel, October 24, 2016. MFA of the Russian Federation). Accessible: https://cutt.ly/6t8Vk3k (12.02.2020).
[349] Anonymous. Interv'ju Posla Rossii v Italii S.S.Razova dlja radioprogrammy "Corriere diplomatico" gosteleradio Italii "RAI Radio 1", 19 ijunja 2014 goda. MID Rossijskoj Federacii, 23.06.14 (Interview of Russia's Ambassador to Italy S. S. Razov for the radio program "Corriere diplomatico" of the Italian State Radio and Television "RAI Radio 1", June 19, 2014. Ministry of Foreign Affairs of the Russian Federation). Accessible: https://cutt.ly/Pt8Xk4g (08. 02. 2020).
[350] Anonymous. Interview of the Ambassador of Russia in Albania A.R. Karpushin to the Albanian TV channel "Top Channel TV", Tirana, May 22, 2015. MFA of the Russian Federation. 22.05.2015. Accessible: https://cutt.ly/At8Vxhk (12.02.2020).
[351] Anonymous. Interv'ju Ministra inostrannyh del Rossii S.V. Lavrova telekanalu «Blumberg», Moskva, 14 maja 2014 goda. MID Rossijskoj Federacii, 14.05.14 (Interview of Russian Minister of Foreign Affairs Sergey Lavrov to the Bloomberg Channel, Moscow, May 14, 2014. MFA of the Russian Federation). Accessible: https://cutt.ly/Gt8Xa0E (04. 02. 2020).
[352] Anonymous. Prjamaja linija s Vladimirom Putinym. Oficial'nye setevye resursy
Prezidenta Rossii, 17.04.2014 (Direct line with Vladimir Putin. Official Internet Resources of the President of Russia). Accessible: https://cutt.ly/nt8Cbdm (09.04.2020).

that pointed to a pre-established result.[353] Finally, the reported number of participation is also questionable. Hence, one can easily argue that referendum in Ukraine was carried out instrumentally to build a convincing argument for Crimea's secession.

Meanwhile, the most important point is that referenda rather fall under domestic law. international law does not confer any special status on referenda and its role has not been supported by the international community as well unless it is backed by the parent state.[354] In the case of Crimea, only the Ukrainian Constitution could confer a right to Crimea to decide her political future by referendum, hence, the 2014 referendum held in Crimea without Ukraine's authorisation was illegal.[355] To be precise, the Ukrainian Constitution does not authorise secession by local referendum, what is more, it requires any referendum concerning territorial change to be one of all the citizens of the country.[356] The same is supported by Article 1 of the Crimean Constitution, which submits to the power of the Constitution of Ukraine.[357] Thus, the referendum in Crimea was illegal, hence it cannot be used as a valid legal argument to justify Crimea's annexation and incorporation into Russia. As referenda can be utilised instrumentally as a veil for territorial expansion, it can be argued that Russia held Crimea's referendum to justify her territorial expansion.[358]

Ukraine's violations of human rights: As illustrated, one of the most important themes identified in the analysed documents is "Ukraine's violations of human rights." According to the statements, Russian officials implied that Ukraine's violations of human rights made the situation in Crimea inevitable. For example, it is argued that the decisions of those behind the coup were against the Russian-speaking population of Ukraine.[359] Special emphasis was made on the abolition of the official status of the Russian language, which is overwhelmingly used by Crimeans and residents of the eastern and southeastern regions of Ukraine.[360] This was seen as an attempt to "deprive the Russians of their historical memory (…) to make them an object

[353] Rotaru & Troncotă, *op. cit.*, p. 13.
[354] Borgen 2015, *op. cit.,* p. 249.
[355] *Ibid.*
[356] Constitution of Ukraine, adopted 28.06.1996, art. 73
[357] Constitution of the Autonomous Republic of Crimea, adopted 12.01.1999, art. 1
[358] Borgen 2015, *op. cit.,* p. 248.
[359] Anonymous. Interv'ju Posla Rossii v Shvecii V.I.Tatarinceva «Krym vsegda prinadlezhal Rossii», opublikovannoe v gazete «Aftonbladet» 20 ijulja 2014 goda. MID Rossijskoj Federacii, 22.07.2020. Accessible: https://cutt.ly/Wt8V5uv (09.02.2020).
[360] Anonymous. Vystuplenie Postojannogo predstavitelja Rossii pri OON V.I.Churkina na zasedanii General'noj Assamblei OON, N'ju-Jork, 27 marta 2014 goda. MID Rossijskoj Federacii, 27.03.14 (Statement by V. I. Churkin, Permanent Representative of Russia to the UN, at a meeting of the UN General Assembly, New York, March 27, 2014. MFA of the Russian Federation). Accessible: https://cutt.ly/Ct8X6JL (09.02.2020).

of forced assimilation."[361] In addition to language and identity, the officials claimed that " (…) the economy, interethnic, interfaith and cultural ties turned out to be undermined."[362]

Apparently, for the Russian authorities the mistreatment of the Russian minority by the Ukrainian authorities made Crimea's referendum "absolutely legitimate."[363] Besides, these statements constructed Ukraine to be a country, which violates not only the human rights of Russians but also all the citizens: "Ukraine has become the undisputed leader in manifestations of anti-Semitism and intolerance towards people of Jewish descent (…).[364] The accusations of antisemitism and neo-nazism were utilised by Putin as well.[365] What is more, some statements accused Ukraine of violating the rights of its citizens to free expression, and the freedom of faith.[366] Thus, the aim of the references to the violations of human rights in Ukraine was to justify the annexation of Crimea and show that Russia was better at upholding human rights.

Nevertheless, a careful analysis of the situation in Ukraine before the annexation in Crimea indicates that Russia's allegations of Ukraine's violations of human rights were exaggerated. While there is no denying that there have been human rights violations in Ukraine, specifically against the Tatar minority, however, these violations were not grave and systemic.[367] The same conclusion was reached by the Office of the High Commissioner for Human Rights (OHCHR) following a visit to Ukraine in 2014 before the annexation of Crimea.[368] Moreover, following the dissolution of the Soviet Union, ethnic Russian were not subjected to assimilation. For example, before 2014 there were about 500 Russian schools and less than 10 Ukrainian in Crimea. Moreover, the Russian language has been largely used in Ukraine as a second language even in state institutions and in practice, people were able to choose which language to speak.[369] Furthermore, this theme is interesting in light of the grim

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[361] Anonymous. Obrashhenie Prezidenta Rossijskoj Federacii. Oficial'nye setevye resursy Prezidenta Rossii, *op. cit.*

[362] Anonymous. Stat'ja Posla Rossii v Urugvae N.V.Sofinskogo "Rossija i Krym – 5-let vossoedinenija". MID Rossijskoj Federacii, 20.03.2020 (Article of the Ambassador of Russia in Uruguay N. V. Sofinsky "Russia and Crimea - 5 years of reunification". MFA of the Russian Federation. Accessible: https://cutt.ly/5t8C15F (10.02.2020).

[363] Anonymous. Stat'ja Posla Rossii v Sirii A.V.Efimova «5-ja godovshhina vossoedinenija Kryma s Rossiej: istorija, sovremennost', perspektivy». MID Rossijskoj Federacii, 19.03.2020 (Article of the Ambassador of Russia to Syria A.V. Efimov "5th anniversary of the reunification of Crimea with Russia: history, modernity, perspectives. MFA of the Russian Federation). Accessible: https://cutt.ly/lt8CNSg (10.02.2020).

[364] Anonymous. Stat'ja Posla Rossii v Makedonii S.A.Bazdnikina «Ukrainskij krizis: pjat' let spustja», gazeta «Nova Makedonija», 2 marta 2019 goda. MID Rossijskoj Federacii, 04.03.2020 (Article of Russia's Ambassador to Macedonia S. A. Bazdnikin "Ukrainian Crisis: Five Years Later", newspaper "Nova Macedonia", March 2, 2019. MFA of the Russian Federation). Accessible: https://cutt.ly/Ct8C6wc (12.02.2020).

[365] Anonymous. Interview to German TV channel ARD. Official Internet Resources of the President of Russia, 17.05.2014. Accessible: https://cutt.ly/1t8CmJs (09.02.2020).

[366] Anonymous. Stat'ja Posla Rossii v Makedonii S.A.Bazdnikina «Ukrainskij krizis: pjat' let spustja», *op. cit*.

[367] Grant, *op. cit.* p. 74.

[368] OHCHR. Report on the Human Rights Situation in Ukraine. - Report of the Office of the United Nations High Commissioner for Human Rights on the Situation ofHumanRights in Ukraine 15.01. 2014, para. 73

[369] *Ibid.*

human rights situation in Russia, which has been well documented throughout the last decades.[370] This makes Russia's concerns about Ukraine's violations of human rights hypocritical. What is more, there is clear evidence of human rights violations by Russia in Crimea as well. Specifically, following the annexation of Crimea, among other things, repressive measures were introduced to silence the political opposition. Hence, Russia's concern with violations of human rights in Ukraine is hypocritical and is only there to serve the country's foreign policy interests.

Finally, the human rights violations theme is strongly linked to the remedial secession theory. In other words, Russia tried to justify the annexation by the elements of remedial secession. Nevertheless, as it has been indicated, the doctrine of remedial secession is contested both in theory and practice.[371] Nevertheless, even if Ukraine had violated the human rights of Crimeans, and if secession is possible, from the point of remedial secession theory, secession would be understood only as a remedy of last resort, which realises only after all efforts are proven fruitless. Remedial secession entails gradual procedure and not a measure available in the initial stage of a crisis.[372] Thus, first of all, efforts must be taken to resolve the crisis "(…) within the existing legal order."[373] Nevertheless, in the case of Crimea, no efforts were made to resolve the crisis in a good faith Crimea. Moreover, no negotiation preceded the separation and annexation of Crimea. In other words: "even if a problem had existed in Crimea of a type justifying remedial secession, the situation was not ripe for secession in March 2014."[374] Thus, the argument that the human rights violations of Ukraine justify the annexation of Crimea is legally weak and points to Russia's hypocrisy, self-interest and double-standards in the annexation of Crimea.

The Kosovo precedent: To continue, it was indicated that when Kosovo declared independence Russia showed strong opposition, claiming that the Kosovo case would open up the pandora box. Nevertheless, Russia went on instrumentalising the Kosovo case for her interests.[375] For example, it was claimed that it is the Western states that used "sui generis" types of arguments thus undermining the norms of international law.[376] The officials argued that the *ICJ* Advisory

[370] H. Coynash & A. Charron. Russian-occupied Crimea and the state of exception: repression, persecution, and human rights violations. – 60 Eurasian Geography and Economics 2019(1), pp. 28-53.
[371] see *infra* chapter 1, p. 21.
[372] Grant, *op. cit.*, p. 76.
[373] *Ibid.*
[374] *Ibid, p*. 77.
[375] Anonymous. Interview to German TV channel ARD. Official Internet Resources of the President of Russia, *op. cit.*
[376] Anonymous. Foreign Minister Sergey Lavrov's interview with Larry King's "Politicking" show on RT, Moscow, July 14, 2018. MFA of the Russian Federation, 14.07.2020. Accessible: https://cutt.ly/4t8Vt24 (10.02.2020).

opinion on Kosovo found that there was no violation of international law when the region was separated from its state.[377] What is more, stress was made on the fact that in Kosovo, unlike in Crimea, there was no referendum for independence as the decision was made by the parliament. This was to insist that Crimea's referendum exemplified a more democratic approach to determining one's future.[378]

In fact, the Kosovo case has been controversial and there is extensive literature available on the legal issue of the Kosovo case. Nevertheless, in this context, the most important point is that having opposed to recognise Kosovo's independence and having blamed the Western states for opening the pandora box of secessionist movements, Russia instrumentalised the same argument to justify the annexation of Crimea, in a way contradicting her previous words and actions. Concerning the Kosovo case, Russia refused to acknowledge the possibility of a remedial right to secession in modern international law, except in "truly extreme circumstances, such as an outright armed attack by the parent State, threatening the very existence of the people in question."[379] Moreover, the grounds of comparison of the cases of Kosovo and Crimea are very weak. The validity of the Kosovo/Crimea parallel has been thoroughly discussed and contested in the field of international law.[380] Most importantly, the *ICJ* Advisory Opinion on Kosovo did not state that secession is not a violation of international law, it rather stated that the act of the proclamation of the Unilateral Declaration of Independence was not in violation of the norms of international law, which is clearly different.[381] Thus, here also one can see the double standards; while Russia refused to accept that there was a humanitarian crisis in the case of Kosovo, it did implement this line of argumentation in the case of Crimea.[382]

Nevertheless, the main take is that Russia tried to justify the Crimea case in the language of international law. This indicates that Russia wanted to present herself as an entity, which respected the norms of international law. For example, Russian officials insisted that "international law should be mandatory for all and should not be applied selectively to serve the interests of individual select countries or groups of states, and most importantly, it should be interpreted consistently."[383] Nevertheless, Russia's respect for international law came hand in hand with self-interests. For example, Lavrov highlighted that they continued "(…) to work

[377] Anonymous. Vystuplenie Posla Rossijskoj Federacii v Indonezii M.Ju.Galuzina v Universitete Indonezii na seminare «Krizis na Ukraine i ego vlijanie na Jugo-Vostochnuju Aziju», *op. cit.*
[378] Anonymous. Seliger 2014 National Youth Forum. Official Internet Resources of the President of Russia, 29.08.2014. Accessible: https://cutt.ly/Rt8CUwH (10.02.2020).
[379] Grant, *op. cit.*, pp. 72-73.
[380] *Ibid. 72-75*.
[381] Kosovo Advisory Opinion, *ICJ, op. cit.*
[382] Rotaru & Troncotă, *op. cit.*, p. 9.
[383] Anonymous. Conference of Russian ambassadors and permanent representatives. Official Network Resources of the President of Russia, 01.07.2014. Accessible: https://cutt.ly/Mt8CxQF (09.02.2020).

in compliance with our obligations on international issues, including the Conceptual Policy of the Russian Federation."[384] He also stated that compliance with the fundamental norms of international law lied at the core of the Russian foreign policy philosophy.[385] As Borgen states: "international law is the vocabulary of modern diplomacy (…) International law defines the common terms of discourse (…) international law sets the rules for which words make sense when used together and which do not. (…)."[386] Hence, Russia's use of international legal arguments is strategic and serves her self-interests.

3.5.3. Other Arguments

Political crisis in Ukraine, Blaming the West, Protecting Compatriots: Amongst the recurring narratives attempting to justify the annexation of Crimea a wide part was devoted to the political crisis in Ukraine. Specifically, the crisis was portrayed as a direct threat to the Russian speaking population of Ukraine in general and Crimea in particular. Moreover, Russian officials saw the crisis as a major security threat to Russia's foreign policy interests. Accusations were made to the authorities of Ukraine for using force against the peaceful population and violating the rights of the Russian speaking minority. The recurring line in these arguments is that Russia did not attack Ukraine, or use force but in light of Ukraine's political crisis there was no alternative but to act and protect the compatriots.

To be specific, it was stated that from the very beginning of the crisis " (…) the Right Sector made attempts to break through and seize administrative buildings."[387] What is more, the new authorities of Ukraine were accused of violating the basic rights of Russians.[388] These events were portrayed to be legitimising Crimea's declaration of independence and the

[384] Anonymous. Vstupitel'noe slovo Ministra inostrannyh del Rossii S.V.Lavrova na soveshhanii s predstaviteljami MID Rossii v sub"ektah Rossijskoj Federacii, 20 marta 2014 goda. MID Rossijskoj Federacii, 20.03.14 (Opening remarks by Russian Minister of Foreign Affairs Sergey Lavrov at a meeting with representatives of the Russian Foreign Ministry in the constituent entities of the Russian Federation, March 20, 2014. MFA of the Russian Federation). Accessible at: https://cutt.ly/3t8Ce4c (09.02.2020).

[385] Anonymous. Foreign Minister Sergey Lavrov's remarks and answers to media questions during Government Hour at the State Duma of the Federal Assembly of the Russian Federation, Moscow October 14, 2015. MFA of the Russian Federation, 14.10.2015. Accessible: https://cutt.ly/Vt8CAk6 (10.02.2020).

[386] Borgen 2015, *op. cit.*, p. 263.

[387] Anonymous. Foreign Minister Sergey Lavrov delivers a speech and answers questions during debates at the 51st Munich Security Conference. Embassy of the Russian Federationin in the Kingdom Of Thailand, 07.02.2015. Accessible: https://cutt.ly/ht8CDY2 (10.02.2020).

[388] Anonymous. Russian Foreign Minister Sergey Lavrov's interview with the National Interest Magazine, published on March 29, 2017. MFA of the Russian Federation, 29. 03.2020. Accessible: https://cutt.ly/Yt8VsAJ (12.02.2020).

incorporation into the RF.[389] The main argument was that in light of the "changing political situation, which threatened the violation of the rights and freedoms of people"[390] the people of Crimea had no alternative to secession. What is more, in an attempt to portray Russia as a peace-loving country, it was parallelly argued that the reunification of Crimea was done peacefully, without any human losses and violence.[391] For example, Zakharova argued that upon the unification with Russia "Crimea did not fall prey to national radicals."[392]

Unsurprisingly, the arguments referring to the political crisis in Ukraine came hand in hand with arguments blaming the West for inciting anti-Russian sentiments in Ukraine and interfering in Russia's so-called sphere of influence. In particular, the attempt of the EU to sign an Association Agreement with Ukraine was deemed unacceptable for Russia.[393] Moreover, Russia hesitated to see the political crisis as a reflection of clashing civil positions but rather a fabrication of the West to destabilise the region.[394] Apart from the EU, the US was also accused of supporting "(…) the unconstitutional coup d'etat in Ukraine."[395] What is more, in the eyes of the Russian officials by supporting the activities in Maidan the Western countries "(…) discredit(ed) themselves as adherents of the rule of law."[396]

In light of the political crisis in Ukraine and the Western support, Russia constructed itself as a defender of the compatriots abroad aiming to protect the so-called legitimate interests

[389] Anonymous. Comment by Foreign Ministry Spokesperson Maria Zakharova on the occasion of the three-year anniversary of Crimea's unification with Russia. MFA of the Russian Federation, 16.03.2017. Accessible: https://cutt.ly/8t8Vphb (12.02.2020).

[390] Anonymous. Interv'ju Posla Rossii v Litve A.I.Udal'cova gazete «Respublika», 3 janvarja 2015 goda. MID Rossijskoj Federacii, 13.01.2015 (Interview of the Ambassador of Russia in Lithuania A.I. Udaltsov to the Republic newspaper, January 3, 2015. MFA of the Russian Federation). Accessible: https://cutt.ly/it8VNOL (14.02.2020).

[391] Anonymous. Interv'ju Posla Rossii v Indii A.M.Kadakina gazete «The Times of India», opublikovannoe 2 maja 2014 goda. MID Rossijskoj Federacii, 08.05.14 (Interview of Russian Ambassador to India A. Kadakin to "The Times of India", published May 2, 2014. MFA of the Russian Federation).
Accessible: https://cutt.ly/Wt8XSBE (08.02.2020).

[392] Anonymous. Statement by Foreign Ministry Spokesperson Maria Zakharova on the sixth anniversary of Crimea's reunification with Russia. MFA of the Russian Federation, 18.03.2020. Accessible: https://cutt.ly/Jt8C7Ev (11.02.2020).

[393] Anonymous. Annual Address of Vladimir Putin, President of the Russian Federation, to the Federal Assembly, Moscow, The Kremlin, December 4, 2014. MFA of the Russian Federation, 04.12.2014. Accessible: https://cutt.ly/Bt8V0q2 (14.02.2020).

[394] Anonymous. Interv'ju Ministra inostrannyh del Rossii S.V.Lavrova programme «Voskresnoe vremja», Moskva, 30 marta 2014 goda. MID Rossijskoj Federacii, 30.03.14 (Interview of Russian Minister of Foreign Affairs Sergey Lavrov for the Sunday Time Program, Moscow, March 30, 2014. MFA of the Russian Federation). Accessible: https://cutt.ly/nt8X2yC (08. 02.2020).

[395] Anonymous. Remarks by Foreign Minister Sergey Lavrov during an open lecture on Russia's current foreign policy, Moscow, 20 October 2014. MFA of the Russian Federation, 20.10.2014. Accessible: https://cutt.ly/nt8V9Vt (15.02.2020).

[396] Anonymous. Interv'ju Posla Rossii v Makedonii O.N.Shherbaka gazete «Nova Makedonija» 31 marta 2014 goda. MID Rossijskoj Federacii, 04.04.14 (Interview of Russian Ambassador to Macedonia ON Shcherbak to the Nova Macedonia newspaper on March 31, 2014. MFA of the Russian Federation). Accessible: https://cutt.ly/9t8XBKP (08.02.2020).

of ethnic Russians and the Russian-speaking population in Ukraine.[397] Hence, Russia pleaded to use "(…) the entire range of available means – from political and economic to operations under international humanitarian law and the right of self-defense."[398] This was reinstated by Lavrov, who claimed that Russia would defend the interests of its citizens by "political, diplomatic, legal methods.[399]

Nevertheless, from the perspective of international law, the political crisis in Ukraine did not authorise Russia to interfere in the affairs of the country or annex its territories. A few points must be clarified here. The prohibition against the use of force is not absolute in international law and according to Article 51 of the UN Charter, is allowed for self-defense if an armed attack occurs against a Member of the United Nations.[400] Nevertheless, "(…) the prohibition against acquisition of territory by threat or use of force (…) is not subject to qualification."[401] This has been reflected in the 1974 UNGA Definition of Aggression, which states that "no territorial acquisition or special advantage resulting from aggression is or shall be recognised as lawful."[402] Hence, international law gives specific importance to defined boundaries. This, in its turn, makes Russia's claimed justifications for use of force and annexation of Crimea void: "justifications for an armed intervention, even if accepted, are not justifications for the forcible acquisition of territory."[403] Thus, Russia's arguments related to the political crisis in Ukraine do not justify the annexation of Crimea.

Besides, the view that Crimea was threatened by the political crisis in Ukraine was only supported by Russia and not other states.[404] Nevertheless, Russia tried to argue the legality based on the invitation of Yanukovich. It is correct that a state may invite another state for assistance, however, the consent must be clear. The protective intervention has been criticised by the international community in several cases such as the US intervention in Grenada and the strikes in Yemen, Pakistan. As for Crimea, the validity of Yanukovych's invitation was contested as generally it was not accepted "(…) that Yanukovych remained head of state, and the central government of Ukraine largely continued to function."[405] Thus, these events, which

[397] Anonymous. Interv'ju Posla Rossii v Italii S.S.Razova dlja radioprogrammy "Corriere diplomatico" gosteleradio Italii "RAI Radio 1", *op. cit.*
[398] Conference of Russian ambassadors, *op. cit*.
[399] Anonymous. Vstupitel'noe slovo Ministra inostrannyh del Rossii S.V.Lavrova na soveshhanii s predstaviteljami MID Rossii v sub"ektah Rossijskoj Federacii, *op. cit.*
[400] Charter of the United Nations, *op. cit.*, Art. 51.
[401] Grant, *op. cit.*, p. 77.
[402] Definition of Aggression, UN General Assembly, A/RES/3314, 14.12.1974, art. 5., para. 3.
[403] Grant, *op. cit.*, p. 77.
[404] *Ibid.*, p. 82.
[405] *Ibid.*

lead the rule of Yanukovich to an end, did not create a basis for foreign intervention and had to be dealt with under Ukrainian constitutional law.[406]

Finally, the fact that an extensive part of the arguments was devoted to accusations of the Western actions in Ukraine indicated that Russia's real motives in the case of Crimea reflected Russia's geopolitical and foreign policy thinking. Specifically, as it was indicated, the concept of the protection of compatriots and the so-called sphere of influence make up a part of Russia's foreign policy ideas.[407] Hence, Russia perceived the Post-Soviet countries to be under her sphere of influence and did not tolerate any move from the West towards these territories. Thus, Russia perceived revolutions in this space "(…) as West's attempts to undermine Moscow's role and status in Eurasia and insists on Russia being treated as an equal partner in relations with the United States and the European Union."[408] Thus, in the background of the annexation of Crimea, one must carefully examine Russia's anxieties related to the expansion of NATO and the EU into eastern Europe: "Russia's leadership apparently thought that a self-determination dispute could slow Ukraine's integration into Western international institutions."[409]

Revising history and Crimea after 2014: In the legitimisation narratives, one of the most interesting themes of arguments was the revision of history. In other words, most of the documents discussing the Crimea case, saw it as righting the historical wrongs, claiming that "in 2014 historical justice triumphed,"[410] this is because "Khrushchev's history mistakes and voluntarism were corrected without a single shot or sacrifice."[411] Some officials even went as far as the 19th century to argue that Crimea has always been Russian.[412] They claimed that "Crimea was Ukrainian only the last 60 years"[413] and many forgot "(…) the fact that before this

[406] *Ibid.,* p. 83.
[407] see *supra* chapter 3, p. 42.
[408] *Ibid.,* p. 4.
[409] Borgen 2015, *op. cit.,* p. 265.
[410] Vystuplenie Postojannogo predstavitelja Rossii pri OON V.I.Churkina na zasedanii General'noj Assamblei OON, *op. cit.*
[411] Anonymous. Interv'ju Posla Rossii v Indii A.M.Kadakina gazete «The Hindu», opublikovannoe 21 ijulja 2014 goda. MID Rossijskoj Federacii, 25.07.2014 (Interview with Russia's Ambassador to India A. Kadakin to The Hindu, published July 21, 2014. MFA of the Russian Federation). Accessible: https://cutt.ly/ht8BwiK (15.02.1020).
[412] Anonymous. Pis'mo Posla Rossii v Kazahstane M.N.Bocharnikova v otvet na interv'ju i kommentarii posla Velikobritanii v Kazahstane MID Rossijskoj Federacii, 03.04.2020 (Letter from Russia's Ambassador to Kazakhstan M.N. Bocharnikov in response to interviews and comments by the British Ambassador to Kazakhstan. MFA of the Russian Federation). Accessible: https://cutt.ly/et8VVf5 (14.02.2020).
[413] Anonymous. Interv'ju Posla Rossii v Shvecii V.I.Tatarinceva, opublikovannoe v shvedskoj gazete «Dagens Njuheter» 15 ijunja 2014 goda. MID Rossijskoj Federacii, 17.06.14 (Interview of Russia's ambassador to Sweden V. I. Tatarintseva published in "Dagens Nyheter" on June 15 2014. MFA of the Russian Federation). Accessible: https://cutt.ly/3t8Xy89 (08. 02. 2020).

centuries-old history of Crimea was connected with Russia."[414] Thus, it was argued that the Soviets violated the historical justice "(…) when Crimea and Sevastopol were illegally - even by Soviet laws - torn away from the Russian Federation, from the RSFSR."[415] For Russia the injustice continued after the collapse of the Soviet Union when "Crimea was cut off from Russia "alive."[416] It is interesting that the officials did not present extensive arguments regarding the issue of the "people" in self-determination, which is understandable, given the complexities thet the defiition of self-determination has been subjected in interntional law. Nevertheless, it can be claimed that alongside the historical claims Russia constructs the people of Crimea as a separate unit for self-determination, whch is again departure from her previous approach.

Nevertheless, to argue that the reunification of Crimea was the right decision the officials claimed that Crimea's situation had improved after incorporation into Russia. Specifically, it was argued that Crimeans "fully trust the Russian state"[417] and that "living with Russia is better than with Ukraine.[418] Furthermore, it was stressed that Crimea's economic situation had also improved significantly and "there has been an increase in the welfare of Crimeans.[419] Of course, this was attributed to the Russian authorities and specifically president Putin. Finally, it was argued that the situation of human rights has also drastically improved in Crime after joining Russia.[420] To back this argument, it was contended that "Ukrainian and Crimean Tatar languages are officially declared state languages in Crimea.[421]

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[414] Anonymous. Interv'ju Posla Rossii v Jestonii A.M.Petrova: "Pozicija Jestonii po sankcijam vyzyvaet sozhalenie". MID Rossijskoj Federacii, 16.04. 2019 (Interview of Russia's Ambassador to Estonia A. Petrov: "Estonia's position on sanctions is regrettable" MFA of the Russian Federation). Accessible: https://cutt.ly/wt8CCJ7 (10.02.2020).

[415]Anonymous. Vladimir Putin posetil Sevastopol'. Oficial'nye setevye resursy Prezidenta Rossii, 14.03.2018 (Vladimir Putin visited Sevastopol. Official Internet Resources of the President of Russia). Accessible: https://cutt.ly/St8CgGU (09.02.2020).

[416] Anonymous. Vystuplenie Postojannogo predstavitelja Rossii pri OON V.I.Churkina na zasedanii General'noj Assamblei OON, *op. cit*.

[417] Anonymous. Rossija Krymom ne torguet. Gazeta, 16.03.2017 (Russia does not trade Crimea, Gazeta). Accessible: https://cutt.ly/2t8CsuI (09.02.2020).

[418] Anonymous. Interv'ju Posla Rossii v Litve A.I.Udal'cova, opublikovannoe v ezhenedel'nike «Jekspress-nedelja» 3 aprelja 2015 goda. MID Rossijskoj Federacii, 07.04.2020 (Interview of the Ambassador of Russia in Lithuania A.I. Udaltsov, published in the weekly "Express Nedelya",April 3 2015. MFA of the Russian Federation). Accessible: https://cutt.ly/Zt8Vvqi (14. 02. 2020).

[419] Anonymous. Interv'ju Posla Rossii v Albanii A.R.Karpushina albanskomu telekanalu "ABC News", Tirana, 16 sentjabrja 2017 g, MID Rossijskoj Federacii. 18. 09.2017 (Interview of Russia's Ambassador to Albania A.R. Karpushin to the Albanian TV channel "ABC News", Tirana, September 16, 2017. MFA of the Russian Federation). Accessible: https://cutt.ly/4t8Vikd (12.02.2020)

[420] Anonymous. Stat'ja Posla Rossii v Albanii A.Karpushina po sluchaju pjatiletija vossoedinenija Kryma s Rossiej, Gazeta "Koha Jon", 19 marta 2019 goda. MID Rossijskoj Federacii, 22.03.2020 (An article by Russia's Ambassador to Albania A. Karpushin on the occasion of the fifth anniversary of the reunification of Crimea with Russia to the Kokha Yon newspaper, March 19, 2019. MFA of the Russian Federation). Accessible: https://cutt.ly/7t8C9o6 (12.02.2020).

[421] Anonymous. Vystuplenie Posla Rossijskoj Federacii v Indonezii M.Ju.Galuzina v Universitete Indonezii na seminare «Krizis na Ukraine i ego vlijanie na Jugo-Vostochnuju Aziju», op. cit.

When it comes to the historical arguments, they are problematic given the risks of the clash between subjective and instrumentalised interpretations of the situation by different actors.[422] If history were valid then Russia should have been reminded of the fact that "Russian Empire conquered Crimea from the Ottoman Empire or that the Tatar Khanate had a longer history in Crimea than Russia." [423] Nevertheless, while this theme does not express legal argumentation, it reveals Russia's foreign policy thinking offering an understanding of Russia's situational reinterpretation of history for legal ends.

3.6. From the 1966 Soviet Approach to Self-determination to Russia's Approach to Self-determination in Crimea

While, the previous parts of the analysis established the characteristics of the Soviet and Russian use of self-determination, two points still need to be reassembled based on previous discussions. First, it is important to clearly state the way the Soviet and Russian approaches to self-determination differed from the Western approach and second, establish the links between the current Russian and Soviet understanding and application of the right of self-determination to verify the hypothesis.

As discussed, the Bolshevik and the Wilosinian understanding of self-determination differed from each other as the former was based on socialism and the latter was based on liberal-democratic thought. Moreover, while Lenin utilised self-determination as a revolutionary principle against the European empires, Wilson hoped that self-determination would become a tool against revolutionary challenges to existing orders. The Bolsheviks criticised the Western states for imperialism and exploiting other countries, but they were hypocritical while using self-determination as it was meant to further advance their ideological and political agenda despite the propagation of the idea that Lenin aimed to liberate oppressed people. When it comes to the question of hypocrisy, one thing must be noted. While the Wilsonian idea of self-determination was popular, it remained a political concept and was not included in the Covenant of the League of Nations. Hence, at the time it did not develop into a general norm of international law. This was also reflected in the outcome of the Aaland Islands dispute.[424] Thus, at the stage, the West straightforwardly refused to accept the possibility of secession for national minorities based on self-determination. Hence, the West displayed less hypocrisy.

In contrast, the Soviets were the first to include the principle in bilateral international treaties, which are referred to as the 1920-1921 Soviet Peace treaties. Nevertheless, in practice,

[422] Rotaru & Troncotă, *op. cit.*, p. 13.
[423] *Ibid.*
[424] see *supra* chapter 2, p. 30.

they did not easily grant secession based on self-determination. This was reflected in the practice of the Soviet peace treaties vis a vis the Baltic states and Georgia, which was about restoring the borders of the Russian Empire. Thus, unlike the Western states the Soviets pioneered the possibility of secession for national minorities based on self-determination but in practice tried to restore the territories of the Russian empire. Thus, their hypocrisy lied in the gap between theory and practice. The same line of thinking continued during the decolonisation period, when the Soviets considered that the issue of self-determination was resolved in their territories, nevertheless, in reality from the Western liberal perspective, there was no actual self-determination in the Soviet Union. Hence, at the time, the USSR promoted self-determination as a foreign policy tool. They refused any criticism and prioritised the principle of state sovereignty and territorial integrity and thought of self-determination to apply to other countries only.[425]

Meanwhile, in the decolonisation period many major Western countries refused to accept the posssibility of secession, given their colonial interests.[426] The Soviets promoted the inclusion of a clause on self-determination in the ICCPR and ICESCR, for colonial peoples. At the times many Western countries opposed this, which reflected their colonial interests, however, they eventually accepted it. The fact that the decolonisation period was accompanied by the *Salt Water* thesis, which favoured the Soviets, indicated the existence of double-standards reinforced by the Soviets.[427] Thus, the hypocrisy of the Soviets was reflected in the fact that while they constantly denied the existence of self-determination issues internally, they started actively promoting it for the other countries. This was part of their anti-Western foreign policy agenda. In contrast, the fact that the Western countries explicitly opposed it, seemed at least honest.

The main argument is that while the Western states were also hypocritical as they prioritised their self-interests, but unlike Russia, they did not propose such legal standards that they would not be able to uphold. This was also visible in the latest developments on self-determination from the reluctance of some major Western states to vote for the 2007 Declaration on the Rights of Indigenous Peoples. While this was a non-binding instrument, these states straightforwardly manifested their position by voting against it. Hence, one may argue that the main difference between the Soviet and Western approach in the given situation was that the Soviets categorically refused to acknowledge the presence of issues related to self-determination within its territories and started promoting the right internationally. In contrast,

[425] see *supra* chapter 2, pp. 26-37.
[426] *Ibid.*
[427] see *supra* chapter 1, p. 13.

the Western countries, acknowledging their self-interests and issues related to colonialism and imperialism, were more cautious and did not propose to promote standards that they were not ready to uphold to themselves. Thus, ths Soviet approach to self-determination differed from the Western one first by underlying ideoloogy and also by the application, which entailed double-stadards and hypocricy.

To continue, when it comes to Russia and its relation to the Soviet understanding of self-determination, the analysis established the legal links between these two entities, based on Russia's proposed doctrine of state continuity. The transition from the Soviet Union had serious consequences for the understanding of the right of peoples to self-determination, which justified the attempt to draw parallels between the Soviet and later Russian understanding of the right. Thus, Russia, just like the Soviet Union thought of the issue of self-determination to be resolved within the frames of federalism, however, the situation in Chechnya and Tatarstan for example, proved the opposite to be true. Nevertheless, throughout the 1991-2013 period, Russia strongly opposed the interpretation of self-determination outside the colonial context. Russia's approach was shaped by its domestic situation and foreign policy goals. However, following Kosovo's declaration of independence, Russia started gradually seeing the possibility of secession outside the decolonisation context. Hence, one may argue that Russia's current understanding of self-determination is unique and more similar to the Soviet understanding rather than the Western liberal-democratic understanding of self-determination. The fact that just like the Soviets, Russia percieved the issue of self-determination to be resolved in its territory, gave Russia the confidence to criticise the Western actions in Kosovo and later argue for Crimea's right to self-determination. Based on the above discussion, the study concludes that at its core Russia's current approach to the right of peoples to self-determination is rooted in the Soviet approach rather than the Western, liberal-democratic approach.[428]

As for the resonation between the Soviet and Russian approaches to self-determination, several patterns were identified. To start with, the way Russia annexed Crimea in 2014 and tried to justify it, reminded of a few episodes from the Soviet past, which was discussed earlier.[429] For example, it was identified that the Soviets did not genuinely care about the aspirations of peoples for self-determination and instrumentalised self-determination for the goals of socialism. Eventually, the Bolshevik and later the Soviet practice of self-determination was anti-Western and was used for restoring the borders of the Russian empire. Similarly, in the case of Crimea, Russia did not necessarily care about the will of the people of Crimea but rather used self-determination for territorial expansion, which also reflected Russia's anti-Western

[428] see *supra* chapter 3, pp. 35-45.
[429] see *supra* chapter 2,

foreign policy goals and anxieties related to the expansion of the EU and NATO. This indicated that Russia, just like the Soviets, was after her self-interests. Most importantly, in both situations, they tried to explain their respective actions with the language of international law.

Furthermore, as discussed, the Soviet application of self-determination was characterised by double-standards as they refused to acknowledge the existence of self-determination issues in their territories. This gave the Soviets the confidence to promote self-determination in the decolonisation context for other countries. Arguably in a similar way, in the case of Crimea Russia resorted to double-standards by contending that the issue of self-determination was resolved in Russia and it is Ukraine that had issues with self-determination and not Russia. Most likely Russia would not show the same confidence if Chechnya and Tatarstan reactivated their secessionist aspirations. What is more, another indicator of Russia's hypocrisy regarding the subject was that with the annexation of Crimea, having exaggerated the human rights violations in Ukraine, Russia refused to acknowledge the grave situation of human rights in Russia as, despite their official narrative, among other things, they mistreated the minorities of Crimea.

Moreover, if the human rights violations were Russia's main concerns, from the very beginning they should have acknowledged the humanitarian situation in Kosovo. In this case, the double-standards were reflected in the fact that while the Kosovo case was closer to the standards of remedial secession theory, they refused to acknowledge its validity for Kosovo. Nevertheless, they used arguments of remedial secession in the case of Crimea, where it was clear that the case was far from meeting the criteria outlined by the remedial secession scheme. In other words, Russia distorted the real value of remedial secession by using it for a case, which did not qualify for it. As for Russia's criticism of the Western application of the right, at least the West tried to use the language of remedial secession for a situation that objectively qualified as one. Whether or not the theory is supported in international law is a matter of different discussions.

Furthermore, it was indicated that Russia tried to justify her otherwise illegal acts in Ukraine with the language of international law. For example, while intervening in Ukraine Russia invoked the invitation of Yanukovich as a legal ground for intervention, which was not accepted by the international community. Besides, an illegal referendum was staged to justify Crimea's right to self-determination and to deny the existence of the conflict. Most importantly, Ukraine's authorities were accused of antisemitism and neo-nazism, thus trying to portray Russia as a liberator of Crimea. In the same style, following the Molotov-Ribbentrop pact, the Soviet authorities fabricated an official narrative, according to which they had liberated these states from fascism. A specific role was given to the line of the narrative of a popular

revolution.[430] In defense of their actions, the Soviets pointed towards the 21 July 1940 pronouncements issued by the legislators of the Baltic states, which approved the incorporation, remaining silent about the fact that this was based on "mock-elections conducted in violation of the constitutions of the Baltic States."[431] Most importantly, the Soviets refused to admit that in 1940 the Baltics states acceded the Soviet Union under the pressure of the Soviet ultimatum of "approval or annihilation."[432] In the same style, the Soviets later intervened in Czechoslovakia, and as a justification, produced an unsigned document implying that Czech leaders "invited" the Warsaw Pact forces to enter Czechoslovakia."[433] In all the discussed cases coercion was made against the territorial integrity and political independence of these states.

Altogether, in all discussed instances, the Soviet Union and Russia respectively were not concerned with the realisation of self-determination of peoples but rather used the language of international law to advance their anti-Western, expansionist foreign policy agenda. Furthermore, both entities applied double-standards as they arguably thought of self-determination to apply to others only and refused to be subjected to criticism. Also, they tried to present themselves as proponents of international law by proposing to help others to realise their right to self-determination by relying on the norms of international law. Nevertheless, their practice resurfaced their hypocrisy as it was about the use of force and subversion of power, rather than genuine concern for the right of respective groups to self-determination.

[430] Kirby, *op. cit., p.* 77.
[431] Cassese, *op. cit.*,p. 258.
[432] *Ibid.*
[433] *Ibid.*, p. 44.

CONCLUSION

Overall, the study aimed at establishing the links between the Russian approach to the right of peoples to self-determination in the case of Crimea and that of the 1966 Soviet approach as reflected in the discussions around the UN Covenants. In particular, the study hypothesised that the current Russian approach to the right of peoples to self-determination resembles the Soviet approach in its legal flexibility characterised by self-interest, hypocrisy, and double-standards. To verify the hypothesis, the study laid down two interconnected research questions. The first research question aimed at establishing the characteristics of the Soviet approach to the right of peoples to self-determination in the 1960s and that of Russia following the annexation of Crimea. The second research question aimed at identifying the links between the Soviet approach to the right of peoples to self-determination in 1966 and that of Russia following the annexation of Crimea in 2014. In line with some interesting findings, the study reached several important conclusions.

To start with, when it comes to the characteristics of the Soviet approach to the right of peoples to self-determination, it was identified that the Bolshevik understanding of self-determination was somehow unique as it differed from the Western, liberal-democratic notion of self-determination in several ways. Primarily, in contrast to the Western liberal-democratic understanding of the right, the Bolshevik and later Soviet understanding was based on the political philosophy of socialism, as the end goal was not the independence of those nations but their integration in a socialist world. Overall, the Bolshevik understanding of self-determination had strong propaganda and tactical elements and in practice was used for restoring the territories of the Russian Empire. Furthermore, the study also established that from the very beginning, the Soviet practice of self-determination was based on hypocrisy and double-standards. This was displayed through the analysis of the Soviet application of the right of peoples to self-determination in the 1920 Soviet Peace treaties. As illustrated, following the conclusion of the peace treaties, the Bolsheviks annexed Georgia in February 1921, and eventually took over Estonia in 1939, despite having explicitly recognised the right of these peoples to self-determination/secession in the discussed treaties. Hence, their practice of self-determination revealed the underlying hypocrisy and the aim to restore the borders of the Russian Empire.

Furthermore, the thesis identified that this flexibility continued in the decolonisation period as well: in addition to hypocrisy and double-standards, the Soviets also displayed self-interests concerning the use of the right of peoples to self-determination. The highlight of this process was the inclusion of an article on the right of peoples to self-determination in the 1966 UN Covenants with the initiative of the Soviet Union. The Soviet move to include the right of

peoples to self-determination in the 1966 Covenants was hypocritical and pointed double-standards and self-interests as while they criticised the Western European powers for their colonial and imperial legacy, they did not accept any similar criticism directed towards the Soviet Union. Meanwhile, while the Soviets believed that they had fulfilled the self-determination aspirations of their nations within their territories, in the Western liberal sense, none of the peoples in the USSR had internal self-determination but the Soviets refused to acknowledge it. In other words, the Soviet Union had itself turned into an empire, despite the ideas and ideals of its forefathers. Hence, upon the end of the decolonisation period, the Soviets used different standards at home and abroad and their understanding of self-determination was characterised by legal flexibility reflected in the adhered double-standards, hypocrisy and self-interest, which were used as tools to further advance the anti-Western foreign policy goals.

To continue, another important point established by the study was the link between the legal thinking of the Soviet Union and contemporary Russia, which was also reflected in Russia's current understanding of the right of peoples to self-determination. To be specific, it was established that upon the transition from the USSR to the RF, Russia invoked the doctrine of state continuity, thus pledging to maintain its legal ties with the Soviet Union. Although later Russia declared the precedence of Russian law over that of the USSR and went on a capitalist path, the Soviet past followed Russia long after. This impacted the development of the understanding of self-determination as well, since Russia borrowed the flexible approach primarily from the Soviet Union, without questioning its foundations. In particular, Russia, just like the Soviets, believed that the issue of self-determination was resolved within its territories. Hence, one may argue that if and when Russia's approach to the right of peoples to self-determination becomes flexible, it is more reasonable to compare it to the Soviet approach first.

Furthermore, the study illustrated that the main inconsistencies in Russia's current approach to the right of peoples to self-determination were the shift from supporting the territorial integrity of states and opposing the recognition of secession outside the decolonisation context throughout the 1991-2013 period, to arguing for the limited possibility of secession based on the right of peoples to self-determination in 2014. Nevertheless, it was also demonstrated that this change did not happen overnight but rather reflected Russia's reaction to several domestic, foreign policy and geopolitical factors. What is more, the study revealed the characteristics of Russia's understanding of self-determination in the case of Crimea by critically analysing Russia's justification arguments found in a number of official statements. It was established that Russia utilised the language of international law to justify the 2014 annexation of Crimea. The narratives included both legal and non-legal arguments. The dominant themes related to self-determination and secession were as follows: Referendum,

Ukraine's Violations of Human Rights, Kosovo Precedent, Self-determination. In addition to this, other types of arguments were also identified such as Political Crisis in Ukraine, Crimea after 2014, Blaming the West, Crimea's History, Protecting Compatriots.

To be specific, the study established that Russia's attempt to present the annexation of Crimea as a case of self-determination was not easy as its legal foundations were flawed. In particular, while references were made to international legal documents to justify the legality of Crimea's cause for self-determination, in reality, none of their arguments justified the right of self-determination of Crimea. Furthermore, another characteristic of Russia's justification strategy in the case of Crimea was the redefinition of the idea of sovereignty as Russia placed her sovereignty above the other states, thus challenging the very idea of territorial integrity of states. Besides, Russia's justification narrative included references to Crimea's 2014 referendum. Nevertheless, the critical analysis indicated that the way the referendum was held was in itself problematic, most importantly, it was stated that referenda are a matter of domestic law and as in this case, it was not authorised by Ukraine and was illegal, it could not be used as a valid legal argument to justify Crimea's annexation and incorporation into Russia.

To continue, another important theme of Russia's arguments was "Ukraine's violations of human rights." According to the statements, Ukraine's mistreatment of the Russian minority made the situation in Crimea inevitable. Nevertheless, a careful analysis of the situation in Ukraine before the annexation of Crimea indicated that Russia's allegations of Ukraine's violations of human rights were exaggerated and revealed Russia's hypocrisy, given Russia's grave human rights records. Moreover, it was argued that the doctrine of remedial secession also could not be invoked in this case, as the Crimea case did not meet the relevant criteria. This theme, in line with the references to the Kosovo precedent, revealed Russia's double-standards as in the Kosovo case, Russia refused to acknowledge the possibility of a remedial right to secession, even though the Kosovo case was more fit for it than Crimea.

Furthermore, amongst the recurring narratives, a wide part was devoted to the political crisis in Ukraine. In particular, the crisis was portrayed as a direct threat to the Russian speaking population of Ukraine, particularly in Crimea. Unsurprisingly, the arguments referring to the political crisis in Ukraine were coupled with arguments condemning the West for interfering in Russia's sphere of influence. In light of the political crisis in Ukraine and the Western support, Russia took the role of a defender of the compatriots abroad. Nevertheless, it was established that for international law, these arguments were not legally justified. Moreover, it was revealed that amongst the non-legal narratives used by Russia the most significant one was the revision of history. In other words, most of the documents discussing the Crimea case constructed Crimea as a historical part of Russia, which was unfairly gifted to Ukraine. To argue that the

reunification of Crimea was the right decision, the officials claimed that Crimea's situation had improved after incorporation into Russia. However, the study established that in this case historical arguments were not legally valid as they provided subjective and instrumentalised interpretations of the situation.

In the following parts, which focused on linking the dots between the Soviet and Russian approaches to the right, the study argued that the Soviet and later Russian approaches to the right of peoples to self-determination differed from the Western approach by the degree of hypocrisy of respective actors. A few arguments were put forward in support of this point. For example, it was stated that at the initial stage of the development of self-determination, the West straightforwardly refused to accept the possibility of secession for national minorities based on self-determination and the principle was not included in the Covenant of the League of Nationa. In contrast, the Soviets were the first to include the principle in bilateral international treaties, nevertheless, in practice, they did not easily grant secession based on self-determination. In practice they tried to restore the territories of the Russian empire. A similar argument was made concerning the decolonisation period. Particularly, it was indicated that at the time, the Soviets considered that the issue of self-determination was resolved in their territories as, allegedly, nations had fulfilled their right to self-determination aspirations with autonomic units in a federal structure. Nevertheless, there was no actual liberal self-determination in the Soviet Union. Hence, at the time, the USSR promoted self-determination, relying on double-standards and hypocrisy.

In the discussed situations the greater degree of the hypocrisy of the Soviets was found in the lack of self-reflection and was part of their anti-Western foreign policy agenda. In contrast, the fact that the Western countries explicitly opposed it, seemed at least honest. In other words, while the Western states also had their self-interests, they explicitly displayed their position. This was also later visible from the reluctance of some major Western states to vote for the 2007 Declaration on the Rights of Indigenous Peoples. While this was a non-binding instrument, these states straightforwardly manifested their position by voting against it. Meanwhile, Russia, just like the Soviet Union, continued the line of thinking that the issue of self-determination was expressed in the territories of the RF.

In addition, the final part of the study established both general and more specific lines of resemblance between the 1966 Soviet understanding of self-determination and that of Russia in the case of Crime. In particular, it was revealed that neither the Soviet Union nor Russian genuinely cared about the struggle of peoples for self-determination in the discusses cases. They both instrumentalised self-determination for territorial expansion and also utilised it as a foreign policy tool for their anti-Western agenda. Nevertheless, they still resorted to the language of

international law in an attempt to justify their actions. For example, the history of the Soviet Union and Russia revealed similar tactics of instrumentalisation of self-determination for their political ends. For example, by claiming that the incorporatoin of Crimea into the RF was based on the popular will of Crimea's people as reflected in a referendum and by constructing itself as a defender of the people of Crimea, Russia reminded of the times when the Soviets used similar narrative upon the conclusion of the Molotov-Ribbentrop pact. Here also, the official line of reasoning emphasised on the narrative of a popular revolution, elections and constructed the Soviets as defenders of Estonians. Nevertheless, in both situations, they remained silent about the violations of the norms of international law.

Overall, based on what was outlined above, it can be concluded that the current Russian approach to the right of peoples to self-determination resembles the Soviet approach in its legal flexibility characterised by self-interest, hypocrisy, and double-standards. For Russia, just like for the Soviet Union, the main point of departure was the perception of one's greatness, power, and sovereignty over that of other states. In other words, self-determination was applied instrumentally and was understood differently from the Western liberal understanding of the right. It was not used to advance the cause of the groups struggling for self-determination but rather as a legal cover for otherwise illegal actions. Nevertheless, to say that the Russian approach to self-determination in the case of Crimea resemles the Soviet approach of 1966 does not necessarily mean that Russia's approach constitutes a separate and unique approach to self-determination. The study remains rather cautious regarding this question whether with the annexation of Crimea Russia, just like the Soviet Union claimed the existence of a unique anti-Western approach to international law or not. It can be argued that such statements can be proven only after significant amount of time passes since the annexation of Crimea. Arguably, six years is not a long enough time to make such judgments boldly. Nevertheless, the study claims that with the annexation of Crimea and even before that Russia started heading towards a direction, which poses significant challenges to the universality of the international law, nevertheless, remaining mindful of Russia's criticism of the Western support of the independence of Kosovo.

This is an important observation, which pinpoints the importance of the historical perspective in legal studies in general and in the analysis of the right of self-determination in particular. To be specific, Russia's annexation of Crimea was deemed shocking by many. Indeed, the annexation of Crimea was against Russia's otherwise consistent approach to the right of peoples to self-determination. Nevertheless, if one looked at history more closely, as this study did, Russia's actions would not come as shocking as the annexation was, after all, the result of several factors that were deeply rooted in Russia's past. In this case, the roots of

Russia's current understanding of self-determination reached as far as the times of the Bolsheviks.

Finally, the results affirm the notion that it is not enough to compare the modern Russian understanding of key international legal issues to that of the Western approach as the historical perspective deriving from the cross-analysis of the Soviet approach revealed nuances, which are otherwise missing. Thus, the study argues that without a proper historical-legal analysis the understanding of key international legal categories in Russia will most likely remain incomplete. While a counter-argument can be made that this approach may undermine the universality of international law, one must admit that from the very beginning the Soviet understanding of international law had little in common with the Western understanding, which lies at the core of the contemporary universal understanding of self-determination. This was consequential for the Russian legal thinking as well. Hence, this study calls for renewing the discussions on the influence of the Soviet international legal thinking on that of contemporary Russia. This is vital given that the issue of self-determination movements and secessionist claims to independence will not diminish any time soon, neither will Russia's role in these movements.

ABBREVIATIONS

FRD	The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations
HRC	The UN Committee on Human Rights
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
QCA	Qualitative Content Analysis
RF	Russian Federation
SSR	Soviet Socialist Republic
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UN	United Nations
USSR	Union of Soviet Socialist Republics

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ANNEXES

Annex 1. Coding Frame

	Code label	*Description*	*Sample*	*Fr.*[434]
SELF-DETERMINATION AND SECESSION	**Self-determination**	Arguments referring to the Right of peoples to self-determination	*No one can prevent these people from exercising a right that is stipulated in Article 1 of the UN Charter, the right of nations to self-determination.*[435]	32
	Referendum	Arguments referring to the 2014 referendum held in Crimea	*Then, referendums on Crimea's independence and then on incorporation into Russia were held.*[436]	52
	Ukraine's Violations of Human Rights	Arguments of Ukraine's violations of Human rights	*Out of 2.2 million inhabitants of the peninsula, almost 1.5 million are Russian-speaking, and they tried to de facto ban the Russian language after the events on the Maidan.*[437]	43
	Kosovo Precedent	Arguments invoking the Kosovo precedent	*As is known, in the case of Kosovo, the UN International Court of Justice in its verdict in July 2010 found that there was no violation of international law when the region was separated from its state.*[438]	29
OTHER	**Political Crisis in Ukraine**	Arguments constructing the political crisis in Ukraine as a threat	*What happened in Crimea? First, there was this anti-state overthrow in Kiev. Whatever anyone may say, I find this obvious – there was an armed seizure of power(…)The people of Crimea feared for their and their children's future following a coup d'etat.*[439]	71
	Blaming the West	Arguments blaming the West for inciting political crisis in Ukraine and stepping in Russia's sphere of influence	*The question is not to appropriate a part of another country. The background to the issue is that the West supported the coup against President Yanukovych, elected by the people, after he said no to the EU.*[440]	55
	Protecting Compatriots	Arguments portraying Russia as a defender of compatriots abroad	*I would like to make it clear to all: our country will continue to actively defend the rights of Russians, our compatriots abroad, using the entire range of available means – from political*	19

[434] Frequency of codes

[435] Anonymous. Vladimir Putin's interview with Radio Europe 1 and TF1 TV channel. *op. cit.*

[436] Remarks by Foreign Minister Sergey Lavrov during an open lecture on Russia's current foreign policy, *op. cit.*

[437] Anonymous. Interv'ju Posla Rossii v Italii S.S.Razova dlja radioprogrammy "Corriere diplomatico" gosteleradio Italii "RAI Radio 1", *op. cit.*

[438] Vystuplenie Posla Rossijskoj Federacii v Indonezii M.Ju.Galuzina v Universitete Indonezii na seminare «Krizis na Ukraine i ego vlijanie na Jugo-Vostochnuju Aziju», *op. cit.*

[439] Anonymous. Meeting of the Valdai International Discussion Club. Official Internet Resources of the President of Russia, *op. cit.*

[440] Anonymous. Interv'ju Posla Rossii v Shvecii V.I.Tatarinceva «Krym vsegda prinadlezhal Rossii», *op. cit.*

			and economic to operations under international humanitarian law and the right of self-defence.[441]	
	Crimea's History	Arguments constructing Crimea as a historical part of Russia	*The Crimea has been a part of Russia from 1783. In 1954, as per a personal initiative of Nikita Khrushchev, Head of the Soviet Union's Communist Party, the Crimean Region was transferred from the Russian Soviet Federative Socialist Republic to the Ukrainian Soviet Federative Socialist Republic, along with Sevastopol, despite the fact that it was a federal city. It is still a matter of dispute for historians what stood behind this decision of his.*[442]	46
	Crimea after 2014	Arguments claiming that Crimea's socioeconomic situation has improved after incorporation to Russia in 2014	*The Crimea and Sevastopol are well integrated into the single political, socio-economic and legal area of the Russian Federation. The results of the presidential elections of 18 March 2018 demonstrated that the people of the Crimea are satisfied with development processes in the peninsula and soundly support the political course of federal authorities.*[443]	59

[441] Anonymous. Conference of Russian ambassadors and permanent representatives, *op. cit.*
[442] Anonymous. An Interview with Chargé d'Affaires a.i. of Russia in Nepal Mr. Yury Yuzhaninov on the 5th Anniversary of the Accession of the Crimea to the Russian Federation, *op. cit.*
[443] *Ibid.*

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