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PROPORTIONALITY BETWEEN VIOLATIONS OF NATIONAL MINORITIES' RIGHTS AND THE RIGHT TO SECESSION AS A CLAIM TO SELF-DETERMINATION

Master's Thesis

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Table of Content

Introduction

The existence of the right to secession, as well as its legal basis and application have been a subject to extensive debates for decades among many scholars and lawyers. However, throughout the years, neither scholars nor the states could come to a common consensus in the question of secession, its connection to self-determination and moreover, the use of force in cases of armed interventions, as a consequence of previously mentioned phenomena. In order to understand the whole problematic and vagueness of law over the process of secession, it is required to analyse the issues related to it. This thesis will not argue about the right to external self-determination regarding colonial peoples, but instead will bring up and analyse a keen and important issue of unilateral non-colonial secession[1] of peoples and minorities.

First and foremost, the collision with the principles of sovereignty and territorial integrity of states remains the toughest obstacle on the way of secession to become an official right.[2] In addition, there is a question whether the right to self-determination should be regarded as a legal basis for secession. While analysing the connection between statehood and self-determination, it is important, for this study, to take into account opinions of various scholars, to underline the academic value and difference of this thesis compared to other studies. For example, Crawford states that "self-determination, is at the most basic level, a principle concerned with the right to be a State."[3] However, as argued by Crawford himself, as well as others, for example Anderson, secession is not the best and easiest way of creation of States.[4] The process of secession is rather complicated and requires more contextual approach in conjunction with various combinations of interpretations of relevant provisions.

While the thesis will analyse the precedents and ongoing cases, it will become clear that, regardless the Crawford's definition of creation of states, secession, as an independent phenomenon, leads to various outcomes which depend on a number of variables. For example,

[1] Hereinafter: UNC Secession
[2] L. Glanville, The Responsibility to Protect Beyond Borders" (2012) 12:1 Human Rights L Rev 1 p. 32.
[3] J. R Crawford, The Creation of States in International Law (Oxford, Clarendon Press, 2006) p. 107
[4] G. Anderson, "Secession in International Law and Relations: What Are We Talking About?" (2013) 35:3 Loy LA Intl & Comp L Rev 34, p. 343-4

according to Kohen, secession is a complex process which involves a lot of various stages, however none of those can guarantee the creation of new state.[5] Therefore, since there is no certain definition and description of the process of secession, it is still a subject to profound analysis. Taking into account all the ongoing debates for disputed territories and secessionist movements, the process of secession must be defined if not precisely, then at least with certain possible scenarios and outcomes. These statements will be tested in this thesis, while the author will analyse the key precedents of secession involving different and similar patterns but yet diverse outcomes and responds.

What's more, Crawford describes the process of secession as an act of violence and use of force in order to achieve its outcomes: "secession is the creation of a State by the use or threat of force without the consent of the former sovereign…"[6] Therefore, Crowford defines secession as one continuous act which has a certain "lifetime" and outcome, which also finds its acknowledgement in works of John Dugard and Alexis Heraclides.[7] However, the author will argue with this statement, using the case studies of Kosovo, Abkhazia, South Ossetia and Crimea as to demonstrate that the secession is a process with various scenarios and results and does not have a certain lifetime, but yet prove the statement that it is a violent process without the consent of the mother-state.

The hypothesis is that it is impossible to have a certain process with distinguished patterns and outcomes if there is no proper legal regulation for it, which could significantly reduce the level of violence in similar situations.

The research problem is that the so-called right to secession collides with two integral principles of international law, which are: the sovereignty and territorial integrity of states. In other words, non-colonial unilateral secession is still unclear as a right under international law, therefore the necessary scale of violations of human rights is not legally regulated.

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[5] M. Kohen, ed, Secession: International Law Perspectives (New York: Cambridge University Press, 2006) p.14

[6] Crawford, "The Creation of States", *note 3*,P. 375

[7] See: J. Dugard, "A Legal Basis for Secession – Relevant Principles and Rules" in J. Dahlitz, ed, Secession and International Law: Conflict Avoidance – Regional Appraisals Hague: TMC Asser Press, 2003 p. 89; A. Heraclides, The Self-Determination of Minorities in International Politics (New Jersey: F Cass Publishing, 1990) p.1

One of the key research questions concerning the secession itself is: Secession, is it a remedial legal right prescribed by interpretation of international custom or a result of political speculations? As a supporting question, the author finds it important to determine, whether the unilateral non-colonial secession includes in itself the initiation and a certain outcome or it is a separate process which leads to various outcomes?

Another research question of this thesis is highly interdependent with the first one, therefore, as a result their answers will provide one holistic explanations of secession as a legal phenomenon. Since national minorities, living on a territory of a sovereign state, are entitled to its domestic law and therefore are under protection of the State, there comes a question of protection of those minorities in cases of oppression by the State. While both international and national law are designed to protect national minorities granting them "internal" self-determination, there are still numerous cases of secessionist movements both successful and not. On the other hand, there are peoples which still live on a territory of various states, but yet are not completely satisfied with their position. Therefore, it is crucial to answer, whether the right to self-determination may or may not serve as a legal justification for secession and what may be the consequences of using such a reference?

The objective of this thesis is to determine the existence or non-existence of the right to secession and its application as a last resort in cases of violation of fundamental human rights of national minorities. Notably, to establish certain points of violations of human rights which may possible trigger the process of secession without the consent of the state. Therefore, this work will focus on the right to Unilateral non-colonial secession under international law and possibility of exploiting the principle of self-determination as a legal basis for it.

First, the analysis will touch upon the principle of self-determination itself, as a fundamental principle of international law. Next, the author will use the analytical method provide for a causal link between the principle of self-determination and the UNC secession as its outcome. Conversely, the second part of the first chapter will present an opposing theory which will try to deny any causal links between self-determination and secession. While making a comparison of two existing theories, the author will discuss existing cases under the scope of each theory and derive all influencing factors necessary to establish the existence or non-existence of such a right which would allow to secede unilaterally. Finally, putting the theories into certain context of case

studies, the author will use the method of contextualization in order to establish the most realistic and relevant aspects of both theories. This thesis will analyse different cases of UNC Secession, specifically the aspect of human rights violations and invoked legal justifications for it. Finally, by taking into account all variables the author will determine the scale of human right violations, political impacts and use of force by third parties, which took place throughout the period of secession for chosen cases. The author will use a comparative analysis in order to determine certain patterns of human rights violations in taken cases of Crimea and Kosovo as the main examples for this thesis, while support the analysis with cases South Ossetia and Abkhazia. All cases will be used to contextualize the findings of the first part.

Since self-determination is one of the most fundamental principles of international law which acquired its status of customary law a long time ago, it is regarded as a peremptory norm. However, the definition and conditions of secession in international law are highly vague and leave a lot of space for debates. There is, however, a reason for this, which plays a key role for this research and will be discussed in detail.[8]

Such examples as Kosovo, South Ossetia, Abkhazia and Crimea have shown the world that this specific interpretation of the principle of self-determination may trigger unauthorized use of force and intervention. So, the author finds it appropriate to discuss the problem of military intervention as an integral part of secession. The main argument here is the principle of non-recognition, when states have an obligation to abstain from recognition of those territories that acquired independence through use of force. For example, South Ossetia and Abkhazia are still questioned to be legal since the international law does not clearly provide for their positions.[9] Therefore, the paper is going to discuss the situation when the national minority is constantly facing violation of human rights as *in extremis*[10] which is regarded as violation of the right to internal self-determination and the legality of secession, as well as available tools and methods to implement it without use of force.

The legal basis for this work will be formed by the most relevant sources of international law, state practice and case-law. In order to prove the legal basis for the right to UNC secession, this

[8] Anderson, "Secession in International Law", *note 4.* p.343
[9] G. Anderson, "Unilateral Non-Colonial Secession and the Criteria for Statehood in International Law" (2015) 41:1 Brook J Intl L 1 p. 4, nn 6–7
[10] Ibid.

thesis will utilize main principles and framework set out by the United Nations General Assembly Resolutions in conjunction with state practice. Regarding the interpretation of state practice, textual elaboration as part of *opinio juris* will be a supporting aspect for non-uniformity of state practice while assessing both at the same time.[11]

In addition to international mechanisms and documents, this thesis will exploit other sources of law which, however, are not internationally binding, but yet must be considered in legal practice. As main examples of this sources, it's worth to mention reports and studies by international organizations or NGOs. These sources, though secondary, but yet provide with "soft law" which is a strong tool in complicated situations which require more flexibility from the law, especially, when the case is related to controversial human rights abuses. The work will overlap with such fields of international law as the territorial integrity, use of force by states and the right to self-determination all regarded as interrelated aspects of one phenomenon as secession.

Keywords: International Law, Human Rights, Border Violation, Occupied Territories, Self-Governing Territories, State Sovereignty, National Self-Determination, Recognition (International Law)

[11] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America), Judgment, [1986] ICJ Rep 14 para 188-89, 191, 205

Chapter 1: The Right to Secession

This chapter will provide for the right to self-determination in general, its brief history and most importantly, link it with the right to UNC Secession, while considering the principle of self-determination as an integral and fundamental part of the right to secession. The objective of this chapter is to determine all the main circumstances and conditions necessary to trigger the right to UNC.

Additionally, the section will analyse the relation between the principle of self-determination and the concept of statehood, in other words, the process of self-determination through withdrawal of territory.

1.1 Self-Determination

During World War 2, in 1941 the US and UK proclaimed self-determination as one of the objectives to be attained and put into practice at the end of the Conflict. The Atlantic Charter drafted by President F.D. Roosevelt and Winston Churchill proclaimed self-determination as a general standard governing territorial change, as well as a principle concerning the free choice of rules in every sovereign state, which was later defined as internal self-determination. However, while discussing and drafting the core mechanism of self-determination, some issues came out such as cited from the UNCIO: it "would open the door to inadmissible interventions if, as seems probable, one wishes to take inspiration from the people's right to self-determination in the action of the organization and not in the relations between the peoples".[12] Moreover, the principle may be misused or taken as a justifying point for certain politicians, for example by Hitler, to justify military invasions and annexations.

Therefore, Committee responsible for the drafting of the relevant provision agreed on four points:

[12] UNCIO vol. VI 300

1) The principle corresponded closely to the will and desires of peoples everywhere and should be clearly enunciated in the UN Charter[13]

2) The principle conformed to the purposes of the Charter only insofar as it implied the right of self-determination of peoples and not the right of secession[14]

3) The principle "as one whole extends as a general basic conception to a possible amalgamation of nationalities if they so freely choose"[15]

4) An essential element of the principle is free and genuine expression of the will[16]

The origin of the article on self-determination may be found in 1966 International Covenants on Human Rights. As one of the main and basic provisions may be stressed the article 1(2) of the UN Charter. Furthermore, numerous links to self-determination may be found throughout the entire Charter. Article 76 of UN Charter states that self-determination means self-government and has nothing to do with independence of peoples.[17] Moreover, the charter didn not define self-determination precisely, nor distinguished between external and internal types. Since self-determination has deep roots in the concept of the equal rights of peoples, equality of races, friendly relation among states, it required more comprehensive documents in order to regulate such a vast area of influence and interdependence.

Finally, the article on self-determination was adopted in 1955.[18] Article 1(3) also grants peoples of dependent territories (non-self-governing and trust territories) the rights freely to decide their international status, in other words, whether to form a state or to associate with an existing sovereign State.[19] As has been recognized in art. 23 para. 3 of the UDHR, the will of the

[13] UNCIO vol VI 296
[14] UNCIO vol. VI 298
[15]UNCIO vol. VI 704
[16] UNCIO vol VI 455
[17] United Nations, Charter of the United Nations, e.i.f. 24.10.1945, 1 UNTS XVI art. 76

[18] UN General Assembly, International Covenant on Civil and Political Rights, e.i.f 16.12.1966, United Nations, Treaty Series, vol. 999, p. 171 Art. 1: 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

[19] Ibid., Art. 1 para. 3

people should be the basis of the authority of government.[20] In addition, article 27 of ICCPR includes rights of minorities, however, the enumerated rights only refer to cultural, religious and linguistic freedoms, that is the right need to guarantee that a minority is able to maintain its identity.

While speaking of self-determination, the major importance must be attributed to its types, such as external and internal. If the first one regulates rights of peoples as a whole state and concerns mainly colonial peoples, the internal type, according to W.Wilson[21], may be defined as the will of peoples to the "right to authentic self-government, the right for people really and freely to choose its own political and economic regime".[22] However, the main question may be posed as – Is there some kind of instrument which provides right for a certain part of population of sovereign State? In order to answer this question, we must make a more detailed analyse of mechanism of self-determination.

First, speaking of colonial people, it may be underlined that their legal position was discussed in 1971 by ICJ in its Advisory Opinion on Namibia, when the court held that: the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the UN, made the principle of self-determination applicable to all of them.[23] Next, while trying to understand the structure of internal self-determination, it's important to define its main characteristics. As a main definition, it is fair enough to state that the internal type emphasizes mainly the right of peoples to expression through a representative in a democratic government; protecting the rights of religious minorities and racial groups who are under discrimination by the State they live in; the rights of ethnic groups, linguistic minorities, indigenous populations, and national peoples living in federated States.[24]

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[20] General Assembly, 5th session : 3rd Committee, 310th Meeting Report, UN Doc. A/C 3/SR:310 1950 para. 14

[21] Thomas Woodrow Wilson (December 28, 1856 – February 3, 1924) was an American statesman and academic. 28th American president

[22] Cassese, A. Self-Determination of peoples: a Legal Reappraisal — Cambridge University Press 1995 p.101

[23] Legal Consequences for States of The Continued Presence of South Africa in Namibia (SOUTH WEST AFRICA) Notwithstanding SCR 276 (1970) ICJ, Reports 1971, 31(para.52)

[24] A.Cassese, *note 22*, p.102

Thus, it is obvious that the principle of self-determination is applicable not only to colonial peoples but all peoples. Generally, fundamental importance is attributed to the right of self-determination. Human Rights Committee in its comment to article 1 stated that in order to support and realize all the fundamental human rights it is vital to guarantee proper implementation of the right to self-determination.[25]

In order to demonstrate the main structure of internal self-determination, we must break it down in several aspects

A) People have a right to choose and form State's policy and political system, in other words, people have constitutive powers, however this right may be derogated in case when people choose to have a dictatorship

B) People have a right to take part in constitutional changes and decide which constitutional norm is better for them. People also can express their protests against dictatorship and tyranny.

C) People have a right to be a part of government, lead public affairs, participate in referendums, elections and other public events.

Therefore, the right to self-determination clearly provides for the set of obligations for states and benefits for peoples inhabiting it.

Since the principle of self-determination has an evolutionary nature it is sometimes perplexing to trace the real violation and distinguish it from illusionary demands of groups of peoples. Nevertheless, it is important to list the main types of violation of self-determination.

First of all, the most classical form of violation is the military occupation during which an independent country is occupied by another power. Second type concerns mainly internal conflicts, when with the background of foreign intervention, political parties in a conflict, which means the State can't find any peaceful measures of dispute resolution. For example, Afghanistan and Kampuchea. In this case it's more complicated to stop the violence because there are two influencing aspects. Third is when the soil and population are under the authority of another State, with no military occupation or civil strife. However, the power is exercised illegally, as an example may serve Namibia. In this case the will and actions of the people play the crucial role.

[25] UN Human Rights Committee (HRC), CCPR General Comment No. 12: Article 1 (Right to Self-determination), The Right to Self-determination of Peoples, 13 March 1984

They must form their own institutions, rules and international status, according to international law.

The last but the most complicated and the most important for this paper is when an independent nation with its own sovereign state is occupied by another power, however the form of occupation (quasi-occupation) is not unlawful from the perspective of international law, specifically the prohibition of use of armed force. People has no right historically to choose internal institutions and to elect rulers, nor has it been in a position to decide upon its international status. As a unique example, in the second part of this paper we will analyse the Palestine case. (Complicated political and military problems, no external and internal self-determination, no provision referred in the 1970 Declaration on Friendly Relations)[17]

1.2 Legal Analysis of Secession

In this part the author will discuss the right to secession as a legal phenomenon, analyse it under colonial and non-colonial contexts and provide for possible legal grounds. The main purpose of this part is to establish a certain picture of secession and possible conditions when it may be triggered.

While speaking of secession as from the view of state practice it can be split in two types: consensual and unilateral.[26] Consensual secession is the type of secession which is based on legal mechanisms provided by the State, while unilateral secession is the process which may include use of force and other necessary means.[27] It is possible to break down the consensual type into constitutional and politically-negotiated. Conversely, constitutional secession, yet rare, supposes a provision in constitution of a sovereign State which provides for proper act of secession from the metropolitan state. Example of provision providing for constitutional secession may be found in the 1921 Liechtenstein Constitution, in particular art. 4(2) which provides for secession of groups of individuals from the state territory.[28]

[26] G.Anderson, *note 4*, p. 350
[27] *Ibid.*
[28] Art 4 1. Changes in the boundaries of the territory of the State may only be made by a law. Boundary changes between communes and the union of existing ones also require a majority decision of the citizens residing there who are entitled to vote.

Diplomatic negotiations form the basis of politically-negotiated type of secession. The main requirement of this type of secession is appropriate room and will for negotiations over disputed territories. Politically-negotiated type is applied when there is no constitutional regulation providing for secession, however secessionist states have quite friendly relationships and open for peaceful negotiations[29] As one of the best examples it's worth to mention the dissolution of Czechoslovakia in 1993. While two distinguished groups negotiated over territory eventually formed their own independent states as Czech Republic and Slovakia.

Finally, the unilateral secession supposes the withdrawal without an actual consent by the State. Moreover, there are two known types of secession[30] The colonial type is not very popular nowadays and refers to peoples who are (used to be) colonies of a metropolitan state. The UNC secession is more complicated since it includes unilateral withdrawal of a territory from a sovereign State. As following from the above-mentioned consensual types of secession, unilateral secession takes place when there is complete lack of constitutional support or grounds for political negotiations. The author here also addresses the main legal collision with the principle of territorial integrity, which makes the unilateral secession a highly controversial topic.

While secession for colonies is a remedy for ending the colonial regime and taking back their independence, its existence outside the colonial context is somewhat complicated. There are two theories that support the right to remedial secession: the primary right and the remedial right. Thomas Simon explains in the following manner: "Under the remedial view, secession is justified only as a remedy of last resort for persistent and serious injustices. Primary right theorists, in contrast, argue that a right to secession does not depend upon a finding of injustices. They claim either that a right to secede can be made on ascriptive grounds, such as the nationality of the peoples claiming the right; on democratic, plebiscitary bases that reflect the

2. Individual communes have the right to secede from the State. A decision to initiate the secession procedure shall be taken by a majority of the citizens residing there who are entitled to vote. Secession shall be regulated by a law or, as the case may be, a treaty. In the latter event, a second ballot shall be held in the commune after the negotiations have been completed.

[29] G.Anderson, *note 4*, p. 351.

[30] *Ibid.* at 353-4

preferences of peoples living within a territory; or on administrative grounds that simply assess the capability to function as an independent state"[31]

The author argues here that the existence of primary right to secession may be somewhat dangerous for territorial integrity of any state, since it presupposes liberty of any group and their right to "grab" the territory and thus secede regardless their right to internal self-determination. While other secessionist movements were titled as remedial secession and always pointed at certain violations of internal self-determination and resulted in external self-determination of oppressed peoples.[32]

All in all, regardless the fact that secession is a subject to many opposing theories, yet it is impossible to deny its *de facto* existence. Another question is whether it should be based on the right to self-determination or no. Two following parts will present two opposing theories, where the first postulates for a direct link between the right to self-determination and secession and provide for the existence of the right to secession, while the second part denies any relations between self-determination and secession, however doesn't deny the right to secession.

1.2.1 The Right to Secession and Self-Determination

While discussing the principle of self-determination, many scholars evoke debates over this principle as a part of creation of state. One of the key problems triggering these debates is relation of the principle to politics, as Crowford stated: "[s]elf-determination as a legal right or principle threatened to bring about significant changes in the political geography of the world, not limited to the dismemberment of Empires."[33] Therefore, it is crucial for this thesis to determine, whether recognition and statehood may be initiated through self-determination and if yes, then in which cases.

[31] T.Simon, Remedial Secession: What the Law Should Have Done, from Katanga to Kosovo 40:1 GA J Intl & Comp L 105 2011 p. 143

[32] From the perspective of primary right supporters, the process of secession must be regarded as a result of human nature and freedoms given by international instruments. However, in case of denial of primary right to secession, peoples have no choice but to turn to the remedial secession, thus remedial type is a natural consequence of harsh violations of positive obligations of states. Eventually, one may assume that the remedial secession is one of modern forms of existence of natural law.

[33] See more: J.Crawford, *note 3*

As of 2016, there were more than 60 ongoing conflicts over national self-determination in the world.[34] What's more, since 1990 they caused around 20 million deaths all around the world.[35] As mentioned in this work, the principle of self-determination is regarded as a fundamental principle of international law. However, the main international instruments do not specify whether this principle may be used as a ground for the UNC Secession. The issue related to the objective of this thesis questions the neutrality of the right by asking which peoples may exercise their right to UNC Secession outside the scope of colonialism.

According to Anderson,

> "*...Unlike many other human rights, self-determination is applicable to groups, or "peoples" (defined as a nationally-based substate group) that are empowered to "freely determine their political status and freely pursue their economic, social and cultural development*."

This means that should a people within an existing state be systematically and egregiously denied this right, then the prospect of UNC secession will become available. Thus, should a people within an existing state be denied their right to internal self-determination, then a right to external self-determination, or UNC secession, will arise."[36] Here the internal and external rights to self-determination are linked together forming a certain hierarchy. From this statement one may come to a conclusion that Anderson and other scholars who postulate for self-determination as a ground for secession, give preference to certain principles of international law over other. Thus, in our case, the interdependence is between self-determination and principle of territorial integrity, which means that violation of one customary international law leads to limitation of other. Is it possible in horizontal legal system of international law? As we see from state practice, sometimes it is possible.[37]

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[34] "United States Policy Toward National Self-Determination Movements" online: https://docs.house.gov/meetings/FA/FA14/20160315/104672/HHRG-114-FA14-Wstate-VejvodaI-20160315.pdf

[35] *Ibid.*

[36] G.Anderson, *note 9*, p. 8

[37] Here the author means almost every case of unilateral non-colonial secession. Speaking of customary international law, in this case we have a collision of two rules of the same value, however, when we speak of violation of the right to self-determination, we usually refer to oppression of peoples, which, as will be argued in following parts, may be of more importance than territorial integrity.

However, it doesn't mean that the right to UNC Secession is absolute and is applicable to every single group more or less falling under the scope of any provision related to self-determination. The controversy is that certain preconditions must occur to trigger the right. In order to become an international custom, it's required to fulfil two conditions a) to be a part of state-practice; b) *opinio juris*. If we put the UNC Secession in this context, it's worth to note that "…mere textual articulation of a qualified right to UNC secession in declaratory General Assembly resolutions, without other concomitant state practice, such as grants of recognition in response to UNC secessionist disputes, will not constitute a binding rule of customary international law. This is because the requisite element of *opinio juris* will not have been satisfied"[38] Therefore, it is vital for the thesis to establish a certain legal basis for the right to UNC Secession.

This is also mentioned by Oscar Schachter

> "*…in place of a practice that began with the gradual accretion of acts and subsequently received the imprimatur of opinio juris, the Court reversed the process: an opinio juris expressed first as a declaration would become law if confirmed by general practice [instead of consistent practice]…*"[39]

This may be supported by the statement of Tullio Treves:

"*…the practice relevant for establishing the existence of a customary international rule must neither necessarily include all States, nor must it be completely uniform. Whatever oppositions of behavior and of opinion there may have been in the formative stage of the rule, the existence at a given time of the rule requires that the generality of States consider the rule as binding"*[40]

Moreover, despite the fact that it is necessary to take into account mainly general state practice, it is possible to also consider as a part of custom such sources as *travaux preparatoires*, diplomatic correspondence, policy statements, the opinions of government legal advisers etc.[41] Most

[38] *Ibid.*
[39] O.Schachter, New Custom: Power, Opinio Juris and Contrary Practice, in Jerzy Makarczyk, ed, Theory of International Law at the Threshold of the 21st Century, The Hague: Kluwer Law International, 1996 p. 531-2
[40] T.Treves, ed, Customary International Law — Max Planck Encyclopedia of Public International Law (Oxford University Press) para 35
[41] J.Crawford, *note 3*, p. 24.

certainly, beforementioned sources are accepted as customary practice in cases when there is uncertainty or vagueness in interpretation of main UN instruments.[42]

Taking this all into account, it is possible to establish whether there is an official right to UNC Secession in cases of *in extremis* human rights violations. While applying above-mentioned theory of customary international law as using the state practice and *opinio juris*, the author may now proceed to establishing the legal source of UNC Secession. The most consistent instrument which is providing for the UNC Secession is the Principle 5, [43] While analyzing, it is crucial to note that those states which are not implementing their positive obligations to provide for equal rights and the right to self-determination, lose proposed protection of territorial integrity. The paragraph 7 states that territorial integrity must not be endangered in those cases when "*independent States conducting themselves in compliance with the principle of equal rights and self-determination of people*"[44] Therefore, the principle of territorial integrity is respected in those cases when the State creates all necessary conditions for internal self-determination of all peoples living on its territory.[45]

Thus, it can be deemed that the Friendly Relations Declaration bestowing enough power on the principle of self-determination to be prioritized over the state-sovereignty and territorial integrity principles in cases of harsh human rights violations. In other words, according to Declaration, violation of right to internal self-determination invokes the right to external self-determination, therefore making clear distinction between these two types and underlining their interdependence

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[42] Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331(e.I.f.27 January 1980) arts 61, 31 (1), 32 (a)

[43] Notably, the paragraph 7 which says "*Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour*."UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, A/RES/2625(XXV)

[44] *Ibid.*

[45] See: Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, GA Res 50/6, UNGAOR, 56th Sess, Un Doc A/Res/50/6 1995 art 1

at the same time.[46] However, authorization of secession by the Friendly Relation Declaration does not mean that the right exists for every case of violation of internal self-determination. Violations and denial of fundamental rights must be systematical and touch upon religious or national aspects of minorities. Eventually, it follows that the Friendly Relations Declaration provides for the right to UNC Secession in case of certain preconditions as *in extremis* human rights violations are present. Another crucial case which forms a fundamental precedent for the right to UNC Secession is the Kosovo Advisory Opinion by the ICJ.[47] The opinion clearly defines the obligation to respect the right to self-determination and also establishes the consequences of its negligence. According to Judge Abdulqawi Yusuf, an ethnically or racially distinct group of people which is constantly denied internal self-determination may claim the right to external self-determination which in its turn may lead to separation from the State.[48] The case of Kosovo will be analyzed in the second part of this thesis, however, for now it worth to mention that the case along with the judgement was invoked several times throughout state practice regarding secession.[49]

Additionally, Judge Cançado Trindade stated that:

> *...Recent developments in contemporary international law were to disclose both the external and internal dimensions of the right of self-determination of peoples: the former meant the right of every people to be free from any form of foreign domination, and the latter referred to the right of every people to choose their destiny in accordance with their own will, if necessary — in case of systematic oppression and subjugation —*

[46] See more: G.Anderson, A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession?, Vanderbelt Journal of Transnational Law Volume 49; 4 2016, p. 1221

[47] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion), General List No. 141, International Court of Justice (ICJ), 22 July 2010

[48] *Ibid*, Justice Yusuf, separate opinion

[49] In case of South Ossetia and Abkhazia which claimed independence under Russian support, the latter party brought the example of Kosovo as the main argument, though Russia still doesn't recognize Kosovo as an independent state. Moreover, in 2014, Crimea followed the same scenario of Kosovo, backed by Russia. Russian critics on unilateral declaration of independence of Kosovo may be found in: *Accordance with International Law of the Unilateral Declaration of lndependence by the Provisional Institutions of Self-Government of Kosovo (Request for advisory opinion) WRITTEN STATEMENT BY THE RUSSIAN FEDERATION 19.04.2009 para. 73; 75 Available at* https://www.icj-cij.org/files/case-related/141/15628.pdf

against their own government. This distinction challenges the purely inter-State paradigm of classic international law. In the current evolution of international law, international practice (of States and of international organizations) provides support for the exercise of self-determination by peoples under permanent adversity or systematic repression, beyond the traditional confines of the historical process of decolonization. Contemporary international law is no longer insensitive to patterns of systematic oppression and subjugation. [50]

The above-mentioned opinion defines the whole concept of possible existence of the right to UNC secession. However, as was mentioned above, there may be some discrepancies in UN Documents and other secondary texts and the main reason lies in the drafting process of those documents. The point is that while drafting, the main core of the Declaration was split between those states that supported the right to UNC Secession and those who opposed it. For example, the former communist States supported the idea of UNC Secession as a result of their policy aimed towards self-determination, while Western and African States opposed them, stating that there is no such right as UNC Secession. Finally, the compromise was suggested by the group from Netherlands, who proposed to accept the right to UNC Secession in cases of violation of fundamental human rights. Thus, Paragraph 7 was created, which, however, does not directly mention the UNC Secession, however, presupposes it.[51]

Therefore, the reference for a possible right to secession. Mere examples are: The Resolution on the Definition of Aggression,[52] Manila Declaration on the Peaceful Settlement of International Disputes[53], Declaration on the Enhancement of the Effectiveness of the Principle of Refraining

[50] *Ibid.* at para 184, Justice Trindade, separate opinion

[51] For example, Vidmar states that "…the relevant judicial decisions and academic writings do not provide sufficient evidence to suggest that in international legal doctrine, remedial secession is a universally-accepted entitlement of oppressed peoples. But…the idea underlying remedial secession—the last resort for ending the oppression of a certain people— can still influence the recognition policies of states"

[52] Resolution on the Definition of Aggression, GA Res 3314 (XXIX), UNGAOR, 29th Sess, UN Doc A/Res/29/3314 (1974) art 7 (3)

[53] Manila Declaration on the Peaceful Settlement of International Disputes Between States, GA Res 37/10, UNGAOR, UN Doc A/Res/37/10 (1982) Art 2 (6)

from the Threat or Use of Force in International Relations,[54] Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field[55] and the Fiftieth Anniversary Declaration.[56]

All in all, the above-mentioned documents provide for cases of human rights violations which are *in moderato* and *in extremis*.[57] According to Christopher Borgen, those scholars who claim for existence of the right to UNC Secession must also take into account certain number of conditions, such as: the secessionist group may be regarded as "peoples" (international recognition), there must take place serious violations of human rights within the State responsible for protection of those peoples, and finally, there are no efficient remedies under domestic or international law, in other words, exhaustion of other remedies which would invoke the "last remedy as remedial secession"[58]

The thesis is analysing such cases which form a precedent and many of those demonstrate the qualified right to a UNC Secession in cases of human rights violations (*in extremis*) and eventually find support under international law. Among "successful" cases, the author lists East Timor, Bangladesh, Kosovo and Eritrea as examples.[59] All aforementioned cases have one set of events in common. The right to a UNC Secession was triggered as a result of in extremis human rights violations as opposed to in moderato, in conjunction with constant unreasonable denial of self-determination. Consequently, these cases provide a basis for existence of right to a UNC Secession, however, as an *ultimum remedium*.

[54] Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, GA Res 42/22, UNGAOR, UN Doc A/Res/42/22 (1987) art 3 (3) [Declaration on the Threat or Use of Force].
[55] Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field General Assembly resolution 43/51, GA Res 43/51, UNGAOR, UN Doc A/Res/43/51 (1988) art 3 (3)
[56] Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, GA Res 50/6, UNGAOR, 56th Sess, Un Doc A/Res/50/6 (1995) art 1.
[57] In moderato – political oppression. In extremis – forced exile, migration, genocide and ethnic cleansing.
[58] C.J Borgen, Is Kosovo a Precedent? Secession, Self-Determination and Conflict Resolution, (2008) 47 Int'l Leg Materials 46 p. 4
[59] G.Anderson, *note 9*, p. 11

1.2.2 When is The Remedy Needed? Secession of Quebec

Since there is no direct and complete instruction of secession and possible situation when the remedy exactly needed, it is quite difficult to establish the correct "workflow" and "time" of secession under international law. While one of the aims of this work is to determine the potential optimal threshold for secession, the author finds it necessary to analyse different interpretations of "remedial situation" raised throughout the history of international law.

As an example of uncertainty in this case the author will take several statements by the Supreme Court of Canada over the Quebec case.[60] Thus, the court noted that the whole concept of internal self-determination is specifically designed for full representation of peoples in every crucial aspect of political, social and economic life, while the right to external self-determination outside of colonial context "arises in only the most extreme of cases and, even then, under carefully defined circumstances"[61] Here, the researcher would like to take out "the most extreme cases" and try to apply this statement to available sources of international law. While analysis of all non-derogable general human rights is outside of the scope of this work, it is still necessary to understand what forms those extreme cases. While in this work, the as one of the main legal sources postulating for the right to secession the author took the Declaration on Principles of International Law, the only conclusion that comes to one's mind is that the state which doesn't comply with the above-analysed provisions of the Declaration (the reference goes to the obligation of the state to provide for equal rights of all peoples living on the sovereign territory). Therefore, the author assumes that the "extreme case" mentioned by the court might be the one when peoples don't have one of those rights mentioned in the Declaration. Moreover, the Court also stated in case of inability to exercise the right to internal self-determination, "it [people] is entitled, as a last resort, to exercise it by secession. "[62]

[60] Secession of Quebec, [1998] 2 S.C.R. 217
[61] Secession of Quebec, [1998] 2 S.C.R. 217 para 126
[62] *ibid.*

Despite the fact that the court referred to the right to UNC secession, it was still outside of the scope of the case, therefore, it remained unclear when and how peoples can implement that right. Another case mentioning those extreme conditions (just a term) happened over Aaland Islands. There, the Second Commission of Rapporteurs spoke about remedy and last resort as an "exceptional solution"[63]

Either way, there is no specific reference to when and how the remedy must be used, nor it is specified how high must be the scale of violations in order to refer to this remedy. The author may conclude that regardless this constantly emphasized link between the right to self-determination and secession, it is still highly doubtful whether such a connotation must be used to violate sovereignty of international borders. Nevertheless, both state and legal practice shows that there is definitely a connection between the right to self-determination and secession. In following, the author will demonstrate the opposing opinion and try to break the link between self-determination and the right to secession.

1.3 Internal Self-determination does not lead to Secession

While the previous section analysed the right to self-determination in relation to the right to secession, more certainly, the right to a UNC Secession, this section will demonstrate an opposing view, which states that the right to self-determination does not provide the grounds for the right to secession.[64]

Throughout many historical examples, the majority of secessionist cases were followed by violence and use of force, thus blaming it on self-determination.[65] It seems that a strong nexus between self-determination and secession is undeniable. In other words, self-determination, regarded as the "normative principle of nationalism" presupposes the attribution of sovereign

[63] 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 O.J., Spec. Supp. No. 3,p.21 (1920)
[64] Z.A. Velasco, Self-Determination and Secession: Human Rights-Based Conflict Resolution, 16 Int'l Comm. L. Rev. 75 (2014)
[65] *ibid.* p. 77

territory/State as the apex point of national independence.[66] While analyzing the UN Charter and other relevant instruments, some scholars deem that the wording to ".. freely determine their political status.." invokes the assumption that in cases of lack of political independence and political will of minorities expressed in the State, secession must be used, if necessary, for achieving political independence.[67] Eventually, while analyzing the post-colonial history of the world, numerous ethnical and national entities claimed to secede relying on the principle of self-determination.[68] Moreover, during the period of Cold War, the rise of secessionist-based movements involving armed conflicts presented a great menace for the basic principle of territorial integrity of states.[69] Mere examples of those movements are Kurds in Turkey, Kashmir case in India, South Sudan and its non-Muslims part of population.[70]

The statement that self-determination does not lead to secession is supported by two lines of analysis: the first one is the internal doctrinal coherence, and the second is the external application as a legal principle,[71] therefore, underlying the doctrinal gap between self-determination and secession.[72] The main opposing work example states that the right of ethnical or national entities to secede comes not from the doctrine of self-determination but is based on "effective power or authority in international politics." The process of secession through self-determination is highly complicated and contradictory. Since self-determination is regarded as "normative principle of nationalism" it eventually turns into a "legal anomaly".

Since there is no certain definition of those "peoples" who fall under the scope of self-determination.[73] Wilsonian interpretation of this principle lead to liberation of peoples, while

[66] A.Buchanan, Secession: The Morality of Political Divorce from fort Sumter to Lithuania and Quebec, Westview Press, 1991. p.48
[67] *Ibid.*
[68] H.Hannum, "Self-Determination in the Twenty-First Century", in H. Hannum and E. Babbit (eds.), Negotiating Self-Determination (2006), p.61
[69] D.Quinn, Self-Determination Movements and their Outcomes, in J.J. Hewitt, J. Wilkenfeld and T.R. Gurr (eds.), Peace and Conflict 2oo8 (2008), pp. 33-35
[70] M.D.Toft and S.M. Saideman, Self-Determination Movements and their Outcomes", in J.J. Hewitt, J.Wilkenfeld and T.R. Gurr (eds.), Peace and Conflict 2010 (2010), p. 44
[71] A. Velasco, Self-Determination and Secession: Human Rights-Based Conflict Resolution, 16 International Common Law Review 75, 2014 p.84

[72] *Ibid.*
[73] A.Aust, Handbook of International Law — Cambridge University Press 2010, p. 23

Hitler's view on the right was completely different.[74] It follows that if one takes the conflicts from Bosnia-Herzegovina, the Northern Ireland, Israel and Palestine, it becomes ridiculously obvious that all parties to the conflict claim the same right to self-determination.[75] Every conflict supposed self-determination of one side and violation of right to self-determination of another, therefore leading to its self-exclusion.[76]

Speaking of peace and security, self-determination, while being one of the basic principles preserving maintenance of stability and peace, stands out as a reason of more evolving conflicts at the same time. In other words, as long as self-determination provides for secessionist inspiration, it will cause more conflicts. The opposing opinion provides a strong but obvious point that self-determination and secession "challenge international norms and they aim to change international borders."[77] Thus, while secession presupposes international recognition of newly created states[78] the issue concerns the entire international community.[79] Recognition of statehood, as demonstrated throughout the history, is mainly the result of political judgment. Therefore, self-determination, as a legal basis for secession is based on political decisions of big powers.[80]

It is also important to analyze the status of territories in post-war periods. The main constitution of Allies in First World War was the self-determination for peoples and their right to freely choose their future.[81] However, the end of war demonstrated completely different state of affairs, which defined self-determination as a political instrument.[82] Thus, the principle was used to break up some territories and neglected in those cases, where territories were to be kept. The mere example is Alsace-Lorraine region, which was given to Poland and Czechoslovakia, while its population had no choice, but to obey. Austrian-Hungarian peace treaty supposed the transfer

[74] N.H. Baynes (ed.), The Speeches of Adolf Hitler, (1942) Vol. 1, p. 103; "the union of all Germans, on the basis of the right of self-determination of peoples, to form a Great Germany."
[75] Christine Bell, Peace Agreements and Human Rights - Oxford University Press 2000, pp. 56, 75
[76] W.M.Reisman, My Self Determination, Your Extinction, - Los Angeles Times, 1992
[77] *Ibid.* pp. 56, 75.
[78] J. Crawford, State Practice and International Law in Relation to Secession, British Yearbook of International Law (1998) p.69
[79] L.Brilmayer, Secession and Self-Determination: A Territorial Interpretation, 16 Yale Journal of International Law, 1991 p.177
[80] Z.A.Velasco, Self-Determination and Secession: Human Rights-Based Conflict Resolution, p. 90
[81] A.Cassese, *note 22,* p 24.
[82] Zoilo, *note 80,* p. 90

of South Tyro to Italy without any public votes.[83] Finally, Baltic States, as well as Caucasian Republics forgot about independence for the upcoming decades.[84]

1.3.1 Post-Colonialism

More cases of implementation of self-determination may be found in post-colonial period, when the nations were supposed to provide all grounds for proper self-determination of all former colonies. However, the author will try to demonstrate all discrepancies by analyzing some key cases. Speaking of colonial peoples and their right to self-government, it's difficult to omit the participation of the UK in drafting process of the article of self-determination in the UN Charter.[85] While the great power didn't want to lose its external possessions, this episode demonstrates one more time that self-determination, even in its classical external sense is still a subject to political will, but not international custom and *erga omnes* obligation.

To dig deeper into legal practice, the author analyzes the case of Western Sahara, where the right of one side which were Sarawahis was approved while Morocco and Mauritania were denied the right to territory. The ICJ held that there were "no legal ties... as might affect... the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory"[86]

While in the case of East Timor, the ICJ stated that there is a right to self-determination for the people of East Timor, moreover, it has an *erga omnes* character. Nevertheless, procedural law appeared to be more competent than the *erga omnes*.[87] "*The Court, at the expense of contradicting itself, virtually gave no value to the East Timorese's right of self-determination when it dismissed the case because it would not rule on the lawfulness of Indonesia's patently illegal occupation of East Timor because Indonesia was not a party litigant*"[88] Consequently, the right to self-determination happened to be far from an *erga omnes* nature, since Indonesia was

[83] A.Cassese, *note 22*. p. 24
[84] R.Lansing, The Peace Negotiations: A Personal Narrative, Hard Press Publishing 1921, p. 98-99
[85] Zoilo, *note 80,* p. 92
[86] Western Sahara, Advisory Opinion, LCJ Reports 1975, p. 68
[87] Zoilo, *note 80,* p.93
[88] East Timor (Portugal. Australia), ICJ Reports 7996, pp. 102, 105-l06.

left out. Eventually, the agreement for a referendum was decided with the background of harsh human rights violations by Indonesia, which forced the international community to pay attention and step in, therefore triggering the 1999 referendum for independence.[89]

Above-mentioned cases demonstrate once more that the right to self-determination plays highly minor role in disputes concerning territories, while the strong political will determines the final outcome of the cases.

1.3.2 Non-Colonial Period

While taking a closer look at cases related to "successful" non-colonial self-determination which had separation and territorial independence as a result, the author can bring such examples as Eritrea, Yugoslavia case, Bangladesh and South Sudan, as it has been mentioned in previous section. However, the opposing opinion of this section, unlike the previous one, states that aforementioned cases were a result of political will and power, but not self-determination as a result of independence.**[90]**

Bangladesh's case was successful due to Indian military intervention using the human rights violations against the Bengalis as a justification. In this case, "the disenfranchisement of the population as a result of interference with the electoral process, the brutality of the (Western) Pakistani forces and the fact that some 10 million refugees - a truly staggering number - consequently fled the country contributed to rapid recognition."[91]

In case of Eritrea, it has also different grounds for eventual independence. As a result of an alliance between the Eritrean Peoples' Liberation Front (EPLF) and the Ethiopian Peoples' Revolutionary Democratic Forces (EPRDF) which succeeded in the struggle against military junta (Derg) of Ethiopia. Later on, those groups came to a common decision to provide for a referendum (independence vote) for Eritreans.[92] All in all, the independence was an exercise of common will of Eritrea and Ethiopia and not a UNC Secession.

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[89] J.J. Hewitt, J. Wilkenfeld and T.R. Gurr (eds.), Peace and Conflict 2008 (2008) PP. 125-126; East Timor, (2012)
[90] Zoilo, *note 80,* p. 93
[91] M.Weller, Escaping the Self Determination Trap, BRILL, 2008, p. 64
[92] *Ibid.*

The case of South Sudan represents the most recent expression of political will and as a result a secession on 9 July 2011. Everything began with the cancellation of autonomy of south by the government of Khartoum in 1983. This provoked the rise of secessionist movement by the Sudan people's Liberation Movement (SPLM) and creation of its armed branch, the Sudan People's Liberation Army (SPLA).[93] Finally, the successful result was guaranteed by the Comprehensive Peace Agreement between the SPLM and Sudanese Government under the supervision of Inter-Governmental Authority n Development (IGAD) with its partner states, the US, the UK, Norway and Italy.

While speaking of former Socialist Federal Republic of Yugoslavia, the secession of Slovenia and Croatia was mainly handled by German political power which had in its interest recognition of Slovenia and Croatia in 1991.[94] Conversely, when the Croatian and Muslim population of Bosnia-Herzegovina claimed to secede for self-determination, Serbs were strictly of opposite opinion. Eventually, plebiscites were held by all involved national groups, to determine whether they want to remain a part of Yugoslavia, or secede based on their right of self-determination.[95] Thus, Bosnia-Herzegovina declared its independence on 3th March 1991, which later on was recognized by the US, the UN Security Council through a recommendation of the admission to the UN and finally its formal admission by the General Assembly on 22 may 1992.[96]

All in all, to put in one sentence the whole point of opposing opinion, all aforementioned examples demonstrate a strong political power behind the principle of self-determination and its consequent secession. Final stage of implementation of secession based on self-determination is the state recognition by the international community. On the examples of Western Sahara and East Timor, the theory demonstrates that the claim for aforementioned rights does not necessarily mean its implementation and eventual independence. Therefore, existence and expression of the right to self-determination must not be confused with secession qua independence or statehood.[97]

[93] *Ibid.*
[94] P.Radan, The Break-up of Yugoslavia and International Law — Routledge, 2002, p. 163
[95] *Ibid.* p.186
[96] *ibid* p.187
[97] Zoilo, *note 80,* p.96

If taken into account the doctrinal assumption that secession and self-determination are interdependent rights, self-determination would turn into a chaotic and highly uncertain right[98] due to its fundamental dependence on political will, and chaotic and unstable geopolitics.

1.4 Final observations

The opposing theory tries to establish a strict and determined propose of self-determination by stating that it is a basic human right which found its place in Article 21(3) of the Universal Declaration of Human Rights and currently is customary international law.[99] Thus, one of interpretations [100] It is not an exclusive right, it does not postulate for the independence of minorities or other entities only, but for all peoples.

Therefore, if we claim that the right to self-determination includes the right to secession, it would be necessary to draw a line of equality, as the cases of Palestine and Kosovo use self-determination as a legal basis for their secessionist movements, so peoples in Syria, Tunisia, Egypt and many other countries where peoples are oppressed by governments must acquire their recognition through self-determination.[101]

As self-determination is a fundamental human right, and if regarded from the perspective of human rights, the very right must be implemented in conjunction with the "human-rights-based approach to peace settlement and conflict resolution".[102] It doesn't mean that the opposing theory completely excludes the possibility of secession in cases of harsh human rights violations against

[98] R.Falk, "Self-Determination under International Law: The Coherence of Doctrine versus the Incoherence of Experience" p. 46

[99] W. M.Reisman, Sovereignty and Human Rights in Contemporary International Law - Yale Law School Faculty Scholarship Series, pp. 866-867

[100] T.M. Franck, "The Emerging Right to Democratic Governance", 86 American journal of International Law (1990) pp. 46-9

[101] W.Danspeckgruber and P.Brandeish Raushenbush, Defining One's Own Destiny: Self-Determination, Religion and the 'ArabSpring',(2012)

[102] Zoilo, *note 80,* p.103

ethnical entities, forced to exploit their "last resort", human rights should provide a justification for separation, however the implementation and interpretation of the very right to secession must not be based on mere self-determination.[103]

Thus, the theory concludes that self-determination and secession should not be associated with one another, otherwise the fundamental right to self-determination would become an "anomaly" which would provide an easy excuse for every entity willing to secede, eventually endangering another fundamental principle of territorial integrity. Additionally, while the author makes an attempt to take a look from the other side, it becomes obvious that secession in conjunction with self-determination for one people leads to violation of rights of another nation claiming their right to the same territory. Finally, self-determination qua secession exists as a dangerous combination which is often a reason for ethno-national conflicts and illegal use of force instead of peaceful dispute settlement.

What's regarding the implementation of self-determination, the opposing scholars claim that its effective implementation is possible only if followed by a strong political power and assistance from the international community. Therefore, all put together, self-determination must stand as a basic principle for human rights, but if one assumes that secession follows from the right to self-determination, then it confronts itself as a human rights principle by creating all preconditions for aggression and violation.

[103] *ibid.*

Chapter 2: Secession Case by Case

This chapter will discuss the mechanism of secession on case by case basis, including the comparative analysis of all integral parts of the process of secession. The author will take several recent and controversial cases of so called “contemporary secessionist practice” and brake them down into several main aspects which caused and lead to secession with its further outcomes.

First of all, before analyzing every case one by one, it is necessary to outline the main criteria which are required by international law for statehood and creation of new states. The Montevideo Convention on the Rights and Duties of States[104] states certain criteria for the entities in order to be recognized as a state: "The State as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with other states".[105] However, not all of newly created stated followed all four criteria listed by the convention. As it will be demonstrated in case studies, a number of States met only first two criteria at the time of declaration of independence.[106]

Another vital mechanism exploited in this analysis is the list of conditions stated by Dugard which are necessary for the secession to take place:[107]

1) it is necessary to have a certain people with its own identity based on ethnicity, race, culture, language or religion;

2) the people must be settled on a distinct territorial part of the State and have the majority of population of the area;

3) the right of the people to take part in government must be denied, as well as the possibility of representation in political structures must be blocked or limited;

4) there must be constant violation of fundamental human rights;

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[104] UN General Assembly, Draft Declaration on Rights and Duties of States, 6 December 1949, A/RES/375
[105] ibid, Art. 1
[106] A.Sucur, Observing the Questions of Self-Determination and Secession in the Wake of Recent Events in Kosovo, Abkhazia, South Ossetia and Crimea, 3 Zagreb L. Rev. 273 2014 p.275
[107] J.Dugard, "The Secession of States and Their Recognition in the Wake of Kosovo", RCADI, vol. 357, 2013

5) secession is possible only after exhaustion of all possible domestic means to protect their human rights and all above-mentioned rights;

If first four conditions are simply representing the core basic human rights and somehow are connected to self-determination, the fifth condition raises a lot of questions and problems. The author thinks that the criteria stated by Dugard are quite logical and might be in accordance with some general provisions of international law. For example, denial of participation in governmental affairs and political life, violation of fundamental rights forms the part of general rights that are included in positive obligations of every state towards its peoples. However, as it will be shown further in this work, these are just theoretical statements, since real secessions happen in an independent self-developed scenario.

Therefore, for the purpose of this thesis, it is necessary to answer a question as When the process of secession must be triggered after violations of first points listed above and can it be triggered at all based on international law or as a strong political will of great powers in violation of international law? Taking into account the last aspect, the thesis may question the legality of secessions gained through use of force by a third state as it may fall under non-recognition principle.[108]

The analysis of cases listed below will demonstrate how in practice those mechanisms work and what is the real state of affairs regulated by international law.

[108] *Ibid.,* p.30

2.1 Kosovo

Before the author goes into analysis of legal aspects of the question, it is worth to mention a few facts about history. Population of Kosovo consists of 90 per cent Kosovo Albanians and 8 per cent Serbs.[109] Kosovo was an autonomous province of Serbia which was removed in 1989 by Serbia without any conditions, moreover, it was accompanied with a number of discriminatory laws aimed to limit or prohibit the use of Albanian language in education.[110] Therefore, Kosovo had to declare its independence in 1991.[111] The declaration didn't receive any recognition from the international community.

At first, there were some non-armed separatists from Kosovo, however in 1996 their place was taken by a more violent and radical group named Kosovo Liberation Army, which in its turn launched vast attacks on Serbian military forces, consequently causing an armed conflict.[112] In 1999 followed NATO intervention. Afterwards, the Security Council adopted a Resolution 1244 (1999) in which it overtook the governance in Kosovo by an international civilian and NATOs military intervention.[113] In 2008 Kosovo unilaterally declared independence. Afterwards, Kosovo received widespread recognition from the international community which at the beginning was 21 states including the USA, while among those who opposed were Serbia, Russia and China.[114]

Here comes a question whether Kosovo could be recognized as a State without fulfilling all four criteria from the Montevideo Convention? Since Serbs still were in majority power in certain areas of Kosovo like Northern Kosovo, they were conducting votes and creating new municipal bodies with Serbs-led majority there.[115]

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[109] *Ibid., p.109*
[110] G.Bolton, "International Responses to the Secession Attempts of Kosovo, Abkhazia and South Ossetia 1989-2009, p.113
[111] J,Dugard, *note 107,* p. 157
[112] A.Gioia, "Kosovo's Statehood and the Role of Recognition", The Italian Yearbook of International Law, vol. 18, issue 1, 2008, p.13
[113] W.G., Pillay, N., "Minorities' Claim to Secession by Virtue of the Right to Self-Determination: Asian Perspectives with Special Reference to Kosovo and Sri Lanka", Nordic Journal of International Law, vol. 82, issue 2, 2013, p. 260
[114] A.Gioia, *note 112,* p.5
[115] A.Sucur, *note 106,* p.285

Therefore, while some recognizing states were supporting the action based on political facts and neglecting the legal side of the question, others, those who opposed the secession, were emphasizing the contradiction with basic principles of international law as territorial integrity.[116]

As a result, Serbia asked for clarification from the International Court of Justice, the advisory opinion requested by the United Nations' General Assembly for Serbia was intended to find answers on legality of secession.[117] Eventually, the court declared that the declaration for independence "did not violate any applicable rule of international law".[118] Obviously, the ICJ gave the initiative to political power and internal civil conflict to determine the actual outcome and faith of Kosovo.[119]

2.1.1 Historical Background

The confrontation between Kosovo Albanians and Serbians may be traced even back to rule of Ottoman Empire. Kosovo Albanians were seeking for autonomy, independence or even unification with Albania. However, the first outbreak of oppression took place in 1948, when Albania decided to preserve its pro-soviet policy.[120] As a result, Kosovo Albanians underwent severe oppression from Yugoslav authorities, therefore besides physical violence against Kosovo Albanians there were limitations in public life. For example, 68% of public service positions was given to Serbs and Montenegrins, who formed only 27.5% of entire population of Kosovo.[121] It is worth to mention that the constitution of SFRY of 1963 directly denied any republican

[116] J.Almqvist, The Politics of Recognition: The Question about the Final Status of Kosovo p.173
[117] "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law? UN Doc. A/RES/63/3 (2008)
[118] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion), Advisory Opinion of 22 July 2010, ICJ Reports, ISSN 0074-4441, ISBN 978-92-1-071107-4,2010, para. 122
[119] W.G., Pillay, N., "Minorities' Claim to Secession by Virtue of the Right to Self-Determination: Asian Perspectives with Special Reference to Kosovo and Sri Lanka", Nordic Journal of International Law, vol. 82, issue 2, 2013, p. 264
[120] M.Vickers, Between Serb and Albanian: A History of Kosovo - Columbian University Press, pp. 148-151, 1998
[121] *Ibid*. P.323

autonomy for areas of "distinct national composition".[122] Moreover, it stated that Kosovo and Vojvodina regarded as autonomous provinces, however only within Republic of Serbia.[123]

The first official call for separation as a Republic of Kosovo within the SFRY was in 1968, followed by such improvements as utilization of Albanian symbolic, language on even bilingual education in University of Pristina.[124] Taking the version of Constitution of the SFRY of 1974, the SFRY contained six republics and two autonomous provinces within the Republic of Serbia, which were Kosovo and Vojvodina.[125] In fact, the constitution had a very detailed approach to internal self-determination. While distinguishing even between "nations" and "nationalities, where the former referred to peoples of republics and the latter concerned nationalities of autonomous provinces.[126] Federal units had a very wide range of powers and competences over their territories and autonomous provinces had their representatives on federal level.[127]

Nevertheless, the crucial fact is that the Constitution attributed the right of self-determination only to nations (republics) which even accepted secession.[128] However, Kosovo Albanians were not happy with wide but yet limiting autonomy. The main demand was to create a separate republic of Kosovo.[129] In the end, when in 80s Slobodan Milosevic was coming to power in Serbia, autonomy of Kosovo was questioned and reconsidered by nationalist leaders.[130] Here the author briefly demonstrated relations of Kosovo Albanians with Serb authorities and their position in FRY. As it is seen, Kosovars had secessionist movements for more than half of a century. Despite the fact, that they were given a wide recognition and their rights were protected on constitutional level, the consequence of ethnical conflicts in past had always been present as rejection of Serbian authorities. In following, the author will illustrate the state of affairs after

[122] Constitution of the Socialist Federative Republic of Yugoslavia art. 111, para. 1
[123] ibid. Art.111, para.3
[124] N.Malcolm, Kosovo: A Short History - Harper Perennial; 1st HarperPerennial ed edition p.311 (1999)
[125] Ustav Socialisticke Federativne Republike Jugoslavije (Constitution Of The Socialist Federal Republic Of Yugoslavia)1974, in Constitutions of The Countries Of The World, p 47 (A.P. Blaustein & Gisbert H. Flanz eds., 1986)
[126] *Ibid*., Art.1
[127] *Ibid.,* art. 271, 291, 348, 381
[128] See. Genera Principle 1, ibid. Nonetheless, the right to secession of republics was not regulated by any specific provision
[129] N. Malcolm, *note 124*, pp.327-328
[130] *Ibid*., pp. 341-344

suspension of autonomy of Kosovo and aggravation of situation, which in its turn led to what we had in 2008.

While the status and rights of Kosovo were clearly established by constitution, it was an autonomous region of Serbia and possessed some powers, so it was not easy for Serbia to interfere in Kosovo's affairs. Therefore, Serbian authorities prepared to enact amendments in constitution in 1989 which would bring certain limitations in Kosovo's autonomy and powers. As a result, Serbian authorities obtained the most of competences over Kosovo, while the latter lost a big part of its possibilities of government.[131] Later on, as a result of vote of 28th March of 1989, due to direct amendments in constitution, which were enacted with the presence of police forces and Serbian politicians[132] Kosovo lost its autonomy. In other words, all institutions created for Kosovo's autonomy now were under direct control of Serbia.[133] Kosovo Albanians responded in a radical way, while on 2nd of July in 1989 the majority of Albanian members of Kosovo's Assembly adopted a resolution which directly declared Kosovo an independent republic within Yugoslavia.[134]

When the SFRY faced the process of dissolution in 1991, the Kosovo Albanians changed their political agenda and now were fighting for complete independence. However, while Serbia and Montenegro were to establish the new Federal Republic of Yugoslavia, there were no discussions concerning the status of Kosovo as a separate state. Thus, as it is obvious from the Constitution of the Federal republic of Yugoslavia, Kosovo remained a part of Serbia.[135] Therefore, in 1991 the so-called underground referendum was held by Kosovo Albanian politicians where was accepted the Resolution on Independence and Sovereignty of Kosovo, which was voted in favor

[131] Constitution Of The Socialist Autonomous Province OF Kosovo (1974), in Normative Acts Before and After 1974, pp. 41, 45 (1998) art. 49)
[132] Malcolm, *note 124*, p.344
[133] Constitution of Kosovo 1974, *note 131*, p.75
[134] See more in Statement of Prime Minister of Albania Mr. Sali Berisha on Recognition of Independence of Kosova. (2008) Link: https://web.archive.org/web/20120420190957/http://www.keshilliministrave.al/index.php?fq=brenda&m=news&lid=7323&gj=gj2)
[135] See. The Constitution of the Federal Republic of Yugoslavia, 1992, full text is available at: http://www.worldstatesmen.org/Yugoslav_Const_1992.htm

by 99.87%.[136] However, eventually the declared independence of 19 October 1991 was recognized only by Albania.[137]

Here the author would like to make a special emphasis on important violations of basic human rights which took place after these events. These facts will be taken as a measure for further comparative analysis and conclusions of this thesis. According to the Law on the Restriction of Real Property Transaction[138] ethnic Albanians didn't have an access to the market of private property, in other words, they couldn't possess any property. Moreover, many Serbian refugees from Croatia and Bosnia-Herzegovina were replaced to Kosovo, which also aggravated the position of ethnic Albanians. This all finishing by limitations in health care for Albanians.[139] Here the author would like to point out the open violation of economic and social rights of a certain ethnic group within a state where they form a big minority. Later the researcher will get back to this fact, however now, it is important to mention the final triggers which led to NATO intervention in 1999.

All in all, the situation in Kosovo at the time may be reported as quite hostile against Kosovo Albanians in the period from 1990 to 1999. Since every aspect of Kosovo's public life had been controlled by Serbs, Albanians were highly oppressed. While Serbs implemented all possible administrative and political measures in order to haunt and control all protesting Albanians, it resulted in a big number of Albanians who had no access to employment, medical care etc. As a result, the death rates among Albanian population raised for a few times. Teachers and other social employees of Albanian distinct were dismissed, as well as the Albanian literature, history and any other related subject was largely forbidden or limited in schools. Therefore, the massive violations of human rights of Albanians by the mother-state could give a right to start protest and start using all possible means to settle the dispute, as it will be illustrated in further sections.

[136] Vickers, *note 120,* p.251
[137] J. Crawford, *note 3*, p.408
[138] Zakon o Posebnim Uslovima Prometa Nepokretnosti (Law on the Restriction of Real Property Transactions), Official Gazette of the SR Serbia No. 30/89, in. Kosovo: Law and Politics, p.75
[139] Vickers, *note 120,* pp.250- 252

2.1.2 NATO, Intervention and the Accords of Ramboullet

After 1995, followed y the emergence of the Kosovo Liberation Army (KLA) and increased Serbian violations of human rights resulted in four resolutions by the UN.[140] Three out of four resolutions addressed the situation In Kosovo condemning the violence from the FRY, proposed political and peaceful resolutions of conflict in Kosovo, however called the actions of Kosovars as "acts of terrorism).[141] Moreover, those resolutions clearly confirm the right to territorial integrity of Serbia.[142] In favour of Kosovo's autonomy, the resolution 1160 mentions its right to autonomy and calls for the increased level of self-administration for Kosovo.[143] These are the first steps of the UN to settle the conflict after its escalation with the dissolution of SFRY, however, the resolutions bear a non-binding nature and thus the negotiations are still to continue.

One of the most remarkable dates in Kosovo-Serbian negotiations was at Rambouillet in France in 1999, where the main goal was to resolve the conflict in a peaceful way.[144] On 23 February of 1999 the Contact Groups of the United Kingdom, Russia, the United States, France and Italy drafted the Rambouillet Accords on Interim Agreement for Peace and Self-Government in Kosovo.[145] The main regulations of the Rambouillet Accords may be found in article 2, which provides for certain framework to put an end for hostilities in Kosovo.[146] Moreover, the first article defines the mechanism of self-government for Kosovo, mentioning all legislative and

[140] See: S.C. Res. 1160, para. 3, 1998; 1119, para. 6, U.N. Doc. S/Res/1199 1998, 1203 para. 8, U.N. Doc. S/Res/1203 1998 and 1239, para. 3, U.N. Doc. S/Res/1239 1999
[141] S.C. Res 1203, para 3-4; S.C. Res. 1199, para. 1-2; S.C. Res. 1160, para. 2-3
[142] S.C. Res 1203, para. 14; S.C. Res. 1199, Para. 13; and S.C. Res. 1160, para. 7. S.C. Res. 1239, para. 7
[143] S.C. Res. 1160, para. 5
[144] J.Crawford, *note 3*, p.557
[145] Interim Agreement for Peace and Self-Government in Kosovo February 23, 1999. Full text available at: https://peacemaker.un.org/sites/peacemaker.un.org/files/990123_RambouilletAccord.pdf)
[146] Rambouillet Accords, art. II, 1-2. (1. Use of force in Kosovo shall cease immediately. In accordance with this Agreement, alleged violations of the cease-fire shall be reported to international observers and shall not be used to justify use of force in response.

2. The status of police and security forces in Kosovo, including withdrawal of forces, shall be governed by the terms of this Agreement. Paramilitary and irregular forces are incompatible with the terms of this Agreement.)

governmental bodies, such as "legislative, executive, judicial and other institutions established in accordance with this agreement"[147] and according to the document, Serbian forces must be taken out from Kosovo.[148]

The Rambouillet Accords presupposed the enforcement of human rights in the region and most importantly, all those articles mentioned above provided for pure internal self-determination for Kosovo Albanians. Provisions providing for self-government institutions, as well as protection a minority as well as clear references to Kosovo Albanians as a separate entity within Serbia illustrate how the mother state oppresses its minority. However, the Accords didn't suppose any secessions and complete independence for Kosovo as there were clear references to territorial integrity of FRY. As a result, Kosovo was to become a powerful autonomous region with a wide range of powers, however, the agreement was refused by FRY and Serbia.[149] As a consequence, the western part of international community decided to react and the NATO launched a military intervention in FRY on 24 March 1999.[150] The author is not going to discuss in this work the (il)legality of this intervention from the perspective of international law, since the main focus of this analysis is the scale of violations of human rights that led to the intervention and further secession.

As a result of intervention, the humanitarian crisis in Kosovo was prevented and the Military Technical Agreement was signed[151] and its main purpose was to provide for security and international control by the UN in Kosovo and first the agreement mentioned the resolution prepared by the UN Security Council[152] Moreover, art. 2, para 2 clearly provided for limitations for sovereignty of FRY over its territory:

[147] Rambouillet Accords, art.1 para4. Citizens in Kosovo shall have the right to democratic self-government through legislative, executive, judicial, and other institutions established in accordance with this Agreement. They shall have the opportunity to be represented in all institutions in Kosovo. The right to democratic self-government shall include the right to participate in free and fair elections.
[148] *Ibid.*, Chapter 7, art. 4 and 6, however the accords called for respect to the territorial integrity of the FRY. (ibid. Art 1 para.1(a))
[149] J. Crawford, *note 3*, pp. 557-558
[150] D. Kritsiotis, The Kosovo Crisis and NATO's Application of Armed Force Against the Federal Republic of Yugoslavia, 49 INT'L & COMP. L.Q. p.330, 2000
[151] Military-Technical Agreement, KFOR-Yugoslavia-Serbia, June 9, 1999
[152] ibid. Art.1, para 1

> *"The international security force ("KFOR") will deploy following the adoption of the UNSCR [United Nations Security Council Resolution] ... and operate without hindrance within Kosovo and with the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out its mission."*[153]

Later on, the Resolution 1244 was enacted by the UN and was binding for all Member States which shifted the situation into a completely different flow, where FRY and Serbia had to share their rights over territory with an alien administration.

2.1.3 Resolution 1244 as a Cornerstone

One of the main sources of law in this case is regarded the Resolution 1244 adopted in 1999 by the United Nations.[154] It was enacted as a result of military actions of the NATO against Yugoslavia and the main purpose was to provide interim administration for Kosovo in order to find peaceful ways of solvation of the conflict. The temporary authority on territory of Kosovo was called the United Nations Interim Administration Mission in Kosovo (UNMIK). The resolution itself prevented Yugoslavia from any actions and sovereign powers in Kosovo.[155]

The Resolution 1244 was designed in such a way that it established a semi-independent governance over Kosovo in order to stabilize the situation in the region. Its provisions gave a wide range of competences to the Special Representative of the Secretary-General and to UNMIK:

> *1. All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General.*

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[153] ibid. Art.2, para. 2

[154] UN Security Council, *Security Council resolution 1244 (1999) [on the deployment of international civil and security presences in Kosovo]*, 10 June 1999, S/RES/1244 (1999)

[155] C.Stahn, "The United Nations Transitional Administration in Kosovo and East Timor: A First Analysis", 5 Max Planck Yearbook of United Nations Law (2001), p.11

2. The Special Representative of the Secretary-General may appoint any person to perform functions in the civil administration in Kosovo, including the judiciary, or remove such person. Such functions shall be exercised in accordance with the existing laws, as specified in section 3, and any regulations issued by UNMIK.[156]

Another crucial fact is that the Resolution was adopted in accordance with Chapter VII of the UN Chapter. Therefore, it's power and legal structure was mandatory for all Member States which also included the province of Kosovo, at that time a part of Yugoslavia. The resolution has never been abolished even after the declaration of independence, which was also mentioned in the declaration itself.[157] The resolution 1244 contained several key fundamental aspects of customary international law. As for example, Article 24, para2 of the UN Charter illustrates the correlation between the Resolution and the obligation of the Security Council to act in accordance with "the Purposes and Principles of the United Nations" which also include Chapter I of the UN Charter. Paragraph 11 of the preamble of the UN Charter says that "Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in Helsinki Final Act/

Therefore, it may be concluded, that the Resolution 1244 is based on the most fundamental principles of international law. The author will use this thesis in following parts where the research will touch upon statements of States supporting the declaration of independence. Another reference which the researcher would like to make, is the statement of the International Law Commission: "when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations. General law will . . . continue to give direction for the interpretation and application of the relevant special law …"[158] The Resolution didn't change any general law in Kosovo by specifying that the law applicable there was still from the legislation adopted before March 24th of 1999.[159] However, those legal provisions, according to the Resolution, could be modified or changed in accordance with

[156] UN Mission in Kosovo Reg. 1999/1, para. 1, UNMIK/REG/1999/1
[157] Declaration of Independence of Kosovo, para.5, Available at: https://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf

[158] Official Records of the General Assembly, S.61, Supplement No.JO (A/61/10), pp.408-409
[159] On the Authority of the Interim Administration in Kosovo, UN Mission in Kosovo Reg. 1999/1, § 1, UNMIK/REG/1999/1 (July 25, 1999), available at www. unmikonline.org/regulations/1999/re99_Ol.pdf

international human rights. Also, the UNMIK had sufficient competences to change the applicable law in the region.[160]

Taking this all into account, let us analyze the legal side of secession according to the Resolution 1244 which the author will use here as a reference to main principles of international law. To begin with, it is worth to mention the number of references to the principle and right to territorial integrity and sovereignty of Yugoslavia. Thus, the operative paragraph 4 mentions Kosovo as a part of Yugoslavia ("Confirms that after the withdrawal an agreed number of Yugoslav and Serb military and police personnel will be permitted to return to Kosovo to perform the functions in accordance with annex 2)[161] "A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia ... " which one more time confirms the importance of territorial integrity of Yugoslavia. The Rambouillet accords also note the territorial integrity of FRY.[162]

The author points out that on the entire Resolution 1244 the Security Council didn't put any direct mention of the principle of self-determination of the Kosovo Albanian people, however, as it has been discussed above, the Resolution itself is built on main principles and values of the United Nations, therefore the principle of self-determination is equally present in the Resolution along with territorial integrity. However, it is uncontestable, that the Resolution had as one of its main objectives to protect territorial integrity of FRY and Serbia through peaceful solvation of the conflict.

[160] *Ibid.*
[161] see more: para 5 of annex 2, para 6 of annex 2, more importantly para 8 of annex 2
[162] S/1999/648, 7 June 1999, p.9 (This letter contained the Interim Agreement for Peace and Self-Government in Kosovo (The Rambouillet Accords) which called for a new constitution for Kosovo that respects the territorial integrity of FRY while simultaneously establishing the principles of democratic self-government for three years until final status of Kosovo is determined)

2.1.4 The Declaration of Independence and Secession

Several final attempts of peaceful settlement took place prior to the final declaration of independence. On 12 December of 2003, the world saw new "Standards for Kosovo" adopted by the Security Council.[163] It was a specific document, which was supported by the contact group (The US, Russia, France, Italy and Germany) and conveyed 8 standards necessary to fulfill before the final status of Kosovo. The document demanded enforcement and protection of human rights of Kosovo Albanians, mentioning such conditions as proper rule of law, economic, social and political rights, push towards negotiations with Belgrade.[164] Nevertheless, regardless one more effort, the plan failed and on 30 November of 2004 the UNSG stated that the implementation of standards in current conditions without any additional political support seems to be impossible.[165]

The further step, which was the first official acknowledgment of necessity of independence also known as the "Ahtisaari Plan". This was an official "Report of the Special Envoy of the Secretary General on Kosovo's Future Status", which, after analyzing the whole situation proposed an independence for Kosovo, yet supervised by international community and organizations.[166] For this thesis, it is important to notice that the observations of the special envoy Ahtisaari mentioned inability of parties to come to a certain conclusion.[167] The Kosovo Albanians required only independence, however, at that time, under effective control of UNMIK, the special envoy didn't observe any hostilities or human rights violations against Albanians, which are, as discussed in this thesis, may be the only reason for "remedial secession". During that period of time, in 2007-2008 it is difficult to say that Kosovo was in need for a remedy as UNC secession. Moreover, while Serbia rejected the Ahtisaari Plan, and the "troika", so-called group of the EU, the USA and Russia was supposed to come up with a final decision on status of Kosovo on 10 December of 2007.[168] Serbian authorities came up with a proposal to give Kosovo

[163] Statement by the President of the Security Council, at 1, U.N. Doc. S/PRST/2003/26 (Dec. 12, 2003)
[164] *Ibid.*
[165] Letter from Kofi Annan, United Nations, to the President, United Nations Security Council, p. 4, U.N. Doc. S/2004/932 (Nov. 30, 2004)
[166] Letter from Ban Ki-moon, SGUN, to the President, UNSC, U.N. Doc. S/20071168 (Mar. 26, 2007) (attaching The Special Envoy of the Secretary-General on Kosovo, Report of the Special Envoy of the Secretary-General on Kosovo's Future Status, Delivered to the Security Council, U.N. Doc. S/2007/168 (Mar. 26, 2007)
[167] *Ibid*., Para 2
[168] SC Report, Kosovo Historical Chronology, Nov. 1, 2005, [hereinafter Kosovo Historical Chronology]

the same status as of the Aaland Islands for 20 years. The plan was supposed to give Kosovo autonomy and self-government over its territory, internal and external affairs with formal participation of Serbia regarding agreements signed by Kosovo. Moreover, Belgrade proposed to give complete independence in internal affairs of Kosovo, legislative and social aspects of life of Kosovars and more. On the other hand, Serbia will participate only in protection its sovereign borders, Serbian traditional heritage and a number of other minor "Serbian" factors in Kosovo.[169]

The researcher here notes that this proposal is an adequate step forward towards peaceful settlement of conflict while not breaching the principle of territorial integrity. While the state of affairs before 1999 as well as some period after was close to be called in extremis violations of human rights of an ethnical minority, now, with this final proposal of Serbia, there was nothing close to conditions necessary for a remedial secession. The final events, where the Resolution 1244 was considered as a failed plan and the open call for independence from the EU and the USA only confirmed the presence of political will behind this secession, while the right to self-determination, violations of human rights and other factors which seem to overlap with the phenomenon of secession are absent. On 17 February 2008 Kosovo unliterally declared independence.[170]

If we test this secession by using those criteria stated in the beginning of this chapter, it will show that the secession meets all of them. Ethnically, Albanians who live in Kosovo have certain distinction and their own identity different from Serbs. They have different culture and language.[171] What's crucial here to mention for this thesis is that if we consider Kosovo Albanians' identity in relation with native Albanians, it would provide for merging with Albania or other bigger similar state (theoretically). The author emphasized this point or so-called condition, since it plays a big role in other cases discussed in this work. With this condition in mind, one may assume that the very purpose of right to secession may be regarded from a different angle, providing for more options for secessionists and more action for intervening States which are interested in protection of their ethnical minorities.

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[169] Ministry of Foreign Affairs of the Republic of Serbia: Belgrade's Proposal Freezes Kosovo Status for 20 Years (Nov. 20, 2007)
[170] Declaration of Independence Available at: https://www.assembly-kosova.org/common/docs/Dek_Pav_e.pdf
[171] Adam Sucur, *note 106*, p.286

The case of Kosovo had a very controversial recognition in the world and divided the international community on two main opposing sides. While Eastern and Western states were trying to prove each other wrong, both sides were using international law as the main legal source for either to deny or to justify this secession. Thus, here the author refers to some statements made in the Security Council on 18th February 2008[172]: Serbia claimed that the declaration of independence by provisional Institutions of Self-Government of the province of Kosovo was completely illegal, moreover, referring to resolution 1244 (1999) which provided for territorial integrity of the sovereign Serbia.[173] In addition, the main supporter of Serbia, which was and still is Russian Federation claimed that the unilateral declaration of independence was a harsh violation of international law and breach of the main principles of the UN Charter. (p.6), while on the other hand, the states supporting secession claimed diametrically contrary. For example, the United States stated that the declaration of independence is based on legal, logical and fair grounds. The most interesting statement which is also crucial for this research is that the ”Kosovo's declaration is fully consistent with resolution 1244 (1999) and expressly recognizes that that resolution will remain in force”[174] Why is it important? Perhaps, the analysis of the resolution demonstrates that if the unilateral declaration of independence is legally accepted by the declaration, it could mean that the United Nations officially allow the secession under the UN Charter. Along with the US, France was one of the biggest supporters of this declaration of independence. Eventually, we have two opposing sides which are using the same source of international law to deny or justify the same action. Does it have something to do with direct human rights violation as a ground for this secession? Partially yes, but in this case, the secession was not regarded as a remedy in the sense discussed in the first part of this thesis. On the contrary, as it has been shown above in this chapter, the UNC secession and declaration of independence are a result of numerous political interventions. The author may conclude that in case of Kosovo the international community created an artificial precedent with a composition of various norms of international law, numerous doubtful actions and at some extend direct violation of international law.

[172] The open meeting following Kosovo’s independence declaration with Prime Minister Boris Tadic of Serbia participating, S/PV.5839 pp. 4-20
[173] ibid. p.4
[174] ibid. p.18

2.2 Russian Perspective on Secession

2.2.1 Crimea

"1. Russia's military intervention in Ukraine violates international law. 2. No one is going to do anything about it."[175]

The author chose this case as an "antagonist" for Kosovo to demonstrate different perspectives of the same process. While the previous case had long-lasting documented violations of human rights, huge efforts towards peaceful settlement and it took many years before the international community came up with the final status of Kosovo. Conversely, the case of Crimea may seem a ridiculous sequence of events with more or less the same principles and outcome as was with Kosovo. This case is chosen in order to demonstrate different concepts of UNC secession and to illustrate the fact that the very proportionality between violation of human rights and the right to secession is quite an abstract, if not an illusionary thing. The main goal here is to analyze and determine the mechanism of international law applicable for the cases used in this work, therefore the author disclaims any political context in this work. Therefore, one will not find such answers as who is a peacemaker and who is the aggressor, or which secession is legitimate and which is not. The author will try to illustrate the facts and explain them using international law.

[175] E. Posner, Russia's Military Intervention in Ukraine: International Law Implications, (01.03.2014)

2.2.2 Historical Background

Crimean Peninsula has a long-lasting history with constant changes in authority and identity which worth a discussion of a history textbook, however in this thesis the author would like to point out at the most important historical fact for the purposes of the work. As being a part of the Soviet Socialist Ukranian Republic, the number of Russian populations was immensely growing in Crimea. In 1991, while the Soviet Union was in process of dissolution, recently independent Ukraine decided to grant autonomy to Crimea within Ukraine.[176]

While before 2013 all Russian attempts to overtake the independence in Crimea didn't finish with success, in the very 2013, during the Ukranian crisis the new hope occurred.[177] At first, the protests taking place in Ukraine after rejection of Agreement with European Union, took a peaceful nature, however later on tensions grew and in 2014 the protest turned into a riot.[178] The protesters requested the Ukrainian government to resign and to organize new presidential elections, which, all in all, happened.[179]

In 21 Faburary 2014 the former president of Ukraine Viktor Yanukovych's rule was overthrown[180] and as it was admitted by Vladimir Putin, Russian troops in conjunction with pro-Russian activists took over Crimea.[181] On 16 March of 2014 the referendum was held asking whether the citizens want to accede to Russia as an expression of self-determination.[182] This, however, proves once more the position of author that self-determination and secession should not be put so close one to another in international law. While the whole idea of self-

[176] A.Sucur, *note 106,* 291
[177] *Ibid.*
[178] V.Ramet, Garces de los Fayos, F., Romanyshyn, I., Policy Briefing: Ukraine's Crisis Intensifies: Protests Grow More Radical, the Authorities More Repressive, Brussels, Directorate-General for External Policies of the Union - Policy Department, 2014
[179] *Ibid.*
[180] See for more: V. Bilkova, The use of Force by the Russian Federation in Crimea, p. 75 Heidelberg journal of int'l Law 27, 41 (2015)
[181] Detailed explanation on the events may be found in: N. Tunde and C. Marian, The war Which Brings in the Cold – Ukraine and Crimea – Maskirovka and Disinformatsia, R&S Today p. 87 (2014
[182] S. Tierney, Sovereignty and Crimea: How Referendum Democracy Complicates Constituent Power in Multinational Societies, 16 German Law Journal, p.523 (2015)

determination was the breakthrough in humanity presented by W.Wilson, the contemporary legal deformation, unfortunately, led to creation of an excuse for great powers. As this case demonstrates, secession is triggered as a result of complicated political games.

The immediate response of international community was a resolution proposed by the UNSC condemning the referendum and deeming it illegal.[183] Nevertheless, since it was obvious that Russia would veto it, the main purpose was to demonstrate the protest of vast majority of states against this secession and annexation. Eventually, when the referendum took place, the UN General Assembly adopted a resolution which proclaimed the referendum invalid.[184] Finally, the "West" of the world imposed wide economic sanctions against Russia.

What's important in this case is the clash of pro-European and pro-Russian political sides. Since Crimea was populated mainly by Russians, those evidently took the pro-Russian side. Eventually, it turned into a conflict between those two.[185] In this scenario Russia expressed some concerns about safety of Russians in Crimea and on 1 March of 2014, armed forces authorized by the Federal Council of the Russian Federation, entered Ukraine pursuing the aim to protect Russian population.[186] In the end, pro-Russian authorities in conjunction with increased number of Russian citizens called for a referendum on 16 March of 2014 and seceded from Ukraine with violation of its constitution.[187] According to Article 73 of the Constitution of Ukraine, any question of changing the territory of Ukraine shall be subject, exclusively, to an all-Ukrainian referendum and the only body that can announce such a referendum is Ukraine's parliament. Further, in Article 134 of the Constitution, the Autonomous Republic of Crimea is stated to be an integral part of Ukraine's territory.[188]

The case of Crimean secession presents a kind of unique material to work with. Let us analyze this case under those five criteria listed in the beginning of the section. Russian population

[183] SC Draft Resolution 2014/189 (15.03.2015) a draft resolution on Ukraine that was not adopted due to a veto by Russia.
[184] Territorial Integrity of Ukraine G.A. Res. 68/262, U.N. Doc. A/68/L.39 (24.03.2014)
[185] A.Sucur, *note 106,* p. 292
[186] Point F of the European Parliament Resolution of 13 March 2014 on the Invasion of Ukraine by Russia (2014/2627(RSP))
[187] *Ibid.,* Point D
[188] Article 134. The Autonomous Republic Crimea is inalienable component part of Ukraine and within the limits of plenary powers certain by Constitution of Ukraine, decides the questions attributed to its knowing.; Constitution of Ukraine December, 8, 2004 N 2222-IV, available at https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/constitution_14.pdf

inhabiting Crimean Peninsula since 19th century constitute a strong claim to self-determination, however there were also Ukrainians and Crimean Tatars with distinct identities, different languages, cultures and ethnicities. As by 2001, about 60% were Russians, 25 Ukrainians and 10 Tatars.[189] In addition, according to the same source, the language spoken as native in Crimea was for 75% of population Russian. So, similarly to Kosovo, in Crimean case Russians fulfilled two Dugart's Criteria which are the majority population and territorial control.

Now let us turn to the problematic side of the case, which forms a precedent within the analysis of this thesis. While in previous case, Kosovo was denied the autonomy and thus internal self-determination, which at some extent gave them the right to evoke the question of secession, in case of Crimea, there was no such violation towards Russian population.[190] Next, one of the integral parts of every secessionist movement are *in extremis* human rights violations.[191] There were no registered cases of intended attacks or other types of aggression towards Russian population.[192] So, Russia justified its intervention as an early protective measure. Speaking of negotiations and exhaustion of all means before secession, no negotiations took place and separatists went straightaway to the referendum.[193] According to the European Parliament, the intervention is deemed to be an act of aggression and moreover, violation of territorial integrity of Ukraine which is a violation of customary international law, especially breach of obligations set by the Budapest Memorandum on Security Assurances for Ukraine (1994). The aspect of use of force in this case is more problematic since it turned from pre-emptive self-defense into clear attacks against certain regions.

[189] Ukrainian Census http://2OO1.ukrcensus.gov.ua/eng/results/general/nationality/Crimea/
[190] A.Sucur, *note 106,* p.293
[191] See Chapter I
[192] Point C of the European Parliament Resolution of 13 March 2014. For the text of the Resolution
[193] almost 97% of voters in Crimea voted in favor of joining Russia. See:
http://www.huffingtonpost.com/2014/03/17/crimea-referendum-final-results n 4977250.html

2.2.3 Crimea and International Law

In order to understand the secession of Crimea it is necessary to list certain key details of state of affairs. If we turn to the vote on referendum, it was boycotted by the most of Ukrainian and Tatar part Crimea, therefore the overwhelming support towards Russia is not a big surprise.[194] However, the question is, whether the referendum was lawful itself. The answer here may be found in the Constitution of Ukraine, more precisely the Article 73, which allows referendums on internal matters, however prohibits any changes in territorial borders.[195] And the logical sequence of any referendum, especially on such a crucial matter is that all or at least the majority of the country participate in vote. Moreover, according to the Venice Commission (featured by The European Commission for Democracy Through Law) stated that the referendum was unconstitutional and the Constitution of Ukraine doesn't provide for any secessions from its territory. Additionally, the Venice Commission confirmed that a referendum which affects international borders must be carefully negotiated and conducted with participation of all "stake-holders"[196]

While this secession resulted also in annexation, it is highly important here to understand the international mechanisms used in this case in order to take it as a lesson of how it should not be. The may be supported by the example of Russian justification which says that prior to annexation there was the question of self-determination of Cremeans which resulted in secession, moreover, President Putin made direct references to Kosovo.[197]

Eventually, using the right of self-determination as a legal ground for referendum prior to annexation is the main argument of Russian Federation, thus resulting in two days of Republic of Crimea. Since this case has strong evidence of unauthorized presence of foreign armed forces, like the one in case with Kosovo, the author now will turn to analysis of legality of this secession from the prism of military intervention. As an outcome, the result will be also applied to Kosovo.

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[194] Crimea profile - Overview, BBC News (Mar. 13, 2015), www.bbc.com/news/world-europe-18287223, accessed: 28.02.2019

[195] Konstituciya Ukraini, Constitution of Ukraine December, 8, 2004 N 2222-IV, art.73 available at: https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/constitution_14.pdf

[196] Reference Re Secession of Quebec, [1998] 2 SCR 217

[197] The full statement by Vladimir Putin may be found at: http://en.kremlin.ru/events/president/news/20603

2.2.4 Legality of Presence of Military Forces

In order to understand the mechanism of presence of foreign military on the territory of a sovereign state and later compare it with NATO in Kosovo, it is necessary to understand the possible ways of how and when foreign military might be allowed to pass an international border.

First of all, when alien military forces are present on the territory of another state without any permission or authorization from the UNSC, it is an illegal act under international law. So, let us turn to justifications used by Russia to understand possible mechanisms or gaps available in international law. Russia has an access to the Black Sea port in Sevastopol, next, the former president of Ukraine invited Russia to cooperate during crisis and finally the doctrine of humanitarian intervention. Therefore, it is necessary to analyze every proposed fact.

Foreign troops may be present under strict conditions with prior authorization or invitation.[198] The position taken by Russian troops in Sevastopol is regulated by a treaty between Russia and Ukraine,[199] nevertheless the treaty doesn't provide for the right for a big number of troops to enter the territory of Ukraine. Later on, the former, however at the time the legitimate president of Ukraine invited Russia to use armed force in order to help with the situation escalating in the country.[200] While the use of force against another state presupposes violation of international borders against the will of another state, in this case it could be assumed that the consent played a role of a justification. However, the very consent must be the highest authority, also every action by foreign military must be according to the consent.[201] However, there was and there is

[198] G.Nolte, Intervention by Invitation, Max Planck Encyclopedia of Public International Law, p. 23 (Rudiger Wolfrum ed., 2010)
[199] Partition Treaty on the Status and Conditions of the Black Sea Fleet, Russia-Ukraine, e.i.f. 12.07.1999
[200] C. Kriel and V. Isachenkov, Ousted Ukranian President Viktor Yanukovych: I was Wrong to Invite Russia into Crimea, https://www.smh.com.au/world/ousted-ukrainian-president-viktor-yanukovych-i-was-wrong-to-invite-russia-into-crimea-20140403-zqpxa.html accessed: 28.02.2019
[201] G.Nolte, Intervention by Invitation, Max Planck Encyclopaedia of Public International Law — Rudiger Wolfrum ed., 2010 P.12

no invitation which would be designed in such a way to bring to secession, even if the intervention is aimed to protect the citizens from hostilities.[202]

While in Kosovo NATO intervention didn't lead directly to secession and it took somewhat 8 years until the final status of Kosovo, in this case intervention and secession happened at the same time. The statement that Russia is protecting its citizens who live in Crimea, moreover, "Russian speaking population"[203] cannot presuppose any secession without long and comprehensive negotiations as it was in Kosovo. If we consider this situation from the prism of humanitarian intervention and self-defense, there must be several conditions in order to deem these actions legitimate at some extent. First of all, there must be a real threat and violations against people, which however weren't registered in Crimea.[204] Next, while protecting endangered people, the actions of intervening party must be aimed on creation of safety measures and safe corridors in order to move people from hot battlegrounds, but not in secession or actions leading to it.

Finally, while debating over the concept of humanitarian intervention, it is still highly controversial when and how states can use force without authorization of the UNSC. In all other scenarios there must be present hard facts of extreme human rights violations which would trigger collective responsibility in such cases as genocides and other war crimes. However, those cases are usually covered by the UNSC. Therefore, there was no legal and humanistic justification for presence of Russian forces in Ukraine, therefore the referendum and secession took place unilaterally and under pressure of armed forces, which makes them completely illegal from the point of view of international law. While in this work the author listed several necessary criteria discussed by scholars and states in favor of UNC secession, the case of Crimea didn't even meet them. Moreover, the autonomy of Crimea wasn't repealed.

[202] Bilkova, *note 180,* p.42
[203] Address by President of Russian Federation Vladimir Putin, 14.03.2014, *note 197*
[204] See: G. Corn et al, THe Law of Armed Conflict: An Operational Approach, p.22 2012; C.Borgen, Russia's Intervention in Ukraine: Legal Rhetoric and Military Tactics, Opinion Juris (02.03.2014)

2.3 Similar activity with the same pattern

South Ossetia and Abkhazia

These two vital cases demonstrate a different angle of secession and intervention. While analyzing these cases, the author will try to point out all the necessary aspects present in cases to derive the statistics for those in order to use them for comparative analysis.

To begin with, it's worth to mention that both regions (South Ossetia and Abkhazia) used to be autonomous regions of the republic of Georgia with population of 70 000 for South Ossetia and 240 000 for Abkhazia. Despite the fact that both regions became parts of Georgia after the Second World War, Russia was issuing its passports to all ethnical Russians inhabiting the given regions. Eventually, ethnic balance was moved towards Russian majority.[205]

As a result, the tensions burst out into an internal armed conflict which lasted until early 90s. Eventually, two regions unilaterally claimed for autonomy and were supported by Russia.[206] In 1999 Abkhazia and in 2005 South Ossetia declared their independence, which, however, didn't meet any international recognition.[207]

During the conflict, Russia played a role of a mediator and planted its peacekeepers in Georgian problematic regions. Nevertheless, in 2008, after Georgian attacks committed against South Ossetians in Tskhinvali gave to Russia all grounds to commence a military counter-action against Georgian troops as an act of protection of its peacekeepers.[208] Later on, Abkhazia joined the action, along with Russian troops they overthrew Georgian forces and the conflict ended in several days. Ceasefire agreement was reached on 12 August 2008 mediated by Nicolas Sarkozy who was the president of the European Union. On 26 August 2008, Russia recognized those two as independent states, while pointing at the Kosovo precedent.[209]

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[205] Slomanson, W. R., "Legitimacy of the Kosovo, South Ossetia and Abkhazia Secessions: Violations in Search of a Rule", MiskolcJournal of International Law, vol. 6, issue 2, 2009, p. 5
[206] C.Ryngaert, Sobrie, S., "Recognition of States: International Law of Realpolitik? The Practice of Recognition in the Wake of Kosovo, South Ossetia and Abkhazia", Leiden Journal of International Law, vol. 24, issue 2, 2011, p. 476
[207] J.Dugard, *note 107,* p.164
[208] Ryngaert, Sobrie, *note 206,* p. 476
[209] *Ibid.*

As a legal justification, Russia brought examples of various international instruments, along which the emphasis was made upon the declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations.[210] All in all, Russia claimed that the very right to self-determination was violated. Consequently, the author may derive that in those cases was used the first theory which postulates for a nexus between the right to self-determination and secession.

Next, in this case one might notice the usual figurant of such conflicts, which is the ICJ, however, Georgian application didn't go any further than procedural stage.[211]

Now let's put these two cases in context of criteria for secession listed in this chapter.

The first step is to determine whether the peoples of Abkhazia and South Ossetia had different identities, taking into account their widespread acceptance of Russian nationality and possession of their previous ones. Therefore, speaking of self-determination, it is difficult to establish whether the given peoples had any problems of their identity.[212]

The 90's denial of autonomy for Abkhazia and South Ossetia triggered the vast violation of the right to self-determination which is uncontestable. Since the 90s conflicts didn't get sufficient attention from the international community, the scale of human rights violations spoken out remained low.[213] Speaking of negotiations, the last chance of possible dialogue was indeed lost after the Georgian attacks.[214]

In this case, the intervention performed by Russia may draw a parallel with the same committed by NATO. Moreover, Russia claimed to act for the sake of protection of its peacekeepers who were attacked by Georgian troops. However, this work will not discuss or condemn further

[210] A.Sucur, *note 106,* p.288

[211] Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, ICJ Reports, ISSN 0074-4441, ISBN 978-92-1-071125-8, 2011.

[212] Thomas, R., "The Distinct Cases of Kosovo and South Ossetia: Deciding the Question of Independence on the Merits and International Law", Fordham International Law Journal, vol. 32, issue 6,2008, p. 2040. 87 Bolton, op. cit. (n. 51) p. 125

[213] G.Bolton, International Responses to the Secession Attempts of Kosovo, Abkhazia and South Ossetia 1989-2009, p.125

[214] *Ibid*. 129

actions of Russia concerning its presence in deeper Georgian territories, since it grows out of the scope of this thesis.

Finally, in this case, Russia had a role of transitional administration, political and military support and without Russia those two regions couldn’t get any weight on international arena.

Chapter 3: Human Rights, Secession and International Law

3.1 Enforcement and Regulations Under International Law

The author now turns to discussion of the influence of international law and possible enforcement measures for this case. The situation overall might seem dramatic, and it is at some extent, since as it will be illustrated (and already is witnessed by the world) the international law has not much to offer as enforcement tools for this case. Here we have both secession and military intervention with highly doubtful and almost clearly unlawful patters. One may ask a question: is the international law then a fiction based on voluntary compliance? As we may see – yes, it is. If international law regards all states as equals, it means that all modern states must comply with its rules and benefit from it equally. However, this is not the case. As it will be established in following, there are certain rules which prove the case of Ukraine unlawful, but not much to regulate and sanction this.

While international law still leaves some room for use of force and intervention, it is highly limited by several doctrines, such as the general prohibition of use of force, principle of state sovereignty and sovereign borders, responsibility to protect, humanitarian intervention are the most general. When an outbreak of violence happens there is a number of mechanisms such as nonrecognition and some measures listed in Articles on State Responsibility. Thus Article 22[215] provides for some countermeasures against states committed a wrongful act, Article 41[216] provides for an obligation of nonrecognition of events which resulted as a breach of international law and articles 49-54[217] list the countermeasures and possible solutions. However, those measures are incomparable with domestic legal systems and enforcement. If we take the international investment arbitration, its enforcement is based on domestic legal system. Therefore, the enforcement of international law and regulations must be of a special importance, especially in such vague and unclear procedures as secession and interventions.

While analyzing main international mechanism of enforcement in cases of use of force, the UN Charter plays an important role. Generally, it is allowed to use force under Chapter VII against

[215] Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, art.22
[216] ibid. Art. 41(2)
[217] Ibid. Art. 49-54

actions of aggression and breach of international law, as well is it is allowed to use force in self-defense.[218] The use of force is still one of many measures that might be implemented by the UN, moreover, it is the so-called "remedy" which must be used in last pace. As an example, it is possible to find many variations of settlement of disputes in Chapter VI and VII prior to use of force. Finally, the UNSC is ought to determine all the preconditions prior to authorization of use of force and the decision is obligatory.[219] The problem of veto and deadlock of the UNSC is an issue outside of the scope of this work, therefore, the UNSC is lister by the author as one of mechanisms supposed to enforce international law.

Another way of enforcement of international law in cases of secession is prescribed by customary international law. Nonrecognition, sanction, diplomatic measures may have a good service in case if the international community is willing to settle the breach of international law. However, those measures require individual participation of states, which makes it quite tricky due to the main division of the world on pro-East and pro-Western states. As it has been mentioned before, the Articles on State Responsibility by International Law Commission express generally customary international law.[220] Basically, the Article 22 says that the countermeasures may be enacted against internationally wrongful acts, however if it is in compliance with articles 49-51. Also, countermeasures must be implemented only in relation of that state which is a victim of internationally wrongful act. (Art. 49(1)) and yet don't consider any use of force. *(Art. 49(2) 2. Countermeasures are limited to the non-performance for the time being of international obligations of the State taking the measures towards the responsible State.))*

Henceforth, what can be used here against an aggression or aggressor in order to reduce violations of both international law and human rights during secessions? While the first possible answer that comes to one's mind is sanctions, that is yet a very controversial measure. While Article 54[221] allows measures by third states, such as sanctions, however the scale and type of

[218] United Nations, Charter of the United Nations, e.i.f. 24.10.1945, 1 UNTS XVI,Art. 2(4), 39-51

[219] *Ibid*., Art.25

[220] Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, art. 22, 49-54

[221] ibid. Art. 54: Measures taken by States other than an injured State *This chapter does not prejudice the right of any State, entitled under article 48, paragraph 1, to invoke the responsibility of another State, to take lawful measures against that State to ensure cessation of the breach and reparation in the interest of the injured State or of the beneficiaries of the obligation breached*

sanctions is still a subject to debates. Since sanctions do not require neither prescriptions from the UNSC, nor any decisions by international courts, they also remain a subject of political affiliations and confrontation of ideologies among great powers.

3.2 Human Rights and the Right to Secession: Comparative Analysis and Conclusions

After having analyzed two different angles, two different opinions, different ideological approaches towards secession under international law and listing possible measures of enforcement, the author will try to establish the real relation of human rights violations and the right to secession. As it was discussed in this work, UNC secession requires certain preconditions and framework[222] and even in that case, it is highly controversial, whether the secession may be the last resort. However, as it has been illustrated on case studies in this work, there are different scenarios, however, with the same outcome as UNC secession.

In case of Kosovo[223] there were registered human rights violations towards a certain group of people with the same distinct ethnical, cultural, lingual and historical signs. While Kosovo enjoyed autonomy before certain period of history, it had been repealed, which could be considered as a certain violation of the right to internal self-determination.[224] Military activities against Kosovo Albanians made yet another contribution in favor of secession. Putting the long analysis in the second chapter short, it may be concluded that the scale of human rights violations was uncontestably high before 1999. The situation normalized after 1999, when NATO intervention stopped the violations and gave a new start for negotiations towards determination of Kosovo status. Suffice it to say that it took over 8 years until the secession took place, therefore the debates concerning non-recognition due to intervention are not relevant, since the intervention itself didn't lead to secession. (Unlike in Crimea, South Ossetia and Abkhazia)

[222] See Chapter 1
[223] See Chapter 2
[224] See Chapter 1

Before 1999, on the scale of 5, where 1 is minor, temporary violation of basic social rights, such as lingual and cultural limitations[225] and 5 is an open genocide, in Kosovo human rights and international law violations may be evaluated as 3.5. The tensions against Kosovo Albanians were high enough to trigger international community to act, while certain limitation against Albanian[226] demonstrated an obvious nationalist policy of Serbians. Therefore, in conjunction with hostile militarist policy of Belgrade against Kosovars, here, as also accepted by a solid part of international community, the mother state couldn't provide sufficient conditions for internal self-determination. Therefore, the Declaration on Friendly Relations could be applied to this situation.

Nevertheless, after 1999, with implementation of UNMIK and Resolution 1244, political, social, economic and military safety of Kosovo was established and enforced by the major international organization. Additionally, taking into account all the conditions for negotiations, numerous attempts to come to a consensus with Belgrade, by 2008 factual violation of human rights could be described as minimal. While the final status of Kosovo was still under question mark, there was no need for such a remedy as secession. Moreover, at that time there was no direct influence of Serbia over Kosovo and Kosovars, so the author can't speak of any direct hostilities and limitations.

However, the secession took place and was justified by many states, including the United States, France and other big powers. The legality of declaration of independence has been discussed for many times and in fact has not much to do with the subject of this thesis, which is the factual violations of human rights. Therefore, if according to the first chapter of this thesis, UNC secession requires such violations of human rights which may be evaluated as 4.5-5, the state of affairs in 2007-2008 could be evaluated as 0. Therefore, it is not a question of human rights violation, but the impuissance of international law to provide any sufficient measures in order to avoid such illogical and in fact unlawful consequences.

[225] See more in UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

[226] I.e., limitations on property rights, repeal of autonomy etc.

Now the researcher will turn to another school of thought regarding secessions, which is the Russian approach towards its neighbors. As it has been shown in this thesis (Chapter 2.2, infra.) While this case has diametrically different factual background, it, nonetheless, led to the same result. In comparison to another case, here there was no direct human rights violations towards Russian-speaking, ethnical Russian and any other Russia-affiliated population. The threat here was the possibility of some type of harm taking into account the unstable situation in the country. Even though the case was followed by an accession of Crimea to Russian Federation, our analysis will touch only upon the moment when the referendum for secession was held and the actual condition of human rights at that period of time.

As this thesis demonstrated, there were no officially registered direct violations of rights of Russians, let alone the threat of hostilities and physical harm. Autonomy of Crimea had not been removed and there were no visible intentions to do so. Overall, Crimea was not the main focus of unstable situation, as Kosovo was a disputed area throughout decades. In this case violation of human rights prior to secession may be attributed 0 out of 5, the threat was anticipated but not materialized. However, for the safety Russia planted some of its forces on the territory of Crimea, which, cannot be paralleled with NATO intervention in 1999 in Kosovo, because the latter was a response to direct hostilities committed by Serbs, while the former seemed to have another purpose. Intervention of NATO didn't lead to secession, while in Crimea the presence of military forces played a big role in developments, pushing towards referendum and secession, if not openly, then indirectly, by the mere fact of presence.

The two-day Republic of Crimea emerged based on conditions which were extremely far from those listed by author, scholars, decided by *opinio juris* and state practice. Conversely, this case, along with South Ossetia and Abkhazia had clear pattern of military interventions and use of force which were the main gears towards change of international borders. Henceforth, it is not necessary to have level 5 violations of human rights and hostilities in order to use doubtful gaps of international law. Both Crimea and Kosovo had minimal violations at the time of secessions implemented, which bring the author to conclusion that there are de facto no proper principles of proportionality applied between violation of human rights and secession.

All in all, these cases demonstrate clear gaps and problems of international law which lead to violation of sovereignty, victims as a result of military intervention, unlawful change of international borders,

Conclusion

It goes without saying that when one is trying to analyse legal anomalies caused by gaps and vagueness in law in conjunction with specific interpretations, it turns into a chaos, since the anomaly will remain as it is unless it is legally controlled. Especially, when the case includes vast state-practice, has numerous supporters and current ongoing cases on one hand, and controversies, collisions with general international law on the other, it becomes quite complicated even to establish a certain logical sequence of this anomaly called unilateral non-colonial secession. The thesis analyzes the legal nature of the phenomenon of secession, links it with possible legal justifications, as well as proves the contrary, that secession as a *legal* procedure should be highly controlled by international law.

The researcher in this thesis had a goal to demonstrate that secession is an independent, separate process with unique and different scenarios, however always with the same violent (both legally and physically) results. As has been illustrated on the examples of Kosovo, Crimea, South Ossetia and Abkhazia, while the cases might have similar patterns, they all had different sequence of events that led to secession, however always contrary to the will of mother-state. Since the existence of secession as a legal anomaly is incontestable, it was highly important to analyze and establish its relation to such a general right as the right to self-determination. While in colonial context and in cases of big unifications of states, secession is a logical, sometimes constitutionally provided right of civilized societies, it is proved and obvious that the external self-determination was a revolutionary step forward in period of decolonization. However, during and especially after the Cold War, the phenomenon of self-determination acquired a second type, which was called internal self-determination. Another highly important right which postulates for equality of nations living on a territory of the same state.

However, when the right to internal self-determination was used as a justification of unilateral secession, it raised a lot of questions and debates. While some scholars and international lawyers, as demonstrated in this work, supported this idea, stating that it is the last remedy for oppressed nations to avoid violation and hostilities, others claimed that it is a dangerous, somewhat nationalistic connection, which may lead (and did to some extend) to horrible consequences, such as violation of sovereign borders, constitution and emergence of new unrecognized states. Moreover, as it has been established in this thesis, if the right to self-determination is used by

one people in order to secede, it definitely violates the right to self-determination of the mother-state, therefore interconnection of secession and self-determination turns the right to self-determination into a self-exclusionary right. Therefore, the author concludes that the process of secession must be regarded as a legal anomaly outside of the context of internal self-determination or the relation must be controlled by international instruments. Thus, the research question posed in the beginning regarding the relation between self-determination and secession has a negative answer.

Next, the author had yet another crucial research question with a supporting question: Secession, is it a remedial legal right prescribed by interpretation of international custom or a result of political speculations; and does the secession contains an initiation and certain outcome or it is a separate process which leads to various outcomes? First of all, while speaking of unilateral secession, it is impossible to attribute the term "right" to it under international law, since any secession within colonial or constitutional context is regulated by international law. Everything else is at least violation of state sovereignty principle. However, as the practice points at a certain document, which is The Declaration on Friendly Relationssovereignty is provided for all states which equally protect the rights of all peoples leaving on its territory. While the document is non-binding and controversial, it still has a right to exist and be enforced since it postulates for general human rights provided by various international covenants and documents. Thus, the international community still has a positive obligation to protect the equal rights of all nations and peoples living on sovereign territories of states. However, if we speak of secession as a remedy, as it has been established in this thesis, the "instructions" of when, and how this remedy must be used are still absent, which leaves a lot of room for political speculations, as has been demonstrated in all cases discussed in this work. Confrontation between East and West, diametrical difference in opinions and attitude towards secessions demonstrates the uncertain and unstable nature of secession and since in this case the international community decides whether to support and recognize the secessionist movements, it takes makes it purely politicized.

Both in Crimea and Kosovo, at the moment of secession were registered very low or no direct and hostile violations against Albanians or Russians. While Kosovo was under interim administration and Resolution 1244 was in force, since 1999 there was no possibility (no access) to do any atrocities against Albanians. As well as in Crimes the situation was very far from *in*

extremis violations against Russians. However, in both cases the secession took place, regardless different backgrounds and events. While in case of Kosovo there were a lot of efforts to come to a peaceful consensus, propositions of autonomy from Belgrade, in case of Crimea the events took very immediate and quick course without sufficient factual background. Nevertheless, in both cases the world witnessed *de facto* unilateral secessions. Therefore, it may be concluded that secession has an initiation, such as referendums (legal or illegal), military actions, interventions (unauthorized in both cases). The process leads to a certain outcome which is violation of sovereign borders with further independence or annexation.

Finally, taking into account all the conclusions made above, the author may state that there is no proportionality between violation of human rights and the right to secession, since secession might be based on violations of human rights, and should be a remedy in cases of hostile and constant violations against certain group of people, however as the practice shows, the fact of secession may exist as an independent phenomenon which requires rather political and military support from great powers than direct de facto violations at the moment.

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