

Lawyers or Liars: An International Law Perspective on
the Role of Russia in the Annexation of Crimea

by

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Author's Note

This thesis stems directly from the impact that the events in Crimea had on my family and from the deep emotional responses and conflicts that it brought up. These conversations and experiences provided my initial framing of Crimea, and they influenced my core objectives for this work. I, therefore, find it necessary to provide readers with the more personal background that led to this project, which I hope will set up the perplexity of the situation in Crimea before I dive into a more academic analysis.

The majority of my family immigrated to the United States from Ukraine. Some were Russian speakers from Eastern Ukraine, some were Ukrainian speakers from Western Ukraine, and some were born in the part of the Soviet Union that is now known as Russia. Although my parents were both from Ukraine, my first language was Russian. In fact, growing up it seemed to me that the two countries were deeply related: sharing culture, cuisine, television programs, and a similar Soviet mentality. I had never heard any animosity whatsoever against Russia, until 2014.

The loss of Crimea to Russia and the ongoing conflict in the Donbass Region changed the relationship between Ukraine and Russia from a friendly brotherhood to an angry rivalry. My immediate family stopped watching "Channel One Russia," the source of Russian television and shows that had previously been on every day, because of the clear anti-Ukraine propaganda apparent not only in the news but even in comedy shows or reality television. Conversations at dinner about the new relationship of Ukraine and Russia would most often end in loud arguments and hurt feelings and, eventually, ceased to take place at all. While my grandfather revered Putin and his strength in handling the situation, by taking back what was rightfully his, my aunt grew more and more agitated by the military draft in Ukraine sending young men to Donetsk to fight a war against their own people, something that had seemed unthinkable ten years earlier.

Everyone has a right to their opinion and a right to disengage from the conversation. However, I wanted to do more than just form an opinion or ignore what happened. My goal here is to explore what transpired in Crimea from an unbiased perspective, the perspective of the law, and to attempt to make sense of how this event will shape the future of the law. My research into this question has led me to a different conclusion than the one I thought I would end up with, and it has altered my perspective on international law. I hope that it brings similar value to those who read it and that it expands readers' knowledge of Russia, international law, and, of course, Crimea.

Introduction

"The experience of history has shown that the way of fraternal union and alliance chosen by the Russians and Ukrainians was the only true way... The unshakeable friendship of the Russian and Ukrainian peoples has grown and strengthened in this struggle."¹

*- The Presidium of the USSR Supreme Soviet,
the USSR Council of Ministers and the CC CPSU*

The above quotation comes from the 1954 Soviet celebration of the Russian/Ukrainian partnership, culminating in Russia's transfer of Crimea to Ukraine as a token of friendship.² Ironically, 60 years later, this gift was taken back in a much less ceremonious and friendly fashion. In 2014, the Crimean territory was annexed and established as two new constituent entities under the Russian government: the City of Federal Importance Sevastopol and the Republic of Crimea.³ This move quickly drew a political backlash from the international community, and the territorial transition is still disputed. The UN general assembly, for instance, adopted a resolution clarifying that there was no basis for a change in status of Crimea and Sevastopol and that, therefore, this annexation had no legal bearing.⁴ For all intents and purposes, however, Crimea has been removed from Ukrainian hands, at least for the time being. This has been emphasized by the Russian government since the annexation and has not changed in the years since then; the official message is that Russia will not return a part of its territory.⁵

¹ I.D Nazarenko, *Narysy istorii Komunistychnoi partii Ukrainy*, (Polityvydav Ukrainy, 1971), 577.

² Orest Subtelny, *Ukraine: A History*, 3rd ed, (University of Toronto Press, 2000), 499.

³ "Laws on admitting Crimea and Sevastopol to the Russian Federation," *Official Internet Resources of the President of Russia*, March 21, 2014, <http://en.kremlin.ru/events/president/news/20625>

⁴ UN General Assembly, *Territorial Integrity of Ukraine: resolution / adopted by the General Assembly*, April 1, 2014, A/RES/68/262

⁵ Euan McKirdy, "Russia: We're not returning our territory, Crimea to Ukraine," *CNN*, February 16, 2017, <https://www.cnn.com/2017/02/15/europe/russia-foreign-ministry-crimea-ukraine/index.html>

Before diving into any analysis, it is beneficial to understand the circumstances in Ukraine that set off and contributed to the change in Crimea's status. On November 21st, 2013, protests broke out in Ukraine. That day, people came out to express their dissatisfaction with President Viktor Yanukovich's decision to abandon a trade deal with the EU in favor of a promised \$15 billion loan from the Russian government.⁶ This was the beginning of the Euromaidan, a political revolution that would result in the change of president and in instability throughout the country.⁷ The protests and dissatisfaction with Yanukovich continued on the Kyiv streets for 3 months.⁸ It is estimated that close to 800,000 people came out to rally in early December.⁹ Unfortunately, although the protests began peacefully, violent clashes between protesters and the Ukrainian government changed the nature of the demonstration. On February 20th, 2014, close to 100 people were killed in a clash between riot police and protesters, with both sides employing snipers;¹⁰ in 2018 these people were honored as the "Heavenly Hundred" that gave their lives for Ukraine's future.¹¹ The escalation of violence, the ongoing opposition, and the taking over of government buildings through the country led Yanukovich to flee to Russia on

⁶ "Timeline: Political Crisis in Ukraine and Russia's Occupation of Crimea," *Reuters*, March 8, 2014, <https://www.reuters.com/article/us-ukraine-crisis-timeline/timeline-political-crisis-in-ukraine-and-russias-occupation-of-crimea-idUSBREA270PO20140308>.

⁷ Lili Bayer, "Ukraine's Political Instability Continues," *Geopolitical Futures*, April 11, 2016, <https://geopoliticalfutures.com/ukraines-political-instability-continues/>.

⁸ "Timeline: Political Crisis in Ukraine and Russia's Occupation of Crimea," *Reuters*, March 8, 2014.

⁹ "Ukraine Crisis: Timeline," BBC, November 13, 2014, <http://www.bbc.com/news/world-middle-east-26248275>.

¹⁰ Gabriel Gatehouse, "The untold story of the Maidan massacre," *BBC News*, February 12, 2015, <http://www.bbc.com/news/magazine-31359021>.

¹¹ "Ukraine Marks Anniversary of Worst Maidan Bloodshed," *Radio Free Europe Radio Liberty*, February 20, 2018, <https://www.rferl.org/a/ukraine-honors-heavenly-hundred-maidan-4th-anniversary/29049895.html>.

February 22nd.¹² That same day, Ukraine's parliament voted to impeach Yanukovich and to schedule new presidential elections for May 25th.¹³

Meanwhile, political turmoil happened outside of Kyiv as well. Some reports have shown that pro-Russian organizations in Crimea opposed the events unfolding in the country's capital and feared the transition from Yanukovich to the "fascist" opposition.¹⁴ Concurrently, Moscow was even more worried about the impacts a post-Yanukovich, anti-Russia Ukrainian government might have. In late February, following Yanukovich's removal, Russian forces in Crimea seized Simferopol government buildings.¹⁵ The responsibility for these actions was initially a contentious subject, with Russia claiming that the "little green men" were Crimean self-defense groups; however, President Putin later acknowledged that these men were Russian soldiers.¹⁶ Soon after, on March 16th, 2014, a referendum was called to decide whether Crimea would secede and join with Russia. The referendum ballot gave voters two options. The first asked, "Do you support reunifying Crimea with Russia as a subject of the Russian Federation?", while the second asked, "Do you support the restoration of the 1992 Crimean constitution and the status of Crimea as a part of Ukraine?"¹⁷ The 1992 constitution asserted Crimea's independence, and

¹² "Timeline: Political Crisis in Ukraine and Russia's Occupation of Crimea," *Reuters*, March 8, 2014.

¹³ Alan Taylor, "Ukraine's President Voted Out, Flees Kiev," *The Atlantic*, February 22, 2014, <https://www.theatlantic.com/photo/2014/02/ukraines-president-voted-out-flees-kiev/100686/>.

¹⁴ Robert Coalson, "Pro-Russian Separatism Rises in Crimea as Ukraine's Crisis Unfolds," *Radio Free Europe Radio Liberty*, February 18, 2014, <https://www.rferl.org/a/ukraine-crimea-rising-separatism/25268303.html>.

¹⁵ "Ukraine crisis: timeline of major events," *The Telegraph*, March 5, 2015, <https://www.telegraph.co.uk/news/worldnews/europe/ukraine/11449122/Ukraine-crisis-timeline-of-major-events.html>.

¹⁶ Shaun Walker, "Putin admits Russian military presence in Ukraine for first time," *The Guardian*, December 17, 2015, <https://www.theguardian.com/world/2015/dec/17/vladimir-putin-admits-russian-military-presence-ukraine>.

¹⁷ "Crimea referendum: What does the ballot paper say?" *BBC News*, March 10, 2014, <http://www.bbc.com/news/world-europe-26514797>.

autonomy from Ukraine,¹⁸ in contrast with the pre-referendum status of Crimea as an autonomous republic within Ukraine. No option was provided for maintaining Crimea's status as is. Official results reported 97% of Crimeans voting to join Russia, although numerous claims were made by the West opposing the validity of the referendum and questioning the truthfulness of these results.¹⁹ Regardless, Moscow accepted the referendum as authentic and "The Treaty on Accession of the Republic of Crimea to Russia" was signed just two days later, incorporating Crimea into Russian territory.²⁰ Although Crimea is officially part of Russia under their domestic law, the majority of the international community has refused to recognize this territorial change, with less than a dozen members of the United Nations accepting Russia's claim.

This brief overview in no way encompasses all of the nuances and information that will be important in discussing Crimea, but it offers an initial understanding of the core issues and events that resulted in the annexation. Throughout this work, I will bring in more detailed factual evidence and historical information as it becomes applicable, but even this short summary gives a taste of many of the issues that any legal examination has to grapple with. Was the transition of the Ukrainian government illegal, and does that matter for Crimea's independence? Can the Russian government be blamed for using force given their role in taking over Simferopol government buildings? What does it mean to only have options of change on the

¹⁸ For more information on this constitution and on the events leading up to its drafting, see pp. 36-37.

¹⁹ Ilya Somin, "The dubious Crimean referendum on annexation by Russia," *The Washington Post*, March 17, 2014, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/17/the-dubious-crimean-referendum-on-annexation-by-russia/?utm_term=.f0c3ed49605e.

²⁰ "Agreement on the accession of the Republic of Crimea to the Russian Federation signed," *Official Internet Resources of the President of Russia*, March 18, 2014, <http://en.kremlin.ru/events/president/news/20604>.

referendum ballot, and how does that influence its validity? All of these inquiries feed into the main questions that this text will attempt to answer.

In this work, I will examine the historical trajectory of the principle of self-determination and analyze whether the actions in Crimea follow along this path. I will examine multiple arguments that Russian leadership and academics have proposed as proof of the legality of the annexation, which include the validity of the referendum as well as the use of force by Russia. Finally, I will attempt to answer questions about what role international law has played in this conflict, and how Russia will utilize it in the future. Chapter 1 will focus entirely on the question of self-determination: first examining the legal background of the principle and then moving forward to analyze each legal argument, presented by Russia, justifying the alleged choice of the Crimean people to secede from Ukraine and join Russia. Chapter 2 is structured in a similar way but looks instead at the permissibility of the use of force in modern international law and the application of these laws to Russia's actions within Crimea. In Chapter 3, I will more broadly examine the association of international law and politics within Russia's government, utilizing the case of Crimea to predict the future of Russia's relationship to international law. I also include recommendations for strengthening compliance with the law through a united international community and the development of a more precise language of legal principles. My hope is that the analysis presented in this thesis answers at least some of the myriad of questions that Crimea has brought up and helps unpack this event so that we may learn from it in the future.

Chapter 1: Self-Determination

“We did not annex [Crimea], we did not seize it, we gave people the opportunity to express themselves and make a decision and we treated that decision with respect.”²¹
-Vladimir Putin

“Очень надеюсь, что когда-нибудь мы вернемся в Крым или он вернется к нам-как часть нашей Родины, часть Украины.”²²
(*“I really hope that someday we will return to Crimea or it will return to us, as a part of our Homeland, a part of Ukraine.”*)

-Наталья Влащенко

Understanding the principle of self-determination and its application in relation to Crimea is pivotal in assessing the legitimacy of Crimea’s annexation. In order to accurately evaluate what role this principle of international law has in this case, I will first track the history of its development generally. I will then move on to analyze the relevant specifics in Crimea, by engaging with different arguments presented by Russia in defense of the claim to self-determination. Whether this was a valid case of self-determination is a fundamental test of the legality of the secession as a whole, although it still leaves questions as to the validity of the annexation by Russia, which will be further examined in Chapter 2. Furthermore, the case of Crimea could influence legal interpretations of self-determination movements in the future and could contribute to elucidating the ambiguous and evolving nature of this element within international law. This analysis is useful not only to gain perspective on this conflict but also to expound the greater impact this could have on the legal field.

~Legal Background~

Self-determination has evolved over time and has expanded in its application, leading to confusion and debate about when it can be applied and by whom. Yet it has

²¹ “Seliger 2014 National Youth Forum,” *Official Internet Resources of the President of Russia*, August 29, 2014, <http://en.kremlin.ru/events/president/news/46507>.

²² Наталья Влащенко, *Кража, или Белое солнце Крыма*, (Фоліо, 2017), 322.

long been a principle of international law, even before the modern understanding of international law that emerged following World War II. In 1914, Vladimir Lenin published *The Right of Nations to Self-Determination*, in which he wrote, “that the self-determination of nations means the political separation of these nations from alien national bodies, and the formation of an independent national state.”²³ In contrast, Woodrow Wilson imagined self-determination not as a national right but as a civil right for citizens to participate in and influence their own governments.²⁴ He pushed for this conception to be instated in the League of Nations and proposed it at the Paris Peace Conference convened in 1919.²⁵ It was ultimately rejected “due to inconsistencies in its interpretation.”²⁶ This is a problem that, as we will see, has not gotten much clearer in the hundred years that followed it.

The importance of the principle of self-determination is evident in its appearance within Article 1 of the UN Charter, which states that one of the purposes of the United Nations is to “develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”²⁷ This concept is clearly an inherent right, given its immediate presence within the Charter, although how this is defined, who this applies to, and what steps can be taken towards self-determination are developed through treaties, court decisions, and customary

²³ Vladimir Lenin, “The Right of Nations to Self-Determination,” *Marxists Internet Archive*, 395, <https://www.marxists.org/archive/lenin/works/1914/self-det/index.htm>.

²⁴ Trygve Throntveit, “The fable of the Fourteen Points: Woodrow Wilson and national self-determination,” *Diplomatic History* 35, no. 3 (2011).

²⁵ Sofia Cavandoli, “The unresolved dilemma of self-determination: Crimea, Donetsk and Luhansk,” *The International Journal of Human Rights* 20, no. 7 (2016), 876.

²⁶ *Ibid.*, 876.

²⁷ Charter of the United Nations, Chapter I, Article 1(2) (1945).

law.²⁸ For example, in 1966, the International Covenant on Economic, Social and Cultural Rights included the right of self-determination in Article 1(1), reinforcing it is a right guaranteed to “all peoples” and stating that “by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.”²⁹ The Declaration Concerning Friendly Relations, adopted in 1970, further emphasizes that, “all peoples have the right freely to determine, without external interference, their political status,” and goes on to state that “every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter.”³⁰ Although the phrasing here implies a certain freedom of action, the legal truth is far from such a simple reading, with multiple factors, such as the definition of “people” and the methods of attaining self-determination, being debated and expanded over time.

Fundamentally, self-determination can only be exerted so long as it does not infringe upon the territorial integrity of a state, which is the broad basis of modern international law. As Thomas Grant, international lawyer and senior associate of the Lauterpacht Centre for International Law, accurately points out: “The international order that emerged after 1945... is, in short, an order of settled boundaries and

²⁸ “Customary international law refers to international obligations arising from established state practice, as opposed to obligations arising from formal written international treaties,” *Legal Information Institute*, https://www.law.cornell.edu/wex/customary_international_law.

²⁹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, December 16, 1966, United Nations, Treaty Series, vol. 993, Article 1(1).

³⁰ General Assembly Resolution, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, October 24, 1970, A/RES/25/2625.

enduring territorial settlements.”³¹ Without this general state agreement to preserve territorial integrity, none of the modern forms of international law that we are accustomed to could have come into being.³² It, therefore, comes as no surprise that the laws uphold the importance of territorial integrity and that this principle can limit many others, including the interpretation of who is allowed to seek self-determination and how. In fact, The Declaration Concerning Friendly Relations goes on to state:

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.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.³³

It is very easy to see the inherent tension present between the necessity to uphold a right of self-determination and making sure that that right does not serve to break up the fundamental notion of territorial integrity, without which the UN Charter and the modern understanding of international law could not exist.

Following World War II, self-determination was largely seen as a necessity only in the context of decolonization. In fact, many of the clarifications and expansions defining the right of self-determination came about from the push to end colonialism. In 1960 the UN General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples which affirms that:

³¹ Thomas Grant, *Aggression against Ukraine: territory, responsibility, and international law*, (Springer, 2015), 4.

³² *Ibid.*, 5.

³³ *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*.

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.³⁴

Though, like all documents relating to self-determination, it mentions that in no circumstances must this right interfere with territorial integrity,³⁵ it also expands what the definition of the right is beyond just a statement of its principle. In relation to this, Additional Protocol I extended the definition of international armed conflict to include instances of self-determination. This was drafted with the primary intent of giving legal protection to liberation movements fighting against colonial domination present at the time. Therefore, this protocol gives a very clear definition of what circumstances must apply to be considered “exercising the right of self-determination,” specifically: “fighting against colonial domination and alien occupation and against racist régimes.”³⁶ In the colonial context, the issue of disturbing territorial integrity did not play as large of a role, as the colony was a separate entity with internationally recognized borders whose proclamation of independence did not fundamentally impact the sovereignty of the colonizing country. Although this was a turning point for self-determination and for the expansion of human rights under international law, it does not address many of the

³⁴ UN General Assembly, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, December 14, 1960, A/RES/1514(XV).

³⁵ “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations,” *Declaration on the Granting of Independence to Colonial Countries and Peoples*.

³⁶ International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, June 8, 1977, 1125 UNTS 3, Article 1(4).

self-determination questions going beyond decolonization that we still grapple with today.

The Helsinki Final Act, signed in 1975, gave an even more inclusive interpretation of self-determination:

“By virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.”³⁷

The final wording of this 8th Principle was the result of drawn-out negotiations between Europe, the United States, and the Soviet Union, with considerable push back against the right of self-determination by the Soviets.³⁸ The agreed upon Declaration of Principles ultimately presented a stronger right for self-determination and the freedom of “peoples” to choose their own political status.³⁹ Although the language here is less constrained and employs words such as “always”, “full freedom”, and “as they wish,” this should not be misconstrued as negating territorial integrity. As the right of self-determination began to apply in more than just a colonial context, for example secession movements within newly-independent states,⁴⁰ the focus on preserving territorial integrity and state sovereignty persisted more than ever. The relationship between self-determination and potential for secession was not one taken lightly. Instead, states were encouraged to give minority groups political autonomy within the state, to preserve the principle of self-

³⁷ Organization for Security and Co-operation in Europe (OSCE), *Conference on Security and Co-operation in Europe (CSCE): Final Act of Helsinki*, August 1, 1975.

³⁸ Boris Meissner, "The Right of Self-Determination after Helsinki and Its Significance for the Baltic Nations," *Case W. Res. J. Int'l L.* 13 (1981), 377-378.

³⁹ *Ibid.*, 378.

⁴⁰ Examples include the 1960 Katanga and South Kasai secessions from the Republic of the Congo, and the 1967 Biafra secession from Nigeria. All three provinces were later reincorporated into their parent states.

determination while diminishing the possibility of infringing on territorial integrity. Although the Helsinki Act referenced the possibility for people to define their political status internally or externally, the international interpretation of self-determination has consistently confined it to internal usage, except in cases of decolonization. Internal self-determination can be defined as “the right of people to freely choose their own political, economic, and social system,” whereas external self-determination is the right of a people “to constitute itself a nation-state or to integrate into, or federate with, an existing state.”⁴¹ The former has the potential to cooperate with the principle of self-determination, by allowing minorities a right to self-govern and influence their position within the state, while still maintaining territorial integrity by avoiding more drastic external self-determination.

The case *Reference re Secession of Quebec* exemplifies the international community’s exclusive acceptance of internal expressions of self-determination. The decision of this case emphasized that although Quebec had a right to self-determination, it did not have a right to secede. The Supreme Court of Canada found that, “a state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its own internal arrangements, is entitled to the protection under international law of its territorial integrity.”⁴² Fundamentally, this illustrates the Court’s stance that unless there was a case of colonial domination, foreign occupation, or the impossibility of internal self-

⁴¹ Salvatore Senese, "External and Internal Self-Determination," *Social Justice* 16, no. 1 (35) (1989), 19.

⁴² Supreme Court of Canada, *Reference re Secession of Quebec*, 1998, 2 S.C.R. 217, para. 130.

determination, the right of seeking external self-determination, i.e. secession, does not exist under international law.⁴³

Yet, the possibility of secession still has the potential to create fear and clashes between minorities and state leadership. A changing understanding of self-determination began to take shape as a response to the problems of minorities and indigenous peoples, which could not always be accommodated by internal self-determination.⁴⁴ In situations where the potential for internal self-determination had been eradicated, the right to secede gained popularity. Hannum points out this issue in his book, *Autonomy, sovereignty, and self-determination: the accommodation of conflicting rights*, writing, “While it is appropriate to focus on secession as the ultimate expression of the right to self-determination it is precisely this focus that has led states to reject categorically any suggestion of self-determination for minorities within their jurisdiction.”⁴⁵ This legal discord continued after the breakup of the USSR, which caused widespread minority problems throughout Eastern Europe and Yugoslavia.⁴⁶ Still, the right of autonomy for minority groups is crucial to allow for the free and fair expression of self-determination and for conflict-free relations between majority and minority groups within a state.⁴⁷

Although the commonly favored interpretation of self-determination maintains internal forms of autonomy in cases not related to colonization, “more recently the right to secede from a state has also been granted in situations where a

⁴³ Roya M. Hanna, "Right to Self-Determination in In Re Secession of Quebec," *Md. J. Int'l L. & Trade* 23 (1999), 241.

⁴⁴ Peter Malanszuk, *Akehurst's modern introduction to international law*, (Routledge, 2002), 338.

⁴⁵ Hurst Hannum, *Autonomy, sovereignty, and self-determination: the accommodation of conflicting rights*, (University of Pennsylvania Press, 2011), 473.

⁴⁶ Peter Malanszuk, *Akehurst's modern introduction to international law*, 338.

⁴⁷ Hurst Hannum, *Autonomy, sovereignty, and self-determination*, 473.

people have been denied civil and political rights and subject to serious human rights abuses.”⁴⁸ Kosovo, a particularly monumental case expanding the understanding of self-determination, unfolded less than twenty years ago. I will provide a more thorough analysis of the facts of Kosovo later on, but what is important to note for the historical development of self-determination is the new realm of possibility this case generated. Kosovo is an example of remedial secession, a type of external self-determination occurring as a response to injustices and human rights abuses against a defined “people”. This does not mean, however, that every country agreed with the expansion of self-determination in regard to Kosovo. Many countries, including Russia, saw it as an infringement on Serbia’s territorial integrity and an illegal use of force by NATO to assist the Kosovar Albanians. Nonetheless, the ongoing genocide of the Kosovar population, and the utter refusal of the Serbian government to appease their demand for internal autonomy, created a situation that would lead to the eventual acceptance of the secession and the emerging statehood of Kosovo. A contributing factor of this acceptance was The International Court of Justice’s decision that Kosovo’s declaration of independence did not break any current international laws.⁴⁹ However, the court did not choose to address additional questions related to self-determination, thereby missing an opportunity for further clarification of the principle.⁵⁰

⁴⁸ Sofia Cavandoli, “The unresolved dilemma of self-determination,” 878.

⁴⁹ International Court of Justice (ICJ), *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion)*, July 22, 2010, General List No. 141.

⁵⁰ The court did not focus on “whether Kosovo was a state; whether recognition of Kosovo was lawful; whether Kosovo Albanians are a people for the purpose of self-determination or even whether they have a right to ‘remedial secession.’” James Summers, ed, *Kosovo: A Precedent?: The Declaration of Independence, the Advisory Opinion and Implications for Statehood, Self-Determination and Minority Rights*, (Brill, 2011), 152.

~Who Does Self-Determination Apply to? ~

It is not only the general principle of self-determination that leaves room for questioning but even how to define the “people” that have this right. “At various points in international legal history, the term “people” has been used to signify citizens of a nation-state, the inhabitants in a specific territory being decolonized by a foreign power, or an ethnic group.”⁵¹ There has been a similar trajectory of development between the application of the right to self-determination and the definition of a “people” that can apply it. The concept of a “people” was initially tied to the entire population of a specific territory, which made sense in the context of self-determination through decolonization. The “people” exercising self-determination in those cases simply became a newly recognized state under the same borders that they had previously been recognized as a colony.⁵² However, as decolonization was realized, self-determination began to transform into an attainable right for minorities and ethnic groups, which necessitated a new understanding of who a “people” was based on more than just territory.

In 1989, UNESCO conducted a study specifically aimed at understanding who a “people” refers to and how this relates to the right of self-determination.⁵³ This was prompted by popular movements in Eastern Europe as well as the potential for self-determination in Palestine and South Africa.⁵⁴ The study emphasizes the vagueness and the dangers of the uncertainty relating to the understanding of “people’s rights,”

⁵¹ Christopher J. Borgen, "Law, rhetoric, strategy: Russia and self-determination before and after crimea." *International Law Studies* 91, no. 1 (2015), 225.

⁵² Sofia Cavandoli, "The unresolved dilemma of self-determination," 878.

⁵³ UNESCO, *International meeting of Experts on Further Study of the Concept of the Rights of Peoples*, November 27, 1989, SHS-89/CONF.602/7.

⁵⁴ *Ibid.*

especially in relation to self-determination. It, therefore, attempts to bring clarification by describing some of the features inherent to a “people” including “(a) a common historical tradition; (b) racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) territorial connection; (g) common economic life.”⁵⁵ The group must also share a common understanding of themselves as a “people.”⁵⁶ Although the study was not binding law, it addressed the global legal recognition of “people’s rights” and attempted to elucidate who a “people” is in modern understanding. Given the lack of a definite definition of “people” under international law, this at least gives a framework from which to analyze self-determination units. There has also been international support for this conception, as illustrated in the implicit acceptance of the Kosovar Albanians as a “people,” with a right to self-determination.⁵⁷

Interestingly, there has not been much progress in answering many of the questions brought up in this study, and most of the objections and problems relating to these rights in 1989 are still the ones raised, such as “a right to self-determination leading to the fragmentation of States, the disruption of settled international boundaries, the breakdown of governmental authority and even the manipulation of peoples for the purpose of disrupting the internal affairs of States.”⁵⁸ With the new conception of a “people” being tied to ethnicity, a concern has emerged that this definition might destabilize multi-ethnic states.⁵⁹ In order to prevent this, most

⁵⁵ UNESCO, *International meeting of Experts on Further Study of the Concept of the Rights of Peoples*, 22.

⁵⁶ *Ibid.*, 22.

⁵⁷ John Dugard, *The secession of states and their recognition in the wake of Kosovo*, (Brill, 2013), 118.

⁵⁸ *Ibid.*, 5.

⁵⁹ Sofia Cavandoli, “The unresolved dilemma of self-determination,” 878.

“people” defined under criteria that extend beyond territory have been restricted to internal self-determination.⁶⁰ It is clear that understanding which people have a legal right to self-determination is the first step in understanding when they have that right and how it can be expressed. Analyzing the validity of defining Crimeans as a “people,” or a self-determination unit, will therefore be critical.

~Wrapping up Legal Background~

As I have illustrated, self-determination is continually being developed. The way in which it is understood has shifted with changes in international circumstances. The initial theoretical concept was refined and applied to decolonization, with an understanding that the “people” who had the right of self-determination were a group living in a defined territory. As international concerns have changed, self-determination has also had to change in order to better address the needs of minorities living within internationally recognized states or to address ethnic conflicts occurring within a single territory. Yet, understanding how to support self-determination without losing territorial integrity, and unwinding the basis of international law, has caused difficulties in defining which people have a right to self-determine and how they are able to do so. While these questions continue to be re-examined, the international community has fashioned a certain understanding of self-determination illustrated through court decisions, government statements, and legal scholarship. Self-determination is a right that must be pursued internally, within the parent state; only in rare circumstances may external self-determination be sought. Brad Simpson, a professor focusing on the history of self-determination, aptly explains that in order for a people to be permitted to secede, “A group of people in a defined territory must

⁶⁰ Ibid., 878.

have distinctive identity and a history of persecution at the hands of an unresponsive state that has made it impossible for them to effectively exercise the right to internal self-determination.”⁶¹ It is with this general knowledge that we can begin to examine self-determination in the case of Crimea.

~Russia’s Arguments in Defense of Crimean Self-Determination~

Many of Russia’s claims regarding the legality of their actions in annexing Crimea rest on the idea that the people of Crimea were seeking the right of self-determination; Russia was, therefore, helping them attain this right and was supporting the result by recognizing Crimea’s independence. The majority of Russian legal authorities have attempted to defend Russia’s actions through legal argumentation, however these arguments largely fall short. In this section, I will present the arguments that relate specifically to self-determination and analyze them in relation to the relevant laws and cases that I have outlined. It is also important to mention that the Russian Constitution stipulates that international laws and international treaties take priority⁶² in cases where they are inconsistent with the domestic law of the Russian Federation.⁶³ Therefore, regardless of national law, the standards of international law in this annexation case must be met. This fact makes it even more interesting that Russian legal scholars seem to be attempting to reinterpret international law in a way that supports domestic policy and domestic legal interpretation, since it should be the other way around. Moiseienko, a Ukrainian lawyer currently pursuing a PhD in international law, even points out that, “a well-

⁶¹ Brad Simpson, “Self Determination in the Age of Putin,” *Foreign Policy*, March 21, 2014, <http://foreignpolicy.com/2014/03/21/self-determination-in-the-age-of-putin/>.

⁶² This applies only to laws and treaties that Russia has accepted.

⁶³ Russia (Federation), *The Constitution of the Russian Federation*, (adopted by referendum, December 1993), Article 15(4).

known website Pravo.ru omits any references whatsoever to potential unlawfulness of the annexation when reporting legal developments in Crimea.”⁶⁴ Such a biased approach of looking at Crimea makes it paramount to analyze and interpret Russia’s claims.

When looking at Russian legal arguments, a pattern emerges in which a variety of different points are being made at once. For example, Mikhail Deliagin, a Russian economist, writer, and politician, pivots from one line of logic to another, quickly bringing up argument after argument to attempt to persuade readers. First, he proposes that the Ukrainian state has ceased to exist after being taken over by “a gang of Nazis.” He then quickly transitions stating that, even if the country does exist, it is not fulfilling its obligations to its citizens meaning that, therefore, they have the right to self-determination.⁶⁵ Finally, he proceeds to claim that even if Ukraine did exist as a state and was fulfilling its obligations, Crimeans still had a right to secede because the West had set a precedent through Kosovo that allowed ethnic groups to seek independence.⁶⁶ Of course, it should not be ignored that this author is more of a politician than a lawyer and that his legal analysis quickly transitions to a discussion of the Crimean national project and how to maximize its benefits. Nevertheless, the hasty arguments he throws out are ones that are repeated in a variety of other, more reputable, sources. Each of these claims will be independently examined in greater detail, to assess the validity of Crimea’s self-determination.

⁶⁴ Anton Moiseienko, “What Do Russian Lawyers Say About Crimea?”, *OPINIO JURIS* (Sept. 24, 2014), <http://opiniojuris.org/2014/09/24/guest-post-russian-lawyers-say-crimea/>.

⁶⁵ Mikhail Deliagin, "Crimea: The First Step in Russia's Return to the World," *Russian Politics & Law* 53, no. 2 (2015), 9-10.

⁶⁶ *Ibid.*

~Is Crimea a “People”? ~

There have been varying understandings of Crimea as a “people” with the right for self-determination. Determining the application of the term to Crimea is the first step in figuring out whether the people living in this territory could legally proclaim independence and whether Russia was simply recognizing a natural course of self-determination. To answer this question necessitates looking at different aspects of Crimea as well as different definitions. Two main understandings of a “people” have emerged: one focused on defined territory and one focused on the characteristics of a group of people.⁶⁷ The territorial approach is used in the context of an “entire population residing within the internationally recognized borders of a territory where no other state exercises legitimate sovereignty.”⁶⁸ Since Crimea was part of the territory of Ukraine, this definition cannot apply and the characteristics of the people living in Crimea must be examined.

Understandably, the Russian position has been to focus on Crimea as one people. The arguments used draw from the recent broad interpretation of the term “people.” Some of the criteria that can be used to support Crimea as a self-determination unit are a common historical tradition, cultural homogeneity, territorial connection, a common economic life, and a common consciousness.⁶⁹ Anatoly Kapustin, a Russian professor of International Law and the President of the Russian International Law Association, uses some of these characteristics to claim Crimea as a “people.” He defines it as a “political-ethnic community” possessing the right to

⁶⁷ Sofia Cavandoli, “The unresolved dilemma of self-determination,” 877.

⁶⁸ *Ibid.*, 878.

⁶⁹ UNESCO, *International meeting of Experts on Further Study of the Concept of the Rights of Peoples*, 22.

self-determine and argues that ethnic differences within Crimea do not minimize that common identity.⁷⁰ In fact, he writes, “In the referendum on independence the people of Crimea – all ethnic groups living in Crimea – showed themselves as one self-determined people and overwhelmingly opted for a reunification with Russia.”⁷¹ This is an important argument to prove, since the more recent understanding of a “people” focuses on shared ethnicity, religion, or language, and Crimea is not uniform in this regard. The common consciousness of Crimea as a whole unit must be demonstrated, which Kapustin attempts to do. But the claims he makes about different ethnic groups in Crimea, and their unity, have been brought into question.

One important group to discuss is the Crimean Tatar population. The Office of the United Nations High Commissioner for Human Rights reported that the majority of the Tatar community boycotted the referendum, with only about 1000 out of about 300,000 Tatars choosing to participate in the vote.⁷² Such an ethnic separation within Crimea could disrupt the idea of Crimea as one “political-ethnic” group. This is especially relevant as the concept of a “people” has in many cases been tied to ethnic or racial communities. Relatedly, Bill Bowring argues that the only group that can be seen as one “people” with the right for self-determination is the Crimean Tatar people given their status as “indigenous people of Crimea.”⁷³ Furthermore, they had faced significant persecution within the Soviet Union; the Crimean Tatars were deported in 1944 and they– alone among the deported peoples of 1944– were not rehabilitated

⁷⁰ Anatoly Kapustin, "Crimea's Self-Determination in the Light of Contemporary International Law," *HEIDELBERG J. INT'L L.* 75 (2015), 115.

⁷¹ *Ibid.*, 115.

⁷² Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine*, April 15, 2014, 4.

⁷³ Bill Bowring, “Who are the ‘Crimea People’ or ‘People of Crimea’? The fate of the Crimean Tatars, Russia& legal justification for annexation, and Pandora’s Box”, forthcoming, 21.

after the death of Stalin. This would add validity to their claim as a self-determination unit. The theoretical separation of the Crimea territory into ethnic sub-units weakens the idea of one Crimean “people” and, therefore, weakens their claim of being a legitimate self-determination unit.

An argument could be made for the territorial connection and common historical tradition in Crimea, both of which are noted as important in the definition of a “people.” While the territorial connection is hard to argue with, scholars have called into question the history of Crimea as a “people.” Law professor and member of the Ukrainian Society of International Law, Oleksandr Merezhko, writes, “Officially the population of Crimea has never been considered a separate people, neither by Ukraine nor by Russia.”⁷⁴ For Crimea to be a self-determination unit, they would have to be significantly different from the rest of Ukraine, enough to be a separate “people.” Additionally, Christopher Borgen, a professor of law at St. John’s University, argues that “although statements by Russian political leaders and international lawyers gave a general sense of the populations of Crimea and eastern Ukraine being different from the rest of Ukraine, they did not clearly state that either population met the formal criteria of being a self-determination unit.”⁷⁵ The opposing viewpoint suggests that Crimea has always been separate from Ukraine, both historically as a region transferred to Ukraine from Russia and more recently as an autonomous region within Ukraine.

⁷⁴ Oleksandr Merezhko, “Crimea’s annexation by Russia—Contradictions of the new Russian doctrine of international law,” *ZaöRV* 75 (2015), 183.

⁷⁵ Christopher Borgen, “Law, rhetoric, strategy: Russia and self-determination before and after Crimea,” 242.

There is a considerable level of controversy surrounding who a “people” is and, although Crimea might not have all of the characteristics noted as being relevant, the definition is too flexible to definitively assert whether or not Crimea is a “people.” Nonetheless, in cases where a “people” does not describe a complete territory that is not under control of any sovereign state, the internationally accepted approach has been to pursue internal self-determination. If we assume that Crimea can be considered a “people” with a right for self-determination, it is still not clear whether they had a legal right to secede from Ukraine and whether Russia could recognize this decision and annex the territory. The following sections focus on the right of Crimeans to secede and the Russian arguments presented in support of this.

~The Illegal Kyiv Regime~

One framing of the legitimacy of the referendum, and later annexation, is that the Ukrainian state had ceased to exist after the *coup d'état*, and that, therefore, groups of citizens had a right to self-determination to create their own state.⁷⁶ This holds no legal merit since a governmental transition or revolution does not invalidate the territorial integrity of the state.⁷⁷ A close, but more realistic, framing of this type of argument is that the change in regime in Kyiv was illegal, which invalidated constitutional norms, thus making the actions in Crimea both lawful and necessary given the turmoil in the country.⁷⁸ Both of these interpretations present the removal of Yanukovich from office as an illegal seizure of the government, a development that put Crimeans at risk and allowed them to take self-determination actions that would

⁷⁶ Mikhail Deliagin, "Crimea: The First Step in Russia's Return to the World," 9.

⁷⁷ Oleksandr Merezhko, "Crimea's annexation by Russia," 187.

⁷⁸ Alexei Moiseev, "Concerning Certain Positions on the Ukrainian Issue in International Law," *Russian Politics & Law* 53, no. 2 (2015), 50.

have been illegal under the Ukrainian constitution in normal circumstances. It also suggests that self-determination was necessary, because the autonomy of Crimea as a territory of Ukraine was at risk under the new leadership. Careful examination of the situation, however, illustrates the Ukrainian government's continuity of control, recognized both domestically and internationally, limited evidence of Crimea's autonomy being at risk, and a timeline that makes this argument questionable.

In late February, after the eruption of violent protests in Kyiv, the opposition leaders and then acting president Yanukovich negotiated and signed a deal aimed at maintaining peace. Titled "Agreement on the Settlement of Crisis in Ukraine", this deal restored the Constitution of 2004, called for constitutional reform to more evenly balance powers, and called for new Presidential elections to be held by the end of the year.⁷⁹ In the days following, Yanukovich fled Ukraine and Parliament voted to impeach him. Although the impeachment process was not carried out by the standards set in Ukrainian domestic law, the presence of a crisis situation, in combination with President Yanukovich's whereabouts being unknown, led Parliament to circumvent the Constitutional procedure. This unconstitutional transition of presidency, from Yanukovich to the new acting president Turchynov, is the strongest buttress of the claim that the regime was illegal and thus necessitated secession. However, domestic illegality or regime change does not provide grounds for ignoring international laws or the international sovereignty of a country. The new government maintained effective control of the country, upheld the Constitution of Ukraine, and preserved

⁷⁹ "Agreement on the Settlement of Crisis in Ukraine- full text," *The Guardian*, February 21, 2014, <https://www.theguardian.com/world/2014/feb/21/agreement-on-the-settlement-of-crisis-in-ukraine-full-text>.

relative peace and stability. Under international law, the government had legitimacy and could not be circumvented in issues of self-determination.

Alexei Moiseev, dean of the Faculty of International Law at the Diplomatic Academy of the MFA of Russia, writes, “Ukraine undoubtedly still exists as a subject of international law by virtue of the sovereignty that has its source in the Ukrainian people, but the basic question of the legal capacity of the state arises: who legally represents state power in Kyiv?”⁸⁰ In fact, this is a question that can be answered by looking at specific requirements of the law. In cases of political unrest within a country, or of governmental shifts, the test of effective control over the territory must be met to be legally recognized as the legitimate government. There is also a growing necessity of international recognition of the government, in order to ascertain its legitimacy.⁸¹ This, as Max Planck Research Group leader, Christian Marxsen, writes, “opens a gray area in which normative considerations in regard to the legitimacy of a government are invoked.”⁸² In the case of governments in exile that cannot have effective territorial control, their ability to represent their citizens and the national will could also be an important consideration in assigning legitimacy.⁸³ In Ukraine, in which a relatively, albeit not entirely, peaceful transition to an interim government occurred, pending elections, the facts illustrate both that effective control was maintained and that the majority of the international community accepted this governmental change. The government continued to function, controlling the territory

⁸⁰ Alexei Moiseev, "Concerning Certain Positions on the Ukrainian Issue in International Law," 54.

⁸¹ Christian Marxsen, "The Crimea Crisis—An International Law Perspective," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (Heidelberg Journal of International Law), 74/2, (2014), 377.

⁸² *Ibid.*, 378.

⁸³ Stefan Talmon, "Who is a legitimate government in exile? Towards normative criteria for governmental legitimacy in international law." *Guy Goodwin-Gill/Stefan Talmon* (1999), 509.

of Ukraine and upholding the Ukrainian Constitution, and countries proceeded to maintain international agreements and to hold talks with the interim Ukrainian government. Furthermore, President Yanukovich had fled the country and could not be found representative of the national will, given that the interim Ukrainian government was brought to power through a protest involving hundreds of thousands of Ukrainian citizens. The potential national illegality of the transition does not discount the effective control and legality of the government once it was established and does not interrupt international legal continuity.⁸⁴ This transition, therefore, in no way invalidated the existence of Ukraine as a state nor did it annul the Ukrainian constitution in a way that would allow for hasty acts of self-determination.

Another point that must be mentioned is the extremely short time span between the change of Ukrainian government and the Crimea secession. Even if the new regime was threatening to Crimeans or resulted from illegal protests, the turnaround and the speed with which the Crimean referendum was arranged, without attempting to negotiate or wait for the new presidential election, scheduled for May 24th, 2014, lowers credibility. As I previously mentioned, the government had effective control and was internationally recognized, therefore, it could not be circumvented for the purpose of self-determination even if the Crimean populace did feel that the transition was illegal. Crimean representatives could have attempted to work with the new government to ensure their autonomy, although there was no indication that this autonomy would be revoked. Furthermore, the Ukrainian government had the potential to regain complete eligibility in the eyes of its citizenry

⁸⁴ Hans Kelsen, "Principles of International Law, 2nd rev. edn., ed," *Robert W. Tucker, New York* (1966), 387.

through scheduled voting later that year. Had the referendum been postponed until then, even if the interim government was unwilling to negotiate, conversations could have begun between Crimean representatives and the newly elected government. Given the continued sovereignty of Ukraine, domestic government could not be ignored when deciding to hold a referendum that would dismantle the territorial integrity of the country, without at least negotiating for maintained internal autonomy first.

In “Concerning Certain Positions on the Ukrainian Issue in International Law,” Moiseev writes, “It can be argued that under an illegal regime, constitutional norms are invalid due to... the absence of circumstances under which a norm is subject to application and acquires the significance of a legal fact. Under the conditions that had arisen in Ukraine, the actions taken by the Crimean authorities were lawful and democratic.”⁸⁵ This statement ignores the legal continuity of Ukraine under international law, the unceasing existence of the territorial integrity of Ukraine, and the effective control of the government post transition. Although a regime change had occurred, it did not invalidate the international principles that maintained when self-determination was appropriate, nor did it invalidate the internal autonomy Crimea possessed within Ukraine under the Constitution upheld by the new government. The *coup d'état* was a national matter, which was concluded by a new government effectively exercising power in Ukraine. It did not open the door for international self-determination, nor did it provide an adequate concern for Crimea to fear for its autonomy under the new regime.

⁸⁵ Alexei Moiseev, "Concerning Certain Positions on the Ukrainian Issue in International Law," 50.

~The Historical Connection~

On behalf of the executive board of the Russian association of international law, Professor Anatoly Kapustin wrote a letter to the Executive Council of The International Law Association on the case of Crimea, Ukraine, and Donbass explaining the situation as he, and presumably the rest of the association, saw it.⁸⁶ What was striking in this letter was the persistent focus on the historical connection between Crimea and Russia, a view that was expounded by other Russian authorities, including Putin himself. During an address following the Crimea annexation, President Putin spoke many times of the shared history between Crimea and Russia invoking phrases such as “Everything in Crimea speaks of our shared history and pride,” and “In people’s hearts and minds, Crimea has always been an inseparable part of Russia.”⁸⁷ These appeals clearly work as political rhetoric, but their value to international law can only hold so long as laws and treaties support these claims. Although this section will devote some attention to the validity of these statements, it will only do so in the identification of the legal facts of the situation. Russia uses a historical narrative to attempt to validate Crimea’s right to self-determination as stemming from an oppressive, continuous denial of autonomy to the Crimeans by the Ukrainian government. Although history shows a complicated path to internal autonomy for Crimea following the dissolution of the Soviet Union, many of these issues were addressed and negotiated with Crimean representatives by the late 1990s. There is little evidence that Crimeans were politically oppressed, or aimed

⁸⁶ Anatoly Kapustin, “Circular Letter to the Executive Council of the International Law Association”, June 2014, <http://www.ilarb.ru/html/news/2014/5062014.pdf>.

⁸⁷ Vladimir Putin, “Address by President of the Russian Federation,” *Official Internet Resources of the President of Russia*, March 18, 2014, <http://en.kremlin.ru/events/president/news/20603>.

to secede from Ukraine, since then. In this section, I will evaluate historical facts and their influence on the legal interpretation of self-determination, in order to address the core of a large portion of Russian arguments.

On March 18th, 2014, in an address to the State Duma, Putin stated, “Now, many years later, I heard residents of Crimea say that back in 1991 they were handed over like a sack of potatoes. This is hard to disagree with. And what about the Russian state? What about Russia? It humbly accepted the situation.”⁸⁸ This line of argumentation stems from the allegation of an unlawful shifting of Crimea from the Russian Soviet Socialist Republic to the Ukrainian Socialist Soviet Republic, and the later claiming of Crimea by the independent Ukrainian state. Within the Soviet Union, Crimea began, in 1921, as the Crimean Autonomous Socialist Soviet Republic of the Russian Soviet Federative Socialist Republic. The Crimean ASSR was redefined as the Crimean Oblast of the RSFSR, in 1945, following Nazi occupation of the region. In 1954, this oblast was officially transferred to the Ukrainian Socialist Soviet Republic by the Presidium of the Supreme Soviet, although the decision is attributed to Nikita Khrushchev.⁸⁹ Different reasons have been presented for this transfer, with many believing it was a “gift” to Ukraine, “framed as a goodwill gesture.”⁹⁰ It was also connected to the 300th anniversary of the Treaty of Pereyaslav,

⁸⁸ Ibid.

⁸⁹ Krishnadev Calamur, “Crimea: A Gift to Ukraine Becomes a Political Flashpoint,” *NPR Capital Public Radio*, February 27, 2014, <https://www.npr.org/sections/parallels/2014/02/27/283481587/crimea-a-gift-to-ukraine-becomes-a-political-flash-point>.

⁹⁰ Joshua Keating, “Khrushchev’s Gift,” *Slate*, February 25, 2014, http://www.slate.com/blogs/the_world_/2014/02/25/separatism_in_ukraine_blame_nikita_khrushchev_for_ukraine_s_newest_crisis.html.

which is associated with Russian-Ukrainian unity.⁹¹ The argument presented in 1954, at the meeting of the Presidium in which this transfer took place, was framed thus:

“Considering the commonality of the economy, the territorial proximity, and the close economic and cultural ties between the Crimean Oblast' and the Ukrainian SSR, and also bearing in mind the agreement of the Presidium of the Ukrainian SSR Supreme Soviet, the Presidium of the RSFSR Supreme Soviet considers it advisable to transfer the Crimean Oblast' to the Ukrainian Soviet Socialist Republic.”⁹²

The ethnic makeup of Crimea had always included more Russians than Ukrainians; at the time of the transfer “there were about 268,000 Ukrainians and 858,000 ethnic Russians living in the area.”⁹³ Relatedly, questions regarding the legal validity of this transfer and this decision to reassign the territory occurred prior to the recent events in Crimea. In 1992, Ambartsumov, a former Russian diplomat and political scientist, pointed out that, according to the RSFSR Constitution, in order to invoke a territorial change the entire RSFSR Supreme Soviet had to make the decision and not just the Presidium.⁹⁴ The 1936 Constitution of the USSR also stipulated that “the territory of a union republic may not be altered without its consent.”⁹⁵ On these grounds, Ambartsumov finds that the decision to transfer Crimea to the Ukrainian SSR was illegal.⁹⁶ Nevertheless, Gwendolyn Sasse, a Professor of Comparative Politics at the University of Oxford, notes the “political elasticity of the application of Soviet law” and how “post-Soviet political actors have tended to imbue

⁹¹ Mark Kramer, “Why Did Russia Give Away Crimea Sixty Years Ago?”, *WILSON CENTER*, March 19, 2014, <http://www.wilsoncenter.org/publication/why-did-russia-give-away-crimea-sixty-years-ago>.

⁹² “Meeting of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics,” February 19, 1954, History and Public Policy Program Digital Archive, GARF. F.7523. Op.57. D.963, L1-10. Published in “Istoricheskii arkhiv,” issue 1, vol. 1 (1992). Translated for CWIHP by Gary Goldberg. <http://digitalarchive.wilsoncenter.org/document/119638>.

⁹³ Joshua Keating, “Khrushchev’s Gift,” *Slate*, February 25, 2014.

⁹⁴ Evgenii Ambartsumov, interview in *Novoe vremia*, no. 6 (1992): 18-20.

⁹⁵ Union of Soviet Socialist Republics, *1936 Constitution of the USSR*, (adopted December 5, 1936), Article 18.

⁹⁶ Evgenii Ambartsumov, interview in *Novoe vremia*.

Soviet constitutional provisions with more significance and legitimacy than they had enjoyed during the Soviet period.”⁹⁷ There is a lack of consensus on how strictly the Soviet law was followed and whether the text holds as much importance as the actual decisions. The legality of the transfer being questionable, however, is less critical than an analysis of events following 1991. At the time, the transfer of Crimea within the USSR was seen as inconsequential, since it continued to belong to the territory of the USSR. Issues with the placement of this territory were exacerbated during, and following, the breakup of the Soviet Union.

On January 21st, 1991, the people of Crimea voted in a referendum to change Crimea’s status from an oblast to an Autonomous Region, ASSR, within the USSR. The result of this referendum was an overwhelming vote for reclassifying it as an ASSR, making it the first ASSR to be created by popular vote and the last ASSR created within the Soviet Union.⁹⁸ In response, the Ukrainian Supreme Soviet passed a law validating Crimea’s ASSR status, but as a part of the Ukrainian SSR. This was done to avoid any legal problems that could have come up by the framing of the referendum question as autonomy within the USSR, instead of within the Ukrainian SSR. In June 1991, Ukraine affirmed the new status of Crimea in article 75 of the Ukrainian SSR Constitution.⁹⁹ The Crimea referendum was followed, after the failed August 1991 coup, by the referendum for Ukrainian independence from the Soviet Union, conducted on December 1st, 1991. 54.2% of Crimeans voted affirmatively to

⁹⁷ Gwendolyn Sasse, *The Crimea question: identity, transition, and conflict*, (Harvard University Press, 2007), 113.

⁹⁸ *Ibid.*, 138.

⁹⁹ *Ibid.*, 139.

the question “Do you support the Act of Declaration of Independence of Ukraine?”¹⁰⁰

Although there were sentiments expressing a desire for Crimea to join Russia, or to declare its own independence, the results of this referendum show a majority supporting Ukrainian independence and Crimea as a part of that. Furthermore, Crimea was already included in the legal state entity of Ukraine prior to the end of the USSR, and Kapustin himself admits that “international customary law does not grant a right of option to the inhabitants of a territory in the case of state succession.”¹⁰¹ This discredits Russia’s claim that Crimea was forcibly stolen by Ukraine after the dissolution of the Soviet Union.

Yet, following Ukraine’s declaration of independence and the beginning of a formulation of what that would mean for the country, Kyiv did not spend adequate attention on its relationship with an autonomous Crimea, which led to discontent and movements for independence. In 1992, The New York Times published an article titled “Russia Votes to Void Cession of Crimea to Ukraine” that describes events hauntingly similar to the 2014 situation in Crimea, with Russia and Ukraine fighting over the territory and the possibility of Crimean secession.¹⁰² On May 6th, 1992, the Crimean parliament voted to declare independence, contingent on confirmation from a public referendum.¹⁰³ This also resulted in a Crimean constitution, which defined

¹⁰⁰ Chrystyna Lalpychak, “Over 90% vote yes in referendum; Kravchuk elected president of Ukraine,” *The Ukrainian Weekly*, December 8, 1991, <http://www.ukrweekly.com/old/archive/1991/499101.shtml>.

¹⁰¹ Anatoly Kapustin, “Crimea’s Self-Determination,” 111 footnote 35.

State succession here is defined as the transition of the state from the Ukrainian SSR to Ukraine.

¹⁰² Serge Schmemmann, “Russia Votes to Void Cession of Crimea to Ukraine,” *The New York Times*, May 22, 1992, <https://www.nytimes.com/1992/05/22/world/russia-votes-to-void-cession-of-crimea-to-ukraine.html>.

¹⁰³ Serge Schmemmann, “Crimea Parliament Votes to Back Independence from Ukraine,” *The New York Times*, 1992, <http://www.nytimes.com/1992/05/06/world/crimea-parliament-votes-to-back-independence-from-ukraine.html>.

the “Republic of Crimea” as a state with sovereign powers, while simultaneously affirming itself as a part of the Ukrainian state.¹⁰⁴ The decision came about during increasing tensions between Russia and Ukraine over the land and confusion about borders and state formation without a Soviet Union. It is important to note that Crimea sought independence following failed negotiations with the Ukrainian government on the powers and autonomy of Crimea.¹⁰⁵ Sasse argues this constitution was used as a way to force Kyiv into negotiating a better deal for the region, which eventually paid off.¹⁰⁶ Although the Ukrainian government declared this act of independence and Constitution illegal, it negotiated with Crimean representatives to draft laws that guaranteed Crimea extensive autonomy in exchange for a redrafting of the Constitution.¹⁰⁷ Still, conflicts between Kyiv and Crimea were not yet over.

They clashed again, in 1994, when the Crimean Supreme Soviet created the position of president of Crimea, and political mobilization for increased autonomy was brought up in the region anew.¹⁰⁸ It was during campaigns for this election, as well as the Supreme Soviet elections, that a movement to reunite with Russia picked up momentum. The newly-elected Supreme Soviet in Crimea was made up of a Russia-supporting majority from the Russian Bloc Party, as was the elected President Meshkov.¹⁰⁹ Meshkov feuded with the Ukrainian government multiple times, and at one point attempted to re-implement the controversial 1992 Crimean Constitution.

¹⁰⁴ Gwendolyn Sasse, *The Crimea question*, 146.

¹⁰⁵ *Ibid.*, 145.

¹⁰⁶ *Ibid.*, 146.

¹⁰⁷ *Ibid.*, 148.

¹⁰⁸ *Ibid.*, 157.

¹⁰⁹ Андрей Мальгин, “Крымский узел. Что привело к «русской войне»2014?” *Россия в глобальной политике*, April 27, 2014, <http://www.globalaffairs.ru/number/Krymskii-uzel-Chto-privelo-k-russkoi-vesne-2014-16591>.

After significant pressure from Kyiv, however, Meshkov backed down.¹¹⁰ Through a series of bad political decisions from the Russian Bloc and Meshkov, they lost the support of the people and, by the end of 1994, polls in Crimea showed support for Meshkov at 5%.¹¹¹ As Sasse points out, the “rapid rise and fall of the Crimean separatist movement demonstrated the inherent weaknesses of this kind of mobilization.”¹¹² The development of this movement was in response to economic weakness, ethnic resentment of the Crimean Tatars, and conflicts with Kyiv, not because of a historical/cultural affinity with Russia.¹¹³ Consequently, the mobilization fell apart when results could not be delivered. It was just one of many solutions that was considered to fix the perceived issues in Crimea, and, when this vision didn’t deliver, people quickly lost confidence in it.

Following these political conflicts, Crimean representatives and the Ukrainian government sought to develop a mutually beneficial solution, and by 1998 this seemed to have been achieved through constitutional means. Article 134 of the Ukrainian Constitution, passed in 1996, states, “The Autonomous Republic of Crimea is an inseparable constituent part of Ukraine and decides on the issues ascribed to its competence within the limits of authority determined by the Constitution of Ukraine.”¹¹⁴ It also stipulates the rights that the Autonomous Republic of Crimea possesses, including a Verkhovna Rada as a representative body to pass laws and decisions, as long as they comply with the Ukrainian Constitution.¹¹⁵ In 1998, a new

¹¹⁰ Gwendolyn Sasse, *The Crimea question*, 165.

¹¹¹ *Ibid.*, 171.

¹¹² *Ibid.*, 172.

¹¹³ *Ibid.*, 172.

¹¹⁴ Ukraine(federation), *The Constitution of Ukraine*, (adopted June 28, 1996), Article 134.

¹¹⁵ *Ibid.*, Article 136.

Crimean Constitution was drafted and approved, which mimicked the language of the Ukrainian Constitution in defining Crimea as an “inseparable constituent part of Ukraine.”¹¹⁶ The turmoil of the Crimea question seemed to have finally been concluded, as both Constitutions upheld the presence of Crimea’s autonomous status within Ukraine. In fact, although conflicts had obviously existed in the 1990s, they were handled through negotiations between the region and the Ukrainian government, which ultimately led to Crimean internal autonomy and stabilization of the area.

This opinion regarding the territorial stability of Crimea as part of the Ukrainian state was held by multiple scholars leading up to the extremely sudden volatility of the area. For example, Eleanor Knott describes the events of 2014 as completely in opposition to the data she had collected in Crimea in 2012 and 2013. She writes, “Including the minority of respondents who identified with Russia, and felt discriminated by Ukraine, none of my(Knott’s) respondents supported secession from Ukraine: it just seemed unthinkable, if not farcical.”¹¹⁷ This view is also supported by data gathered by political scientists Grigore Pop-Eleches and Graeme Robertson. They found that, although Crimeans were less likely than citizens of other Ukrainian regions to view Ukraine as their homeland, instead naming Crimea itself, only about 1 percent of respondents identified Russia as their homeland.¹¹⁸ Furthermore, they note a 2013 Razumkov Center survey that showed a majority of

¹¹⁶ Gwendolyn Sasse, *The Crimea question*, 202.

¹¹⁷ Eleanor Knott, “Crimea before Annexation: Reflections on Writing a ‘History of the Past,’” *Eleanor Knott* (blog), September 29, 2015, <https://eleanorknott.wordpress.com/tag/russian-annexation-of-crimea/>.

¹¹⁸ Grigore Pop-Eleches and Graeme Robertson, “Do Crimeans Actually Want to Join Russia,” *The Washington Post*, March 6, 2014, https://www.washingtonpost.com/news/monkey-cage/wp/2014/03/06/do-crimeans-actually-want-to-join-russia/?utm_term=.f2babf5780c5, Figure 1.

Crimeans opposing separation from Ukraine.¹¹⁹ Such a rapid shift of sentiment in relation to Russia and secession from Ukraine is extremely questionable and makes the claim of ongoing resentment and an ongoing desire to rejoin Russia dubious. The yearning for self-determination that begins after the use of force or intimidation by an outside power cannot hold weight under international law, especially given the presumed lack of this desire since autonomy was obtained.

Furthermore, although Russia might speak of their historical ties with Crimea, legally the matter had been solved from the Russian perspective when they vowed to respect Ukraine's territorial integrity in agreements made in 1994 and 1997. The Budapest Memorandum affirmed that:

“The United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland, reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons will ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations.”¹²⁰

This was necessary to assure Ukraine of its safety, following its agreeing to give up nuclear weapons. A treaty three years later, directly between Russia and Ukraine, further reinforced the respect for each other's territorial integrity and mutual assurances of security.¹²¹ Additionally, in 1997, Russia and Ukraine signed the Black Sea fleet agreements giving Russia bases in Crimea for 20 years. This was a sign of Ukraine-Russia partnership and was motivated by President Yeltsin's desire to normalize relations between the two countries, even though there was some

¹¹⁹ Ibid.

¹²⁰ General Assembly Security Council, *Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-proliferation of Nuclear Weapons*, December 19, 1994, A/49/765.

¹²¹ “Treaty of Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation,” (signed May 31, 1997).

opposition at the time from Crimean groups.¹²² The multiple legal reassurances of Russia's acceptance of Ukraine's borders make claims of the illegality of the Crimean transfer moot. Even if the Soviet law protocol was not directly followed, the later affirmations of the international community, upholding the territory as part of the newly-recognized state, validate Crimea as a territory of Ukraine. Although Kapustin attempts to circumvent this by stating that bilateral agreements between Ukraine and Russia did not address the legal status of disputed territories like Crimea,¹²³ this is not easily reconciled with the terms of the agreements or with the world's acceptance of Ukraine's borders at the time of the signing.

Russia's attempts to invalidate the incorporation of Crimea into the territory of Ukraine even went so far as to pass a bill in 2015, after the annexation, "annulling the Soviet Union's 1954 transfer of Crimea to Ukraine."¹²⁴ Federation Council Chairperson Valentina Matviyenko stated, in regard to the bill, "We have been accused of annexing Crimea and the adoption of this law will prove to the entire world that a one-man decision to transfer Crimea to Ukraine in 1954 was not legal."¹²⁵ However, retroactively passing a bill to prove the legality of recent actions cannot cancel out the countless other treaties conducted between Russia and Ukraine, since 1954, that have solidified the territorial integrity of Ukraine. Agreements like

¹²² Андрей Мальгин, *Крымский узел. Очерки политической истории Крымского полуострова 1989–1999*, (Новый Крым, 2000), 47.

¹²³ Anatoly Kapustin, "Crimea's Self-Determination," 113.

¹²⁴ "New Russian Bill Condemns 1954 Transfer of Crimea to Ukraine as 'Illegal,'" *The Moscow Times*, February 5, 2015, <https://themoscowtimes.com/news/new-russian-bill-condemns-1954-transfer-of-crimea-to-ukraine-as-illegal-43588>.

¹²⁵ "Federation Council to pass bill proclaiming Crimea's transfer to Ukraine in 1954 illegal," *Russia Beyond*, December 23, 2014, https://www.rbth.com/news/2014/12/23/federation_council_to_pass_bill_proclaiming_crimeas_transfe_r_to_ukraine__42480.html.

the Budapest Memorandum have included Crimea within Ukraine's territory, thereby making claims of illegality of the transfer in 1954 marginal.

As Borgen expertly points out, "International legal doctrines of sovereignty, effective dates of boundaries and non-intervention deliberately do not give weight to such historical grievances because almost every country can point to some past wrong and some previous territorial distribution that they believe is more just."¹²⁶ The argument of historical and cultural ties brought forward by Russia holds no weight legally. In one paper, Kapustin admits to the extremely rare reference to history in such cases under international law, but then contrasts it with a statement that "it cannot be ignored when it comes to reuniting historically united nations."¹²⁷ The Soviet transfer of Crimea to Ukraine, the negotiations during the 1990s between Ukraine and Crimean representatives on the autonomy and rights of Crimea, the subsequent stabilization of Crimea as a part of Ukraine, and Russia's agreement in multiple treaties and meetings to the borders of Ukraine that included Crimea within them, all point to legal invalidation of the argument Kapustin makes. If all of these factors are ignored in favor of an abstract concept of historical ties, it will set a clearly dangerous precedent that ignores any understanding of modern territories and allows countries to go back as far back as they please to find relevant history. As Borgen states, "It is as if the Russian leadership realized that it would be on shaky ground if it tried to build anything like a classic argument based on self-determination; so,

¹²⁶ Christopher Borgen, "Law, rhetoric, strategy: Russia and self-determination before and after Crimea," 259.

¹²⁷ Anatoly Kapustin, "Crimea's Self-Determination in the Light of Contemporary International Law," 113.

instead, it began a parallel construction based on history and cultural affinity.”¹²⁸ This argument is interwoven into most defenses of the annexation and it exhibits the strongest political rhetoric, while disregarding valid standards of international law.

~The Persecution of Russians~

In “Crimea’s Self-Determination in the Light of Contemporary International Law,” leading Russian legal theorist, Kapustin, writes:

“In the Crimean situation, the physical existence of the people was at stake and therefore a secession from Ukraine was justified under the requirements of “remedial secession”. Of course, compared to Bangladesh, Kosovo and other examples of this kind, the situation in Crimea was different. In fact, there were no mass killings of civilians or full-scale military actions, but this was not to the merit of the Ukrainian government or the international community”¹²⁹

His appraisal of the situation as endangering the lives of Crimeans echoes politically based statements of the Russian government, but it also invokes legal theories of secession and self-determination. As presented earlier, there is growing international support for the possibility of secession under self-determination in cases where the government is infringing on the rights of a group of people or is not allowing them to express their guaranteed right of self-determination within the state.¹³⁰ Kapustin is right in stating that there is a precedent of remedial secession, but this can only apply to Crimea if the factual evidence supports his claim that “the physical existence of the people was at stake.” Supporters of this argument for self-determination allege that the regime that took power following the Ukrainian revolution committed atrocities against the Crimean population, and primarily the ethnic Russians, and that Crimea

¹²⁸ Christopher Borgen, "Law, rhetoric, strategy: Russia and self-determination before and after Crimea," 241.

¹²⁹ Anatoly Kapustin, "Crimea’s Self-Determination," 117.

¹³⁰ *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.*

had no choice but to secede to save itself from persecution and oppression. Yet the facts do not support the widespread abuse that would be necessary to support this legal theory, nor was there cause to believe that ongoing oppression would ensue, given the short amount of time since the regime change and the scheduling of fair and free elections to proceed in May of 2014.

One of the cases presented by Kapustin, as being indicative of a larger problem of abuse against ethnic Russians, occurred two months after the referendum and annexation of Crimea.¹³¹ The situation took place in Odessa on May 2nd, 2014 and was a clash between Pro Ukrainian Unity activists and Pro-Federalism Russian supporters which involved gunshots, Molotov cocktails, and beatings.¹³² The outbreak also led to a fire in the Trade Union Building, which, combined with other violence, left 52 people dead and many more injured.¹³³ This was a tragic loss of life and was the deadliest incident in Ukraine since the EuroMaidan protests in February.¹³⁴ However, this incident falls short as an argument for the persecution of Russians within Ukraine, which could be used to justify self-determination in Crimea. First, this occurred months after Crimea had already seceded; future events cannot be retroactively applied to prove the danger to a people in March, when this claim would have been necessary. Secondly, Kapustin frames the conflict as a “brutal massacre of dissidents in Odessa,” stating that, “dozens of people were killed or burned alive simply because they wanted to speak Russian.”¹³⁵ Reading the Human Rights Report

¹³¹ Anatoly Kapustin, "Crimea's Self-Determination," 116.

¹³² Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in Ukraine*, June 15, 2014, p. 37-50.

¹³³ *Ibid.*, p. 47-49.

¹³⁴ *Ibid.*, p. 37.

¹³⁵ Anatoly Kapustin, "Crimea's Self-Determination," 116.

that he cites, this analysis clearly doesn't offer the full picture. Although it is accurate to state that extremist activists from the Right Sector were involved, which aimed to clear Odessa of pro-Russian separatists,¹³⁶ the conflict began when pro-Russian activists intervened in and provoked participants of a "United Ukraine" rally.¹³⁷ This was not an attack on Russian speakers but was a conflict resulting from violence on both sides, tied directly to questions of separatism and the secession of Ukrainian territories.

The concern about the suppression of Russian language, hyperbolized in Kapustin's quote in the previous paragraph, was a response to Ukraine's Verkhovna Rada adopting a bill to abolish a law that allowed for the use of more than one official language in regions where a significant percentage of locals spoke a regional language.¹³⁸ This bill was voted on a day after the vote to impeach President Yanukovich.¹³⁹ A majority of Crimeans speak Russian at home,¹⁴⁰ and the rejection of this law was seen by many as an attack on the use of the Russian language. This interpretation, however, has been criticized by some as not indicative of the actual reasons for the repeal. For example, Ukrainian lawyer Oleksiy Stolyarenko argues that the status of the Russian language throughout Ukraine has not changed in practice, even while there might have been legal modifications.¹⁴¹ He asserts that the 2012 language law changed nothing in regard to regional languages, as there was no

¹³⁶ Howard Amos and Harriet Salem, "Ukraine clashes: dozens dead after Odessa building fire," *The Guardian*, May 2, 2014, <https://www.theguardian.com/world/2014/may/02/ukraine-dead-odessa-building-fire>.

¹³⁷ *Ibid.*

¹³⁸ "Canceled language law in Ukraine sparks concern among Russian and EU diplomats," *RT*, February 28, 2014, <https://www.rt.com/news/minority-language-law-ukraine-035/>.

¹³⁹ *Ibid.*

¹⁴⁰ Grigore Pop-Eleches and Graeme Robertson, "Do Crimeans Actually Want to Join Russia," fig. 3.

¹⁴¹ Алексей Столяренко, "Все про статус русского языка," *Украинская Правда*, March 13, 2014, <https://www.pravda.com.ua/rus/columns/2014/03/13/7018654/>.

budget or program created to implement it, and that the decision to abolish the law was a poorly timed attempt at getting rid of a badly written piece of legislation.¹⁴² While the reasons for the Rada's decision are speculative, the bill did not actually go into effect; on March 1, 2014 acting President Turchynov vetoed it. He stated, "Although the 2012 language law was unbalanced, I will not sign into law the parliament's decision to repeal it until a new bill to protect all languages is passed."¹⁴³ His decision, and justification, imply a respect for regional languages and for minorities within Ukraine. Although the bill might have caused concern initially, its prevention should have signaled that Russian-speakers were not, and would not, be persecuted.

The U.N. human rights report released on April 15th, 2014, which objectively investigated any potential human rights violations in Ukraine in the month of March, stated in regard to Crimea:

"Although there was no evidence of harassment or attacks on ethnic Russians ahead of the referendum, there was widespread fear for their physical security. Photographs of the Maidan protests, greatly exaggerated stories of harassment of ethnic Russians by Ukrainian nationalist extremists, and misinformed reports of them coming armed to persecute ethnic Russians in Crimea, were systematically used to create a climate of fear and insecurity that reflected on support to integration of Crimea into the Russian Federation."¹⁴⁴

UN human rights official, Magazzeni, further noted that they "do not have any credible evidence of issues that would justify concerns on the part of the Russian-

¹⁴² Ibid.

¹⁴³ "Ukraine's 2012 Language Law to Stay Until New Bill Ready- Turchynov," *Sputnik International*, March 3, 2014, <https://sputniknews.com/world/20140303188063675-Ukraines-2012-Language-Law-to-Stay-Until-New-Bill-Ready--Turchynov/>.

¹⁴⁴ *Report on the Human Rights Situation in Ukraine*, April 15, 2014, para. 89.

speaking population of Ukraine.”¹⁴⁵ These observations suggest that it was the media climate and propaganda surrounding the referendum that created a fear of persecution and not real threats. Although the U.N. chose not to comment on where this fear-mongering propaganda was coming from, there are clear parallels with the propaganda in the Russian news cycle, which denied Russian involvement in the conflict, vilified the interim Ukrainian government, and reported on stories of the harassment of ethnic Russians.¹⁴⁶ Many Russian journalists maintained the official Putin line on the Crimea situation, irrespective of observable facts.¹⁴⁷ They also perpetuated claims of Ukrainian extremists oppressing ethnic Russians in Crimea through videos and images that were later discredited. One example of this is the story labeled “The Right Sector from the Western Ukraine attacking peaceful Russian citizens and killing soldiers in Crimea,” which presented images of a bus “filled with people dressed like paramilitary fighters, toting machine guns and grenade launchers” labeled as a group of Ukrainian extremists.¹⁴⁸ Further examination, however, made the claim extremely questionable and more likely to have been a group of Crimean “self-defense forces.”¹⁴⁹ Even more interesting is Putin secretly awarding over 300 journalists with medals for their “objective” analysis of the news in Crimea.¹⁵⁰ It seems plausible to argue that the creation of fear and threats related to ethnic Russian

¹⁴⁵ Tom Miles and Stephanie Nebehay, “U.N. finds fear mongering by Russian Speakers in Ukraine,” *Reuters*, April 15, 2014, <http://www.reuters.com/article/us-ukraine-crisis-un/u-n-finds-fear-mongering-by-russian-speakers-in-ukraine-idUSBREA3E16U20140415>.

¹⁴⁶ Timothy Snyder, “Crimea: Putin vs. Reality,” *The New York Review of Books*, March 7, 2014, <http://www.nybooks.com/daily/2014/03/07/crimea-putin-vs-reality/>.

¹⁴⁷ Simon Shuster, “Putin’s Confessions on Crimea Expose Kremlin Media,” *TIME*, March 20, 2015, <http://time.com/3752827/putin-media-kremlin-crimea-ukraine/>.

¹⁴⁸ Oleg Shynkarenko, “Putin’s Crimea Propaganda Machine,” *Daily Beast*, March 3, 2014, <https://www.thedailybeast.com/putins-crimea-propaganda-machine>.

¹⁴⁹ *Ibid.*

¹⁵⁰ Claire Bigg, “Putin Awards 300 Journalists for ‘Objective’ Crimea Coverage,” *Radio Free Europe Radio Liberty*, May 5, 2014, <https://www.rferl.org/a/putin-awards-journalists-objective-crimea-coverage/25373844.html>.

prosecution was assisted, at least in part, by Russian media operating as an arm of Russia's government.

The widespread use of propaganda and the overtaking of media prior to the referendum implies the blocking of a fair and free referendum, and therefore the ability of people to self-determine. As the International Court of Justice emphasized in the Western Sahara Advisory Opinion, "the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned."¹⁵¹ Furthermore, although little evidence was found in the UN Human Rights Report relating to persecution of Russians, there were multiple issues of harassment and human rights abuses found in Crimea that targeted people perceived to be in opposition to the referendum.¹⁵² The silencing of opposing views reinforces the potential issue in Crimea relating to a "free and genuine expression of the people's will," and weakens an argument for external self-determination related to political oppression of the pro-Russian supporters.

Although persecution and oppression of an ethnic minority would be a very strong argument for secession, this was not the case here. Undoubtedly, this is why many other self-determination arguments are woven in and discussed in the defenses presented for the referendum and secession. The fear of future oppression and persecution on its own, without actually facing a considerable amount, is not enough to warrant legal secession. Combined with no prevalence of meaningful ethnic

¹⁵¹ International Court of Justice (ICJ), *Western Sahara, Advisory Opinion*, I.C.J. Reports October 16, 1975, General List No. 61, para. 55.

¹⁵² "There have also been credible allegations of harassment, arbitrary arrest, and torture targeting activists and journalists who did not support the referendum." *Report on the Human Rights Situation in Ukraine*, April 15, 2014, para. 6. "Bloggers and local civil society representatives reported cases of human rights violations regarding journalists and civil society representatives who were perceived to be against the referendum." *Report on the Human Rights Situation in Ukraine*, April 15, 2014, para.84.

Russian oppression leading up to 2014, and the political autonomy granted to Crimea under the Ukrainian constitution, the argument of persecution has the weakest amount of factual evidence to back it up.

~The Kosovo Precedent~

There is no denying the impact that Kosovo had on the principle of self-determination, especially because of how recently the events in Kosovo occurred. However, Russia's use of this case as justification for Crimea's self-determination is inadequate. The comparisons drawn between Kosovo and Crimea ignore critical disparities between the two cases, which create different legal outcomes. That being said, Kosovo did have a significant impact on international law through its secession and declaration of independence, the ICJ court decision regarding this declaration, and the use of force by another state to help Kosovo move forward in its self-determination. Although this case warranted a completely different international response and generated a more credible claim of self-determination than Crimea, Kosovo opened the door to a looser interpretation of territorial integrity that cannot be overlooked.

First, a brief overview of the conflict. Following World War II, Kosovo had been an autonomous region within the Republic of Serbia in the Yugoslavian federation. The presence of an ethnic majority of Albanians within the region had been considered when drawing the borders, which resulted in Kosovo being given some political autonomy, although they were not granted their own republic. This autonomy was incentive to prevent the possibility of Kosovo wanting to secede and join Albania, while the denial of republic status avoided giving them a legal-political

structure which could be used to agitate for secession. Under the rule of President Tito, who held the Yugoslavian presidency from 1953-1980, ethnic tensions between the Kosovar Albanians and the Serbs had been kept under control. However, after his death, a power vacuum occurred, which led to a series of political and ethnic conflicts throughout the whole of former Yugoslavia. In 1981, Kosovar Albanian student protests broke out, demanding more autonomy for Kosovo within Yugoslavia. The protests were squashed by the leadership of Yugoslavia, and police deployment resulted in numerous deaths and imprisonments. This heightened conflict between Serbs and Albanians within Kosovo and prompted Serbia to question Kosovo's power and autonomy.¹⁵³ These tensions were exacerbated by the rise of Slobodan Milosevic to the Serbian presidency in 1989. Milosevic, a Serbian nationalist, moved to limit the amount of political autonomy given to Kosovo and placed it under the effective control of Belgrade.¹⁵⁴ Understandably, this resulted in anger and dissent from the Kosovars. Although initially this dissatisfaction was voiced through non-violent measures under the leadership of Ibrahim Rugova, the Kosovo Albanian president elected in 1992, as time went on it escalated to violent confrontations with Serbs through the Kosovo Liberation Army, created in 1996. Conflict between the KLA and the Serbian government led to an increasing use of force by Milosevic to maintain control of the area, which included the deaths or displacement of thousands of Kosovo Albanians in 1998.¹⁵⁵ It was at this point that the international community increased its attention to the conflict, and set out to mitigate it. This eventually

¹⁵³ Sabrina P. Ramet, ed. *Central and Southeast European politics since 1989*, (Cambridge University Press, 2010), 361.

¹⁵⁴ James Summers, *Kosovo: A Precedent*, 9.

¹⁵⁵ K. William Watson, "When in the Course of Human Events: Kosovo's Independence and the Law of Secession," *Tulane Journal of International and Comparative Law* 17, no. 1 (2008), 272.

resulted in NATO launching a 78-day bombing campaign of Serbia, concluding on June 20th, 1999, which went ahead without UN approval and in the face of Russian opposition. Serbian forces retreated and Kosovo's political status was left up to negotiation. However, after failure of the Serbians and the Kosovars to reach an agreement, Kosovo declared independence in 2008 and moved to secede. The newly formed state, the Republic of Kosovo, is still fighting for total international recognition and membership within the UN, although 116 states have now recognized its independence.¹⁵⁶

“The recognition and non-recognition of Kosovo has, however, demonstrated a level of inconsistency and arbitrariness that understandably has given rise to questions about the role of international law in the recognition process- and indeed led some to ask whether international law has any role to play at all.”¹⁵⁷ This case was a monumental precedent in international law, both because of foreign intervention of NATO in the absence of the approval of the UN Security Council and because of Kosovo exercising its right to self-determination through secession. Whether this was a political move that did not fall under the scope of international law or whether this followed the progression of the principle of self-determination was, and is, heavily debated. Interestingly, in regard to the recognition of states, and Kosovo in particular, many international lawyers have claimed that this is a political question not based in law or precedent.¹⁵⁸ Whether or not the law allowed for the secession of Kosovo at the time, the events clearly had an impact on the development of international law. An unclear response from the international community on how exactly this case

¹⁵⁶ Kosovo Thanks You, <https://www.kosovothanksyou.com/>.

¹⁵⁷ John Dugard, *The secession of states and their recognition in the wake of Kosovo*, 43.

¹⁵⁸ *Ibid.*, 37.

relates to different aspects of international law has allowed for an open interpretation of its relevance and of its recognition.¹⁵⁹

In the 2010 Advisory Opinion on *Accordance with International Law of the Unilateral Declaration of Independence in Respect to Kosovo*, the International Court of Justice chose to limit its scope of examination to a very specific question: whether the Kosovo declaration of independence, on its own, was illegal under international law. The Court found that it was not, “because international law does not prohibit declarations of independence.”¹⁶⁰ However, it did not address whether the secession was legal, nor whether this was a valid form of self-determination under international law. In the opinion given, the Court drew a distinction between the legality of the secession and the legality of the proclamation of independence itself.¹⁶¹ It found that in order to answer the question of whether the declaration of independence was legal, it was not necessary to resolve the question of self-determination.¹⁶² This allowed the ICJ to avoid clarifying the context in which secession could be used or the application of self-determination, and thereby to ignore the larger legal issues raised by the Kosovo case. To many, this seemed to be a weak argument for the Court to make. For example, Thomas Burri writes, “To argue that a declaration of independence which was pronounced by a community against whom serious human rights violations had been committed has no link to secession and self-determination defies common

¹⁵⁹ James Summers, *Kosovo: A Precedent*, 405.

¹⁶⁰ Curtis Doebbler, “The ICJ Kosovo Independence Opinion: Uncertain Precedent,” *JURIST*, July 23, 2010, <http://www.jurist.org/forum/2010/07/the-icj-kosovo-independence-ruling-an-uncertain-precedent.php>.

¹⁶¹ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion)*, para. 83.

¹⁶² *Ibid.*, para. 83.

sense.”¹⁶³ Unfortunately, the ICJ did not alleviate the uncertainty relating to new forms of self-determination and left the Kosovo case open for legal, and political, interpretation.

Looking at the effects of the Kosovo precedent in the case of Crimea shows just how important this is in the advancement of international law. For example, the comments made by Russian political actors about the Kosovo situation in regard to Crimea present an interesting cooptation of the legal argumentation the United States used to intervene in Kosovo. Although Russia heavily opposed Kosovo’s decision to secede and has still not recognized Kosovo as an independent state, they seem to rely on this case of self-determination as pivotal for Crimea’s right to secede. Speaking of the decision to annex Crimea Putin stated:

“We keep hearing from the United States and Western Europe that Kosovo is some special case. What makes it so special in the eyes of our colleagues? It turns out that it is the fact that the conflict in Kosovo resulted in so many human casualties. Is this a legal argument? The ruling of the International Court says nothing about this. This is not even double standards; this is amazing, primitive, blunt cynicism. One should not try so crudely to make everything suit their interests, calling the same thing white today and black tomorrow. According to this logic, we have to make sure every conflict leads to human losses.”¹⁶⁴

Two main points are mentioned in this statement. First, the acceptance of the Kosovo case as influencing international law, and being internationally recognized as such, and second pushing the law even further by stating that although the situations in Crimea and Kosovo have major differences this new right to secession should also extend to apply to Crimea. Following this logic, secession or annexation should occur

¹⁶³ Thomas Burri, ‘Kosovo Opinion and Secession: The Sounds of Silence and Missing Links’, *German Law Journal* 11 (2010), 886.

¹⁶⁴ Vladimir Putin, “Address by President of the Russian Federation.”

proactively in order to prevent “human losses”, instead of the current system in which external self-determination is the last resort when all other avenues have failed.

There are clearly flaws with such an open-ended interpretation of the Kosovo case. The international community’s reaction to the crisis in Kosovo was based on the complete denial of autonomy for the Kosovar Albanians as well as a campaign to destroy their population. Although Kosovo can be seen as an exception from standard international law, given their remedial secession from Serbia, this occurred due to the inability of Kosovar Albanians to obtain internal self-determination after an extended period of time and due to the beginning of a possible ethnic genocide. The Declaration Concerning Friendly Relations states that the territorial integrity of states shall not be infringed as long as they are “themselves in compliance with the principle of equal rights and self-determination of peoples... and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.”¹⁶⁵ Since Serbia was not in compliance with these principles, Kosovo could, in theory, fall underneath the accepted standards of self-determination. In contrast, Crimea was considered an autonomous region within Ukraine with its own political powers and structures, which had been stabilized following a period of turmoil after the disbanding of the Soviet Union. Since then, there had not been popular movements to secede or feelings of political oppression, until the revolts in February of 2014. The Kosovo precedent included historical oppression, ethnic cleansing, and failed attempts to maintain internal self-determination, which set it apart from the Crimea case.

¹⁶⁵ *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.*

Crimea's secession does not follow this precedent nor the overall development of international law. Although Russian lawyers and political figures have argued that the acceptance of Kosovo's secession should expand to the acceptance of Crimea's annexation, there are fundamental differences between the two cases. In order to maintain its legality, changes to the principle of self-determination must be made, which would include loosening the importance of territorial integrity and allowing for external self-determination as an immediate answer, prior to searching for other means of autonomy. This departure from the traditional focus on internal-self-determination also contradicts fairly recent legal argumentation from Russia in the Kosovo case, in which the Russian Federation submitted that, "all efforts should be taken in order to settle the tension between the parent State and the ethnic community concerned within the framework of the existing State," limiting secession only to extreme cases which threaten the existence of a people.¹⁶⁶ Although this change could have been guided by policy and state objectives, it is a crucial one to note when interpreting arguments that relate Kosovo to Crimea. As I mentioned earlier, Russian argumentation for Crimea's self-determination also places enormous emphasis on the historical relationship between Crimea and Russia as a guiding factor for the legality of its annexation, which is a question distinct from the Kosovo case entirely. While Albania assisted Kosovo in their fight for independence, Kosovo did not seek to join Albania and was not guided by that historical association. The pivotal differences between the two, limit the effectiveness in using Kosovo as a precedent for the legality of Crimea's secession and subsequent annexation. Although the Kosovo case

¹⁶⁶ Russia(Federation), "Written Statement by the Russian Federation," *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion)*, April 16, 2009, 31-32.

did expand the scope of self-determination and who it could be applied to, it was an extreme case of ethnic oppression that forced Kosovar Albanians to seek external self-determination. Because Crimeans did not have a similar experience or a similar history of oppression, the interpretation of the law would have to be pushed even further to apply to them, and, judging from the reaction of the international community, this is not a step that they are willing to take.

~Conclusion~

Self-determination is not an easy concept to understand or to actualize. While it is a right granted to all people, it is simultaneously curtailed by territorial integrity. The challenge, then, becomes clarifying when it is permissible and how self-determination can be carried out. In the case of Crimea, analyzing this right can illuminate the legality of the entire incident. Russia's government has claimed that the Crimean people pursued self-determination through a referendum, and, on the basis of this referendum, they chose to secede Ukraine and to join Russia. The argument, then, is based on the annexation as a product of valid self-determination. As I have explained in this chapter, none of the arguments presented by the Russian government, or by Russian scholars, legitimately justify Crimean secession under the principle of self-determination. All of the proposed legal defenses ignore the core modern view of self-determination as a right that must be pursued internally, except for in rare cases when internal autonomy is not granted or when a people are subject to persecution. The facts do not support that either of these had occurred in Crimea. Arguments claiming a historical connection between Russia and Crimea or the discontinuity of the Kyiv government are simply not part of the law as it is

internationally understood. For these claims to hold, new norms of the law would have to be accepted. Under the current framework of the law, Crimea's secession is not legally validated by self-determination and, therefore, the transition of the territory to Russia is illegal. The next chapter examines the role that Russia played in this transition and whether its actions can be defended by the applicable laws.

Chapter 2: The Use of Force

*Не должно быть так, что тот кто сильнее, тот всегда прав.
(It shouldn't be the case that those who are stronger are always right.)*

-My mother

*"I'm ready to fight the Russians. But I'm hoping there'll be no war, that it's just
Putin flexing his muscles."¹⁶⁷*

-Vitaliy Vovk

The role of Russia in the Crimean territory must be examined separately from whether Crimea had the right to self-determination. Russian interference in Ukraine's territory prior to the annexation not only weakens the argument for Crimean self-determination but also opens exploration into the laws overseeing the use of force. The arguments that the Russian government gives in defense of their use of force in Crimea are closely related to the arguments they present related to Crimean self-determination. They are undeniably linked; several factual inconsistencies that create flaws in legal argumentation in the first chapter can be observed here as well. Russia must not only defend their right to accept the secession of Crimea, in order to annex it, but also their presence in the region and the *jus ad bellum*¹⁶⁸ for doing so. Questions relating to whether Russia's actions can be equated to a use of force and whether the situation can be considered a war under international law will be examined, along with an analysis of the legal defense arguments and the implications of the reasons Russia gives. The situation in Crimea has potential to not only advance

¹⁶⁷ Kathy Lally and Will Englund, "Putin says he reserves right to protect Russians in Ukraine," *The Washington Post*, March 4, 2014, https://www.washingtonpost.com/world/putin-reserves-the-right-to-use-force-in-ukraine/2014/03/04/92d4ca70-a389-11e3-a5fa-55f0c77bf39c_story.html?utm_term=.ab30aad2de3a.

¹⁶⁸ This phrase is Latin for "right to wage war." It is the principle of the law that has to do with the legality for using force against another country, and whether there is justifiable reason to do this. "Jus Ad Bellum Law and Legal Definition," *US Legal*, <https://definitions.uslegal.com/j/jus-ad-bellum/>.

the scope of what is seen as self-determination but also the scope of how countries can behave towards other countries.

~Legal Background~

The prohibition on the use of force upholds the territorial integrity that is essential to international law. Through nonintervention, states illustrate respect for other countries and for their sovereignty, which is pivotal for their peaceful coexistence and cooperation.¹⁶⁹ This was a principle that carried weight even before the modern understanding of international law that emerged in 1945. As Verdebout argues, prohibition on the use of force was present in the 19th century as well, stemming from an understanding of the equal sovereignty of all states.¹⁷⁰ Nevertheless, the idea of minimizing conflicts between countries and preventing wars related to territory was invigorated following World War II, when the threat of another world war was most acute. In order to “save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind,” the United Nations determined that a prohibition on the use of force was imperative.¹⁷¹

Although the use of force is much more clearly codified in international law than the principle of self-determination, it encompasses a broader spectrum of application. The general prohibition on the use of force is identified in the United Nations Charter which states, “All members shall refrain in their international

¹⁶⁹ Raymond John Vincent, *Nonintervention and international order*, (Princeton University Press, 2015), 14.

¹⁷⁰ Agatha Verdebout, "The Contemporary Discourse on the Use of Force in the Nineteenth Century: A Diachronic and Critical Analysis," *Journal of the Use of Force and International Law* 1, no. 2 (2014), 227.

¹⁷¹ Charter of the United Nations, Preamble, (1945).

relations from the threat or the use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”¹⁷² It is also reinforced in later treaties such as *The Declaration Concerning Friendly Relations*, which reaffirms Article 2(4) of the charter and restates the illegality of armed intervention and other forms of interference in the internal or external affairs of any state.¹⁷³ There are very specific instances in which the use of force is legally allowed and these are also defined in the Charter, however, like most principles in international law, the interpretation of these exceptions has differed greatly. The first exception is on authorization from the Security Council.¹⁷⁴ The second is in the case of self-defense. Article 51 of the Charter states, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.”¹⁷⁵ These two exceptions are the only outright legal justifications for the use of force against another state, without the permission or invitation of the state. Of course, this does not mean that the use of force doesn’t occur. There are still wars and illegal interventions, as well as force used with questionable legality, that have the potential to influence international law.

For example, although self-defense is clearly defined as an exception which allows for force, what can be called self-defense is much more flexible. This has led to arguments on what actions can invoke self-defense and whether the actions had to have already occurred. The original test for self-defense comes from the 1837

¹⁷² Charter of the United Nations, Chapter I, Article 2(4) (1945).

¹⁷³ *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*.

¹⁷⁴ Charter of the United Nations, Chapter VII, Articles 39,42,43,44 (1945).

¹⁷⁵ Charter of the United Nations, Chapter VII, Article 51 (1945).

Caroline case. The case focused on a British attack of an American ship, the *Caroline*, after it was used to transport supplies to Canadians rebelling against the British government. Britain claimed that this attack was an act of self-defense, and a test was developed to assess whether their act was justified. The Caroline test, which has been accepted under customary international law, set a precedent that, to justify self-defense, the necessity would have to be “instant, overwhelming, leaving no choice of means, and no moment of deliberation.”¹⁷⁶ This test gives a conservative reading of the self-defense rule, focusing on the presence of an overwhelming necessity to act when no other options are available. While it is still held as the primary interpretation, more recently, other theories have developed. Although Article 51 states, “self-defense if an armed attack occurs,” defenders of the principle of preventive self-defense claim that this exception can be invoked in cases of “anticipatory self-defense against an imminent danger of attack.”¹⁷⁷ There is widespread controversy about this form of self-defense, yet it has been used to justify multiple instances of force. Israel used it to argue for the legality of bombing an Iraqi nuclear reactor in 1981, the United States used it to justify bombing Libya in 1986, and other countries have argued in favor of its implementation.¹⁷⁸

Another contentious form of self-defense is the armed protection of nationals abroad. *Akehurst's Modern Introduction to International Law*, published in 1997, explains the contrasting opinions regarding this form of self-defense, with most

¹⁷⁶ Daniel Webster, "Letter to Sir Henry Stephen Fox," *The Papers of Daniel Webster: Diplomatic Papers* 1 (1983): 1841-1843.

¹⁷⁷ Peter Malanzuk, *Akehurst's modern introduction to international law*, 311.

¹⁷⁸ *Ibid.*, 313.

agreeing that it does not fall within the exception.¹⁷⁹ “The contrary view insists that an attack on nationals of a state abroad or the failure to provide the kind of protection to them, as required by international law, should be assimilated to the law of self-defense.”¹⁸⁰ There is a danger that incorporating this principle into international law could generate issues of powerful states using it as an excuse for intervention. Nevertheless, in some instances, this form of intervention has “met a relative lack of condemnation by organs of the United Nations, although they have not been approved as being lawful.”¹⁸¹

A more recent exception to the limit on intervention and the use of force is the concept of Responsibility to Protect, or R2P. As Gareth Evans explained in his presentation to the CIIS Conference in 2013:

“The emergence of the ‘Responsibility to Protect’ (R2P) was a response to a real international problem: the continuing inability of the international community, notwithstanding the embrace of the Genocide Convention and many other new international human rights standards after World War II, to effectively prevent or halt mass atrocity crimes – viz. genocide, ethnic cleansing and other major crimes against humanity and war crimes – occurring behind sovereign state borders.”¹⁸²

This concept gained strength following the genocides that had happened in Rwanda and Bosnia, with the U.N. not being able to come to a consensus and thousands of human lives being lost to internal conflict. The idea grew between 2005 and 2011. In 2011, the UN Security Council even used the evolving norm as a justification for stabilizing the situation in Libya.¹⁸³ R2P has also been used in other individual cases

¹⁷⁹ Ibid., 315.

¹⁸⁰ Ibid., 315.

¹⁸¹ Peter Malanzuk, *Akehurst's modern introduction to international law*, 316.

¹⁸² Presentation by Professor the Hon Gareth Evans, Australian National University, to China Institute of International Studies (CIIS) Conference on *Responsible Protection: Building a Safer World*, Beijing, October 17, 2013, <http://www.gevans.org/speeches/speech535.html>.

¹⁸³ Ibid.

as a basis for intervention, although it has not yet reached a standard of customary international law. Notably, multiple criticisms have been brought forward against this principle, as it has the capacity to be abused by powerful countries who seek to infringe on another country's sovereignty, not just protect the civilians within it.¹⁸⁴ R2P continues to develop as a principle of international law.

It is also important to note that what constitutes the use of force can be interpreted in a variety of ways. For example, the 1986 ICJ *Nicaragua* case was particularly monumental in relation to clarifying the definition of the use of force and holding countries accountable even in uses of "irregular forces." The International Court of Justice was examining the suit raised against the United States by Nicaragua, accusing them of being responsible for illegal military and paramilitary activity within Nicaragua. Although the activities were carried out by *Contras*, rebel groups within Nicaragua, the court stated that if the United States had "effective control" over these groups' operations they would have to hold legal responsibility for them.¹⁸⁵ The salient conclusion was that controlling the actions of opposition groups carrying out illegal military actions within another country is akin to a direct use of force against the State and an infringement on their territorial sovereignty. Contrastingly, in the former Yugoslavia, the ICTY did not agree with this narrow definition of control and, in the *Tadic* case, chose instead to rule on a level of "overall control". The court stated, "It must be proved that the State wields overall control over the group, not only by equipping and financing the group, but also by

¹⁸⁴ Alex J. Bellamy, "The responsibility to protect—five years on," 144.

¹⁸⁵ International Court of Justice (ICJ), *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Reports, June 27, 1986, General List No. 70, para.115.

coordinating or helping in the general planning of its military activity.”¹⁸⁶ This is a more lenient definition in that the State does not necessarily have to control all actions of the group to still meet the requirement of control. Both of these cases highlight that the use of force can take on meanings outside of the straightforward military attacks of one country against another. The application of either the “effective” or “overall” control tests could attribute responsibility for violence and military operations to a State, even if it does not send its own troops into a region.

~Wrapping Up Legal Background~

The use of force by one country against another is heavily regulated under international law and is prohibited in most cases. While countries seek to gain legality for their actions through new principles like anticipatory self-defense or the responsibility to protect, the prohibition on the use of force is generally held to a conventional standard. In order to prevent destructive wars or abuses of power, the circumstances under which the use of force is permissible must be limited.

Interference on another state’s territory infringes upon its territorial integrity and creates a danger for the entire system of law that hinges on this conception. More specifically, Russia’s presence in Crimea, if it is deduced to be an example of the use of force, represents an attack on Ukraine’s territorial integrity. Evaluating whether or not this was legal influences future cases, since international law is heavily guided by the international community’s interpretation of the law. It also creates the potential to assign legal responsibility for the events in Crimea to the Russian state. Analyzing

¹⁸⁶ International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Dusko Tadic (Appeal Judgement)*, IT-94-1-A, July 15, 1999.

whether Russia's actions meet the threshold of a use of force, and whether these actions are permissible under the law, will be the focus of the rest of this chapter.

~What Constitutes Russia's Use of Force? ~

With the background of what generally constitutes the use of force in mind, we can move to examining factual evidence of Russia's intervention into the Crimea region, whether this can be defined as use of force, and, if so, whether this was legal under any accepted principles. The use of force in the case of Crimea is fascinating due to the two separate factors that need to be examined. The first is Russian troops using coercion and aggression to influence the referendum and to assist opposition groups prior to the annexation, and the second is the claiming of Ukrainian territory after the Crimean declaration of independence. Based on the timeline of the events in Crimea, it is obvious that both factors are connected. As I will demonstrate, however, there is a divergent application of the law depending on which action is being discussed. In certain instances, a law that applies to one aspect might not apply to the other. Instead of talking about Russia's use of force as a whole, I will attempt to analyze both facets individually in relation to the laws and to Russia's legal arguments in defense of the use of force.

“Although the extent to which Russia used force against the territorial integrity or political independence of the Ukraine may be debated, that it intervened in Crimea and was responsible for the application of coercive measures is largely undisputed,” writes Gary Wilson, programme leader at Liverpool John Moores University's School of Law.¹⁸⁷ Unmarked soldiers appeared in Crimea in weeks prior

¹⁸⁷ Gary Wilson, "Secession and Intervention in the Former Soviet Space: The Crimean Incident and Russian Interference in Its 'Near Abroad'," *Liverpool Law Review* 37, no. 3 (2016), 166.

to the referendum and were considered by many to be Russian, although they did not wear the appropriate uniforms.¹⁸⁸ For example, February 28th, 2014, *The Guardian* reported soldiers, wearing what resembled Russian uniforms, taking over airports in Crimea and evoking the fear of an ongoing Russian military invasion in Ukraine officials.¹⁸⁹ Although the Russian government initially denied it, it has since admitted to the placement of Russian troops within Crimea for the purposes of assisting the people there and opposing the Ukrainian government. In the documentary, *Crimea. The Way Home*, Putin explained his decision to assist the Crimean self-defense forces and to follow their lead with more strength and supplies than they would have on their own.¹⁹⁰ These initial actions and the presence of Russian troops in the region meet the minimum requirements for the threat or use of force, as, by Russia's own admission, they were assisting rebel groups opposing the Ukrainian government. The legality of this use of force will be examined in the following sections, looking at a wide range of possible defenses for the presence of Russian troops in Crimea.

Furthermore, it is possible that Moscow had effective or overall control over the Crimean self-defense forces in the region, making Russia legally accountable for their actions as well. This is an additional question distinct from the Russian use of force illustrated by the Russian troops. If the Crimean self-defense forces were controlled by Russia, then it would be even more culpable for any violence in Crimea and for actions that challenged Ukrainian sovereignty carried out by these forces.

¹⁸⁸ Shaun Walker, Harriet Salem and Ewen MacAskill, "Russian 'invasion' of Crimea fuels fear of Ukraine conflict," *The Guardian*, February 28, 2014, <https://www.theguardian.com/world/2014/feb/28/russia-crimea-white-house>.

¹⁸⁹ Harriet Salem and Shaun Walker, "Russian armoured vehicles on the move in Crimea," *The Guardian*, February 28, 2014, <https://www.theguardian.com/world/2014/feb/28/gunmen-crimea-airports-ukraine>.

¹⁹⁰ *Crimea. The Way Home*, directed by Sergey Kraus, (All Russia State Television and Radio Broadcasting Company, 2015), min. 67.

Admittedly, it would be very difficult to prove this under the standard of effective or overall control, as both of these tests include precise parameters.¹⁹¹ Commanders of the Crimean self-defense forces, Merstalov and Sheremet, denied Russian involvement stating that, “they received no financial or technical assistance from Moscow and were organized purely by local residents of Crimea.”¹⁹² As Burke-White points out, “Putin cleverly exploited this lax standard for attribution, recognizing that it would be extremely difficult, if not impossible, to prove that these unidentified militias were under his effective control, and that, even if they were funded and directed by Russia, Moscow would still not be legally responsible for their actions.”¹⁹³ While there is evidence to suggest that Russia had been in control of the Crimean militias, it has not been definitely proven. Regardless, the admitted presence of Russian troops in the region is enough to define Russia’s actions as the use of force. Whether or not Moscow had control over Crimeans on the ground is less important, given that Russian soldiers had also been sent and that their actions can be analyzed as directly tied to Russia.

Another element to consider as the use of force was the actual annexation of the territory. Russia maintains that their agreement to annex the territory was reached with the independent Crimea, after its people capitalized on their right to self-determination, although as we have seen in the previous chapter this is a questionable claim. Not only did the presence of Russian troops and influence taint the legitimacy of the referendum, but, furthermore, there are laws and customs governing the

¹⁹¹ See pp. 62-63.

¹⁹² Gabriela Baczyńska, “Crimea’s ‘self-defense’ militia eyes national guard role,” *Reuters*, March 24, 2014, <https://www.reuters.com/article/us-ukraine-crisis-crimea-selfdefence/crimeas-self-defense-militia-eyes-national-guard-role-idUSBREA2N0FG20140324>.

¹⁹³ William Burke-White, “Crimea and the international legal order,” *Survival* 56, no. 4 (2014), 69.

recognition of a territory and the territorial integrity of states, which must be respected in the transfer of land. Historically, premature recognition of a seceding state was seen as an international wrong and an insult to the parent state, which still had claim to the territory.¹⁹⁴ There is some ambiguity in law and politics around the recognition of new states, however, as John Dugard, professor of law and former member of the International Law Commission, points out, there is a necessity of recognition from a significant portion of the international community for a new state to be considered a legitimate subject of international law, especially in cases of secession.¹⁹⁵ The immediate recognition of Crimean independence, and the subsequent annexation of the territory, signifies a disregard of Ukraine's territorial integrity and political sovereignty and indicates a use of force by Russia.

The ICC, in a report publicized on November 14th, 2016, states that the situation in Crimea should be classified as an international armed conflict between Ukraine and Russia.¹⁹⁶ The report found that although there was not an exchange of fire between Ukrainian government forces and the Russian troops in the region upon the annexation of Crimea, it still meets the threshold for an armed conflict because the territorial sovereignty was infringed upon. Article 2 of the Geneva Conventions specifically states that armed conflicts include "all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."¹⁹⁷ Russia's presence and incorporation

¹⁹⁴ John Dugard, *The secession of states and their recognition in the wake of Kosovo*, 23.

¹⁹⁵ *Ibid.*, 63-64.

¹⁹⁶ International Criminal Court, Office of the Prosecutor, "Report on Preliminary Examination Activities 2016," November 14, 2016.

¹⁹⁷ International Committee of the Red Cross (ICRC), *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*. Geneva, Article 2, August 12, 1949.

of the region into their territory leads to an ongoing international armed conflict, regardless of the legality of their initial intervention. The Declaration Concerning Friendly Relations further states, “Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.”¹⁹⁸ From the language of these treaties, it is apparent that the annexation had to involve the use of force, as it violated Ukraine’s territorial boundaries without the government’s consent.

Although there was not a violent military clash, the use of force in Crimea can be defined as the intervention of Russian troops into the region and the resulting claiming of territory which belonged to Ukraine. Pressing on, the question becomes whether the use of force was legal and whether the intervention and annexation were justified. Addressing this will involve investigating the different arguments that Russia has proposed in relation to the intrusion.

~Russia’s Arguments in Defense of The Use of Force~

Russian government officials and scholars have presented multiple arguments defending the use of force, with some denying it entirely and others bringing in multiple different approaches to persuade the world that the use of force was legal. Most of these relate to the intervention into Crimea prior to the referendum. The arguments in relation to the annexation itself are closely related to claims of Crimean self-determination. Still, I find it useful to discuss these in the context of Russian arguments on the use of force, since international laws prohibits the threat or use of

¹⁹⁸ *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.*

force to claim territory. Notably, due to the interconnectedness of the initial intervention and the resulting annexation, arguments for the former frequently blend into arguments for the latter.

~The Naval Agreement~

The Russian Association of International Law letter asserts, “Contrary to false information from the leaders of the USA and EU countries Russia didn’t send its military fleet into the Crimea for holding a referendum. The Russian Black Sea military fleet has been staying in the Crimea long ago (long before a referendum) during many centuries! And this fact is well known.”¹⁹⁹ It is true that the presence of a Russian military fleet existed in Crimea long before the referendum. In 1997, Russia and Ukraine came to an agreement to sign three treaties related to the status and conditions of the Black Sea Fleet. Within these treaties, Russia was given the right to use the Sevastopol port and to maintain a military stationing on the Crimean Peninsula, but there were conditions placed upon their presence within Ukraine. A maximum of 25,000 troops, 132 armored combat vehicles and 24 pieces of artillery was permitted at the Russian facilities and Russia was bound to "respect the sovereignty of Ukraine, honor its legislation and preclude interference in the internal affairs of Ukraine."²⁰⁰ In relation to this, Russian military personnel had to show their "military identification cards" when crossing the Ukrainian-Russian border and Russian forces could operate "beyond their deployment sites" only after "coordination with the competent agencies of Ukraine."²⁰¹ These treaties were later extended in

¹⁹⁹ Anatoly Kapustin, Circular Letter to the Executive Council of the International Law Association.

²⁰⁰ Spencer Kimball, “Bound by treaty: Russia, Ukraine and Crimea,” *Deutsche Welle*, March 11, 2014, <http://www.dw.com/en/bound-by-treaty-russia-ukraine-and-crimea/a-17487632>.

²⁰¹ *Ibid.*

2010 through the Kharkiv Pact and would have stayed valid until 2042, had the pact not been terminated following the Crimea annexation. It is clear from the treaties that, although a Russian military fleet was permitted to be present in Crimea, there were restrictions and rules applied to their position within Ukraine. Maintaining a military presence outside of these provisions is a breach of the agreement and could be interpreted as a use of force.

As a defense to the claims of unlawful intervention into Ukraine, multiple Russian scholars, as well as the Russian government, maintained that the Russian troops seen in Crimea were simply a part of the Black Sea fleet agreement. For example, Moiseev writes, “Russia has not introduced troops into Crimea but merely strengthened its grouping there without exceeding the limit on the number of troops set by international agreement.”²⁰² Although the limit of troops might not have been exceeded, other aspects of the agreement were breached. There is a defined purpose that the Russian fleet is allowed to pursue while they are on the Crimean Peninsula, and this specifically excludes the involvement in Ukrainian internal affairs.²⁰³ Furthermore, there was an influx of unmarked soldiers, widely thought to be from Russia, that did not identify themselves as such. Any Russian troops operating in the region as part of the agreement would have to be clearly marked and would have to notify Ukraine of their whereabouts beyond the Russian base. The influence of Russian soldiers on the referendum and the secretive nature of their actions and appearance do not comply with the treaties between Ukraine and Russia.

²⁰² Alexei Moiseev, "Concerning Certain Positions on the Ukrainian Issue in International Law," 52.

²⁰³ J. Laurence Black, ed., *Russia & Eurasia Documents Annual 1997: The Russian Federation*, vol. 1, (Academic International Press, 1998), 129.

Even within Russia, there has been tension with supporting the claim that the only Russian troops in the region were part of the base and that they did not assist in backing Crimean “self-defense forces.” In March of 2014, Moscow had continually denied the deployment of Russian soldiers within Crimea and maintained that the unmarked troops were local forces.²⁰⁴ Yet, in a Russian documentary aired a year later, President Putin admitted to ordering troops to take control of Crimea.²⁰⁵ He had also previously stated that, “Russian servicemen did back the Crimean self-defense forces.”²⁰⁶ Meanwhile, Dmitri Kiselyov, a newsman who had assisted in the denial of Russian military involvement in Crimea and had regulated media to support the official government position regarding the absence of Russian troops, continued to stick to the initial claim that no Russian troops had surrounded Ukrainian military bases in Crimea.²⁰⁷ All he admitted was the stationing of Russian soldiers at the naval base, as agreed upon with Ukraine.²⁰⁸ Any denial of the Russian troops’ purpose or placement in light of Putin’s confession, however, lacks persuasiveness.

Although the Russian Black Sea Military Fleet had the right to remain on Ukrainian territory, it had to do so under the agreed upon terms. By performing acts that interfered with the internal affairs of Ukraine, Russian troops exited the scope of the treaty and entered into the legal territory of intervention and the use of force. Their objective, as Putin explained, was returning Crimea to Russia, which is

²⁰⁴ “Pro-Russian troops have been deployed across Crimea. Moscow insists they are local self-defense forces, but there are widespread reports that they are from Russia.”

“Ukraine crisis: Does Russia have a case?” *BBC News*, March 5, 2014, <http://www.bbc.com/news/world-europe-26415508>.

²⁰⁵ *Crimea. The Way Home*, directed by Sergey Kraus.

²⁰⁶ Simon Shuster, “Putin’s Confessions on Crimea Expose Kremlin Media,” *TIME*, March 20, 2015.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

incompatible with and cannot be excused by the agreement.²⁰⁹ These actions within Ukraine must therefore be classified as either a legal or illegal intervention.

~Yanukovych's Invitation~

The presence of Russian troops cannot be considered the use of force against a state if the state government invited them into the region. Accordingly, some Russian theorists and politicians maintain that Yanukovych, as the acting leader of the Ukrainian government, asked for Russian assistance based on the revolution and the unlawfulness occurring domestically; Russia was simply responding to this request. Mr. Churkin representing the Russian Federation stated, “Mr. Aksyonov, Prime Minister of Crimea, went to the President of Russia with a request for assistance to restore peace in Crimea. According to available information, the appeal was also supported by Mr. Yanukovych, whose removal from office, we believe, was illegal.”²¹⁰ This relates back to arguments presented previously related to the illegality of the new regime and to the legitimacy of Yanukovych as president even after he was impeached. The problem to be examined is whether Yanukovych had the authority to invite Russian troops and how that pertains to the legality of the use of force.

In order for Yanukovych's invitation to be legally binding, Russia would have to recognize him as representative of the Ukrainian government. As Moiseev writes, “The central issue in the crisis situation created in Ukraine by the unconstitutional coup in Kyiv resulting from the armed seizure of power by extremists is the issue of the legality of the new regime itself. Those who seized power in Ukraine by force of

²⁰⁹ *Crimea. The Way Home*, directed by Sergey Kraus.

²¹⁰ United Nations Security Council, 7124th meeting, March 1, 2014, UN S/PV/. 7124, 5.

arms have committed a crime, and their actions cannot have legal force for the Russian Federation.”²¹¹ This position, however, ignores the accepted norms of government recognition that are relevant in this case. In the past couple decades, states have chosen to recognize the effective government, in most cases ignoring the internal governmental transitions.²¹² In fact, recognizing a government in exile, instead of the domestic government holding effective control, can be considered an “unlawful intervention in the internal affairs of the state,” as it denies the state’s independence and right in deciding its own government.²¹³ Russia’s recognition is further weakened by the absence of the required measures signifying an authentic government.

As I argued in the previous chapter, Yanukovych did not have effective control over Ukraine, nor did he have internationally supported legitimacy. The effective control of Ukraine was maintained by the new regime which had elected new officials, awaiting democratic elections. In terms of legitimacy, the domestic decision to impeach Yanukovych, along with popular support for this action, disproves theories of democratic legitimacy or popular sovereignty, which could have been used to reinforce Yanukovych as a legitimate government official. Any confusion regarding the validity of Yanukovych’s representation of Ukraine should have cautioned against intervention. Thomas Grant pointed out the shift in modern international law, disfavoring “intervention in civil wars and internal unrest,” utilizing principles and statements from the *Institut de Droit International*.²¹⁴ September 8th,

²¹¹ Alexei Moiseev, "Concerning Certain Positions on the Ukrainian Issue in International Law," 54.

²¹² Thomas Grant, *Aggression against Ukraine*, 54.

²¹³ Stefan Talmon, "Who is a legitimate government in exile?" 519.

²¹⁴ Thomas Grant, *Aggression against Ukraine*, 53-54.

2011, the *Institut* indicated that in order to respond to a State request with military force “the request shall be valid, specific, and in conformity with the international obligations of the requesting State.”²¹⁵ It must also come from a government with “effective control over a substantial area”, otherwise the government should not be recognized as representative of the State.²¹⁶ Although these principles are not internationally binding, they reflect the general caution against intervention and the use of force, especially in domestic issues. Accordingly, given the lack of power or legitimacy that Yanukovich had, it would be a stretch of the imagination to find him not only representative of the entire State but also having enough authority to request intervention.

Furthermore, the request from Crimea’s Prime Minister, against the wishes of the Ukrainian government, should not have held any weight for Russia nor does it attribute legality to their intervention. In fact, in the *Nicaragua* case, the ICJ stated:

“It would certainly lose its effectiveness as a principle of law if intervention were to be justified by a mere request for assistance made by an opposition group in another State - supposing such a request to have actually been made by an opposition to the régime in Nicaragua in this instance. Indeed, it is difficult to see what would remain of the principle of non-intervention in international law if intervention, which is already allowable at the request of the government of a State, were also to be allowed at the request of the opposition.”²¹⁷

Their decision referred to the illegal use of force by the United States in assisting Nicaraguan opposition groups, but it can also be applicable to Crimea. Whether or not Crimea asked for or wanted Russia’s assistance is irrelevant. International law prohibits intervention into another country, or acquisition of its territory, without the

²¹⁵ Institut de Droit International, *Session de Rhodes-2011*, “Present Problems on the Use of Force in International Law,” September 8, 2011, 10 RES-C EN PLENIERE, 3.

²¹⁶ Thomas Grant, *Aggression against Ukraine*, 54.

²¹⁷ ICJ, *Nicaragua v. United States of America*, para. 246.

consent of the national government or in cases of permitted uses of force. As the International Court of Justice rightly points out, allowing intervention in other cases based on the request of the opposition would erode international principles against the use of force.

Yanukovich's invitation cannot have given Russia legal justification for its actions, both because of his lack of control or legitimacy and because of the inappropriate recognition of a government in exile. Still, it is pivotal to look at what this invitation could have permitted Russia to do, had it been valid. The statement issued on March 1st, 2014 by the deposed President said, "I therefore appeal to the President of Russia, V.V. Putin, to use the armed forces of the Russian Federation to restore law and order, peace and stability and to protect the people of Ukraine."²¹⁸ Even if Yanukovich had the authority to issue this invitation, this request speaks about returning peace and protecting the entire people of Ukraine. The appeal that is made reaffirms the sovereignty of Ukraine as a nation and the entirety of the population as one people. The annexation of Crimea, and the use of military pressure to move this process along, did not protect the entire population, nor did it restore stability. In fact, it led to a destabilization of the region and the idea that the people of Crimea are a separate unit, free to decide their own path without the involvement of the rest of the State. Even if the initial intervention had been supported by Yanukovich's appeal, the annexing of territory, without the permission of the Ukrainian state, points to an illegal use of force irrespective of his request. This argument does nothing to defend the annexation of the territory, and it fails to provide an adequate legal basis for Russia's use of force within the region prior to it.

²¹⁸ United Nations Security Council, 7125th meeting, March 3, 2014, UN S/PV/. 7125, 3-4.

~The Need for Self Defense~

Article 51 of the U.N. Charter allows for the use of force in cases of self-defense but only in acceptable circumstances. It is important to maintain limits on this exception, in order to maintain the ground rule of the prohibition against the use of force. Therefore, Russia must have had an adequate reason to present an argument of self-defense and to bring troops into the territory of Ukraine. In the case of Crimea, since there was not a threat to the sovereignty of the Russian state, self-defense could have been invoked in order to protect Russian nationals abroad. President Putin, on March 18th, 2014, stated, “Russia has not introduced troops into Crimea but merely strengthened its grouping there without exceeding the limit on the number of troops set by international agreement” for the purpose of protecting “the lives of citizens of the Russian Federation, our compatriots, and personnel of the military contingent of the armed forces of the Russian Federation deployed on the territory of Ukraine in accordance with international agreement.”²¹⁹ Ignoring the phrase that this did not exceed the limit under the international agreement, which I have expanded upon in a previous section, I will focus on the stated purpose of protection described by Putin.

The use of self-defense to protect a state’s nationals abroad is a slippery issue. *Akehurst’s Modern Introduction to International Law* explains that, “most states and most writers agree that attacks on a state’s national residents abroad do not entitle the state to use force in order to defend its nationals without the consent of the foreign government.”²²⁰ However, there is an opposing view that such protection should fall under the authorization for self-defense and should be allowed even in opposition to

²¹⁹ Alexei Moiseev, "Concerning Certain Positions on the Ukrainian Issue in International Law," 52.

²²⁰ Peter Malanzuk, *Akehurst's modern introduction to international law*, 315.

the state's wishes. Although this position has not been accepted as law, there has been some support for the cases in which the argument was used, and many states have chosen not to condemn actions taken with the objective of protecting nationals abroad.²²¹ With this exception to the use of force, as with others, there is the danger of states using it to mask their actual intentions for intervention and thereby weakening the principles prohibiting the use of force. Consequently, the case by case circumstances, as well as the international response, should play an important role in determining whether this argument can be accepted. There are two immediate issues that distinguish the Crimea case from the standard use of this self-defense argument. The first is the extension of protection not just to Russian passport holders but also to the ethnic Russians living in the area and even to all Russian-speakers. The second is that the "protection" ended up with the claiming of Ukrainian territory.

Although self-defense has been extended in some cases to apply to nationals abroad, this is limited to actual citizens residing outside the state, not just the ethnic group. While there were Russian passport holders within Crimea, the majority of the population prior to the annexation were simply ethnic Russians. Moscow's language on the issue was presented as the protection of Crimea and the freedom of Russians within the region, but this would necessitate the expansion of the principle of self-defense to all ethnic Russians regardless of citizenship. This is the position that the Russian government has taken, asserting "the right and obligation to protect Russians anywhere in the world,"²²² which also ties in to the concept of historical and cultural

²²¹ Ibid., 316.

²²² Robert Coalson, "Putin pledges to protect all ethnic Russians everywhere. So, where are they?" *Radio Free Europe Radio Liberty*, April 10, 2014, <https://www.rferl.org/a/russia-ethnic-russification-baltics-kazakhstan-soviet/25328281.html>.

ties that Russia stated in relation to Crimea and the Crimean people. This is not, however, an acceptable form of self-defense. Given the controversy and ongoing development of self-defense as a right to protect a state's own citizens, it is even more contentious to attempt to expand that right to include protection based not just on citizenship but on shared ethnicity or culture as well.

Furthermore, the basic requirements of self-defense state that the response must be necessary, immediate and proportionate.²²³ Even if we could include the protection of ethnic Russians as applicable to self-defense, the state's response in order to ensure this protection would have to meet these criteria. There has been little factual evidence to show that ethnic Russians or Russian nationals were being harmed to an extent that would require the necessity of immediate self-defense from the Russian state. A claim could be made for preemptive or anticipatory self-defense, yet, even then, a certain threshold of factual evidence would have to be met. There is already controversy regarding the protection of nationals abroad as a form of self-defense, since the originally intended purpose outlined in the Charter is the protection of state sovereignty. Combining this novel interpretation with the disputed idea of preemptive self-defense gives the argument for the use of force even less legal validity. The use of multiple, dubious interpretations of self-defense within one case weakens the entire claim.

Moreover, arguably the most important responsibility of each state, should they choose to implement force, is to maintain proportionality. In the situation being discussed, this would mean that if the Russian state was concerned about the lives of its citizens and ethnic Russians, they could potentially use force to nullify this threat

²²³ Peter Malanzuk, *Akehurst's modern introduction to international law*, 316.

and to stabilize and bring peace to the region.²²⁴ In fact, Russia exhibited a certain level of concern related to proportionality in their presence in Crimea prior to the annexation. They were careful not to open fire on the Ukrainians, thus preventing bloodshed that could be deemed excessive, although their deployment and intimidation throughout the territory was still concerning. Yet, under no circumstances could self-defense have been used to claim the territory.²²⁵ As Professor of International Humanitarian Law, Timothy McCormack, notes, “A state which goes beyond the limited purpose of protecting its rights and uses more force than it is necessary to do, is no longer acting in self-defense.”²²⁶ The situation is a tricky one, because, technically, there is a degree of separation between Russian troops coming into the area and the annexation itself. The importance of examining the claim to self-determination is heightened when we consider that Russia can claim it only interfered in Crimea so much as to allow for the occurrence of a fair and free referendum, which might be considered a proportional response. The decision made by the Crimean people to claim independence thereafter, and for Russia to accept that independence and conduct an agreement with Crimea, would then not be considered as a use of force. Nonetheless, there are issues with such an interpretation. Russian troops in the region have been found to be coercive and influential on the Crimean referendum, and there is also adequate reason to suspect that many of the Crimea

²²⁴ There would have to be significant evidence for this concern and force could only follow if other methods, such as negotiations with the Ukrainian government, had been attempted and failed.

²²⁵ “Self-defense cannot be invoked to settle disputes as to territory. It is unlawful to attack territory which is in the possession of another state, even though the state using force may consider that it has a better title to the territory in question than the state in possession.”

Peter Malanzuk, *Akehurst's modern introduction to international law*, 314.

²²⁶ Timothy LH McCormack, *Self-Defense in International Law: The Israeli Raid on the Iraqi Nuclear Reactor*, (Jerusalem, 1996), 277.

“self-defense forces” were under the effective control of Russia.²²⁷ Although Moscow initially denied the claim, it later admitted that there were unidentified Russian soldiers in Crimea prior to and during the referendum and annexation.²²⁸ Drawing on the prior examination of self-determination in Crimea, it is apparent that Russia’s influence on the referendum and its squelching of pro-Ukraine protesters, leading to the illegal declaration of independence by Crimea, should be considered a disproportionate use of force. Correspondingly, Grant writes, “It is hard to see how the deployment of troops, at near division strength, and the complete supplanting of the territorial State’s administration, with no mechanism for a return to normal conditions, were justified by persons merely being ‘threatened with repression.’”²²⁹

Russia taking over a Ukrainian territory, after supporting separatists within Crimea and being a defining force in an illegitimate referendum, cannot be justified on the basis of controlled self-defense to protect nationals abroad. Not only was the necessity of the operation in question, but also the proportionality of the operation was completely out of the scope of any threat that could have been imposed against Russian nationals. Furthermore, Moscow attempted to expand the scope of self-defense even further to encompass people with historical and cultural ties to Russia, along with the traditionally protected state citizens. Legitimizing such legal argumentation would require circumventing the limitations, definitions, and accepted practices relating to self-defense that protect our international legal system. Doing so would open the door for countries to justify a wide variety of military actions

²²⁷ Alan Taylor, “Believed to be Russian Soldiers,” *The Atlantic*, March 11, 2014, <https://www.theatlantic.com/photo/2014/03/believed-to-be-russian-soldiers/100696/>.

²²⁸ Shaun Walker, “Putin admits Russian military presence in Ukraine for first time,” *The Guardian*, December 17, 2015.

²²⁹ Thomas Grant, *Aggression against Ukraine*, 48.

undertaken with the state's interests in mind, masking as self-defense.²³⁰ Such a defense of Russia's use of force is infeasible under current legal norms.

~The Responsibility to Protect~

An intervention based on the responsibility to protect takes certain aspects of the self-defense argument but heightens them to a question of morality and protection of all humans, not just in the defense of Russian nationals. This fairly new concept in international law has not been fully accepted or clarified. It can be understood primarily as a way to prevent tragic losses of human life from occurring, in cases where the Security Council chooses not to act. However, because of the potential subjectivity of which instances can require and excuse this type of force, this exception to the prohibition on force must meet a high threshold and must be supported by a majority of the international community to have validity. Even then, it is a questionable tactic. In relation to this argument being used in Crimea, I find it interesting to examine the basic question of whether ethnic Russians in Crimea required protection as well as to look at how the Russian government and Russian academics have historically looked at the principle of R2P.

In his defense of the annexation, and Russia's involvement with it, Kapustin writes, "To wait as in Rwanda and other hot spots of the world and to act only when the number of victims ran into hundreds of thousands ... of tortured people and then strive to restore the trampled justice through subsequent international criminal justice cannot be justified from the standpoint of morality and humanity."²³¹ Contrarily, in the section, "The Persecution of Russians," I argued that, given the evidence, there

²³⁰ Timothy McCormack, *Self-Defense in International Law*, 240.

²³¹ Anatoly Kapustin, "Crimea's Self-Determination," 117.

was no reason to suggest that massive human rights abuses were being levied against ethnic Russians in Crimea, nor that they would be in the near future. The situation would have to exhibit clear evidence of abuse in order for another state's involvement to be legally permissible through R2P, given the new and debated nature of the principle. Based on the facts in the case of Crimea, I believe this threshold was not met, as does a majority of the international community that vilified Russia's actions. Kapustin might be right in his statement about the danger of waiting in situations where people are being tortured or murdered, but there is wisdom in prudence and an objective analysis of the facts before violating the essential prohibitions on the use of force, especially when the worry of human rights abuses could be unfounded.

It is also somewhat intriguing that although the doctrine of R2P seeks to prevent human rights abuses, these have actually increased in Crimea since the annexation. “A key finding of the report is the grave deterioration of respect for human rights and fundamental freedoms in Crimea over the past 3-1/2 years,” said Fiona Frazer, head of the U.N. human rights monitoring mission in Ukraine.”²³² Obviously, we cannot retroactively discount actions or their purpose by using unfavorable subsequent outcomes. But given the proposed objective of protecting humanity, the results of the U.N. do give pause and allow for at least questioning the initial goals. Russia has taken over effective control of the region and has incorporated it into its own state. If the aim of this action was to prevent atrocities and abuses against people, why would these abuses increase after Russia had intervened?

²³² “UN human rights office: Russia violating int'l law in Crimea,” *ABC News*, September 25, 2017, <http://abcnews.go.com/amp/International/wireStory/human-rights-office-russia-violating-intl-law-crimea-50070627>.

Even more interesting is the historical relationship of Russian authorities to the R2P doctrine. It has faced opposition and criticism from the Russian government and Russian scholars in its uses by the West and its undermining of territorial integrity.²³³ In 2000, the Russian Minister for foreign affairs, Igor Ivanov, stated, “We should not rule out that use of different doctrines of humanitarian intervention can destabilize international order to the point which would be dangerous even for those would like to appropriate the ‘right’ to hold military actions.”²³⁴ More recently, however, Russia has used R2P argumentation to justify its involvement within South Ossetia.²³⁵ Here, R2P was manipulated for the political interests of Russia and used as justification for the use of force within Georgia.²³⁶ Such an interpretation of R2P was widely discredited and the general international consensus found a lack of validity for such an argument given the lack of significant crimes against humanity in Georgia.²³⁷ Nonetheless, the cases of South Ossetia and Abkhazia proved more favorable for Russia, with actions by the Georgian government providing cause and legal coverage for Russia’s interference. There are crucial differences between the cases of Georgia and Crimea that will be explored later on, but, in regard to R2P, the important takeaway is Russia’s attempts to use this new legal principle for their benefit in 2008 and in 2014. Even though this argument was not entirely persuasive the first time Russia used it, they have alluded to it again in the case of Crimea, where even less

²³³ Oleksandr Merezhko, "Crimea's annexation by Russia," 190-191.

²³⁴ Игорь Сергеевич Иванов, “Верховенство права в международных отношениях- залог всеобъемлющей стратегической стабильности и безопасности в XXI веке,” *Moscow Journal of Internal Law*, No.1 (2001), 7.

²³⁵ Emma Gilligan, "Redefining humanitarian intervention: The historical challenge of R2P," *Journal of Human Rights* 12, no. 1 (2013), 32.

²³⁶ Alex J. Bellamy, "The responsibility to protect—five years on," *Ethics & International Affairs* 24, no. 2 (2010): 143-169.

²³⁷ *Ibid.*, Table 1.

evidence to support an R2P claim existed. While the international community has not changed its assessment of fictitious R2P claims, the use of such claims could have an effect on the development of the principle. It also sheds light on the way that international law is treated by Russia and how it has changed over time, which will be expanded upon in Chapter 3.

~Conclusion~

In the March 19, 2014 Security Council meeting, Ukraine's representative asserted that, "The declaration of independence by the Crimean Republic is a direct consequence of the application of the use of force and threats against Ukraine by the Russian federation."²³⁸ As I have illustrated, the illegal presence of Russian troops and their influence on the events leading up to the referendum, in conjunction with the subsequent annexation of Ukrainian territory, corroborate this statement. There was a clear breach of the prohibition on the use of force, and none of the proposed arguments legally justified these actions. Specifically, the takeover of the territory was the most problematic Russian act, challenging the core notion of territorial integrity and illustrating inappropriate recognition of Crimea's independence, especially given initial Russian involvement. As Malanzuk notes, "It is a general rule of interpretation that exceptions to the principle (Article 2(4), prohibition on the use of force) should be interpreted restrictively so as not to undermine the principle."²³⁹ The use of force is permissible only in extremely limited circumstances, so as to maintain its core prohibition within international law. The situation in Crimea did not

²³⁸ United Nations Security Council. 7144th meeting. March 19, 2014. UN S/PV/. 7144.

²³⁹ Peter Malanzuk, *Akehurst's modern introduction to international law*, 312.

sufficiently exhibit these. It is important to recognize the illegality of Russia's actions in order to prevent the use of such argumentation in the future.

Chapter 3: The Future

*“Reputation is the cornerstone of power. Through reputation alone you can intimidate and win; once it slips, however, you are vulnerable, and will be attacked on all sides.”*²⁴⁰

Robert Greene

*“While it is clear that force persists and that international law can go further to restrain the use of force, it is not true that law has not and cannot have an impact.”*²⁴¹

Mary Ellen O’Connell

Juxtaposing Crimea with the currently accepted system of international law illustrates the illegality of the annexation and of Russia’s involvement within the region, as well as the lack of justification for a self-determination claim of secession. Examining this case in a vacuum, however, does not illuminate the significance of it. The future of Crimea and the impact of it on international law can only be speculated on, but it is that future that makes it important. I have hopefully proven the illegality and falsehood in Russia’s argumentation regarding Crimea. Now, I will hypothesize on two critical questions. Was this case a one-time departure from international law that will continue to be vilified, or is this the beginning of a new trend that states will use to shape the future of international law? And what does this say about the effectiveness of international law today and the motivations that drive states’, and specifically Russia’s, decisions?

Before beginning to analyze these questions, I must forewarn that it would be a mistake to simply regard all of Russia as a unified actor. It is fair to assume that contradictions can occur within a country’s government or that individuals can act in ways that are in opposition to the official state policy but still influence outcomes that

²⁴⁰ Robert Greene, *The 48 Laws of Power*, (Profile Books, 2000), 37.

²⁴¹ Mary Ellen O’Connell, "Enforcing the Prohibition on the Use of Force: The UN's Response to Iraq's Invasion of Kuwait," *S. Ill. ULJ* 15 (1990), 457-458.

are then tied to the state. This makes analysis of the state's views or its future actions more difficult. In this work, I focus on official statements from the government and on the writings of Russian scholars that are in line with these explanations, as exemplary of Russia's approach. Moreover, I especially focus on President Putin's statements and views as indicative of the state's, given his centralization of power in Russia. Relatedly, Putin's admission of his decision to interfere in Crimea makes it fair to assume that this can be perceived as demonstrating Russian policy. I will evaluate Russia using these sources as characteristic of Russia as a whole, although, as I have pointed out, there are potential discrepancies that can occur with this type of analysis.

~Why Follow the Law? ~

In order to theorize on whether Crimea will be an isolated incident, it is crucial to look at whether there is an incentive to follow international law and how countries, and Russia specifically, view themselves in relation to it. Harold Koh, Professor of International Law at Yale Law School, gives a thorough framework of five possible explanations for why nations might obey international law: "power, self-interest or rational choice; liberal explanations based on rule-legitimacy or political identity; communitarian explanations; and legal process explanations at the state-to-state level and from the international-to-national level."²⁴² Although they all have merit, the ones I will focus on that seem most relevant to the current discussion are the power, self-interest and communitarian explanations. The power idea is simple; countries follow the law because other countries force them to.²⁴³ In this explanation,

²⁴² Harold Hongju Koh, "How is international human rights law enforced," *Ind. Lj* 74 (1998), 1401.

²⁴³ *Ibid.*, 1402.

everyone is simply coerced to go along with international law, but no one actually wants to obey it.²⁴⁴ In contrast is the school of thought arguing that states follow the law because of their own self-interest; nations cooperate and agree to follow certain principles because, in the long run, these principles help them.²⁴⁵ The communitarian explanation offers a more optimistic reason for state's legal compliance. This view explains states obeying international law because of "the values of the international society of which they are part."²⁴⁶

Looking at Russia through these three lenses can elucidate Russia's place in the international legal order and the decisions made in Crimea, as well as whether further decisions to act outside legal norms will follow. From the power perspective, there is a clash between the United States, supported by the EU, and Russia. The US and the EU are attempting to impose their view of the law onto Russia and to force them into cooperation and the return of Crimea to Ukraine. Yet, while the power explanation might work for weaker countries that simply don't have the strength or resources to go up against powerful states striving to uphold international law, Russia, as its own powerhouse, is much less likely to be coerced into following the law due to fear of another country. That does not mean, however, that it will ignore the threat of sanctions or of political fallout. Instead, this will become a factor that plays into the rational choice theory of international law. Rational choice theory, postulating the pursuit of national self-interest, tends to be used in analysis of international relations, but political aims are also frequently intertwined with legal questions. Using a rational choice model for state decisions, in connection with other concepts of law

²⁴⁴ Ibid., 1401.

²⁴⁵ Ibid., 1402.

²⁴⁶ Ibid., 1405.

such as legitimacy, obligation or compliance pull, can bridge international relations and law and provide better discussion of the future of law.²⁴⁷

Last is the communitarian explanation of law compliance, which becomes more relevant when looking towards Russia's legal future. "The idea is that one's membership in a community helps to define how one views the obligations of that community."²⁴⁸ Russia's membership in the international legal community, separate from the Soviet Union, is fairly young, although it did inherit a few Soviet memberships.²⁴⁹ Between 1996-1998, Russia was admitted to the Council of Europe, joined the G7 political forum, turning it into the G8, and ratified the European Convention on Human Rights and the Law of the Sea Convention.²⁵⁰ Although the Soviet Union's approach to international law and to foreign policy continues to influence Russia,²⁵¹ there has been a definite shift, evidenced by the new engagement of Russia in multiple international organizations and by the increasing adoption of international law language in Russian politics and scholarship.²⁵² In the future, I believe it is possible that community values and increasing globalization will become a greater influence on Russia's approach to the law. This explanation already functions for some core principles of the law, including territorial integrity and certain guaranteed human rights that are endorsed by almost every country. These principles have achieved a high standing in international law and have been

²⁴⁷ Duncan Snidal, "Rational choice and international relations," In *Handbook of international relations*, 2nd ed, (Sage Publications, 2012), 103.

²⁴⁸ Harold Hongju Koh, "How is international human rights law enforced," 1405.

²⁴⁹ "Russia to Inherit USSR Seat on U.N.'s Security Council," *Deseret News*, December 22, 1991, <https://www.deseretnews.com/article/200308/RUSSIA-TO-INHERIT-USSR-SEAT-ON-UN-SECURITY-COUNCIL.html>.

²⁵⁰ Anna Dolidze, "The Non-Native Speakers of International Law: The Case of Russia," *Baltic Yearbook of International Law Online* 15, no. 1 (2016), 99-100.

²⁵¹ Lauri Mälksoo, *Russian Approaches to International Law*, 9.

²⁵² Anna Dolidze, "The Non-Native Speakers of International Law: The Case of Russia," 98.

customarily accepted; they have therefore become ingrained as values. There is communal pressure not to violate these laws, and, even if states choose to breach them, the principles continue to be enforced and respected internationally. Certain comparisons found in domestic law can help clarify this idea. Domestic law criminalizes murder, but murders still occur. Be that as it may, it is recognized in most societies that murdering others is fundamentally wrong and antithetical to the community's values and that it should be illegal. This standard, therefore, will continue to persist in domestic law even if the rate of murders fluctuates or increases. Similarly, there are certain values that have been accepted globally as part of international law, and, for the most part, countries will go along with them and will recognize their importance.²⁵³ Although the communitarian explanation might not yet be the most relevant in relation to Russia or the discussion of Crimea, it is an important one to keep in mind and one that I will return to in exploring the future of Russia's place in international law.

As a self-serving, realist power, Russia is currently much more likely to pursue something out of self-interest and rational choice analysis than out of the fear of another state or out of communal bonds. Yet, its self-interest in the long run is extremely tied up with the entire international community. In a world increasingly prone to globalization, rational choice calculations must include the responses of other states and the impact of actions on future relations.²⁵⁴ This is the case both economically and politically. The effects that post-Crimea economic sanctions had on

²⁵³ Valerie Sperling, *Altered States: The Globalization of Accountability*, (Cambridge University Press, 2009,) 325, 330-331.

²⁵⁴ Andrew T. Guzman, *How International Law Works: A Rational Choice Theory*, (Oxford University Press, 2008), 211.

the Russian economy will serve as a warning factor in future self-interest calculations done by the Russian government. Furthermore, any major changes to the principles of international law will also affect subsequent disputes Russia is a part of. Territorial integrity and state sovereignty are both crucial to Russia and have been reinforced by the government and by Russian scholars as the core tenets of the law.²⁵⁵ “In terms of the hierarchy of principles Russians continue to give priority to the principle of state sovereignty,” writes Mälksoo, whose work focuses on Russia’s conception of international law.²⁵⁶ Although the choices made in Crimea might have stepped outside the bounds of the law, it would be against Russia’s long-term interests to allow this case to serve as a precedent that weakens the concept of territorial integrity. This theory of self-interest provides the framework with which I will explore Russia throughout the rest of this chapter.

My emphasis on self-interest and rational choice theory as the guiding principles of Russia can potentially be construed as a view that the law has no power and that states will choose either to use it when it is convenient or to circumvent it when it is not. For example, in 1977, David Ziegler wrote, “The problem is not in any technical deficiency in the law itself- failure to word treaties precisely, for example- but in the refusal of states to accept the laws when vital interests are at stake.”²⁵⁷ One could choose to apply this perspective to Crimea, in which the law was circumvented for Russia’s own interests. Yet despite this somewhat bleak prognosis, Ziegler continues on to argue that a balance of power amongst all the states could deter a

²⁵⁵ Oleksandr Merezhko, "Crimea’s annexation by Russia," 178-180.

²⁵⁶ Lauri Mälksoo, *Russian Approaches to International Law*, (Oxford University Press, 2015), 141.

²⁵⁷ David W. Ziegler, *War, peace, and international politics*, (Little, Brown and Company, 1987), 168.

single aggressor from acting outside the law.²⁵⁸ Applying and expanding on some of these thoughts in relation to Crimea, I argue that it is actually in Russia's vital interests to make what happened in Crimea an outlier of state practice and to follow and accept laws in the future. This assessment is based on the continued non-recognition from a united international community and from a more nuanced evaluation of Russia's reliance on a conservative reading of international law. I also argue that the clarification of legal principles could prevent states from reinterpreting laws and finding readings that suit their interests, which could prevent situations like Crimea in the future. Precise definitions of the law could force state leaders to think deeply about whether their actions are worth a clear, indisputable violation of international law.

~Global Response and The Power of Non-Recognition~

Immediate shock and criticism followed the change of Crimea's status. On March 17th, President Obama authorized an executive order to impose sanctions on Russian officials.²⁵⁹ In a statement given that day, he also stressed that, "The international community will continue to stand together to oppose any violations of Ukrainian sovereignty and territorial integrity, and continued Russian military intervention in Ukraine will only deepen Russia's diplomatic isolation and exact a greater toll on the Russian economy." March 18th, 2014 the NATO Secretary General stated, "Crimea's annexation is illegal and illegitimate and NATO Allies will not

²⁵⁸ Ibid., 172.

²⁵⁹ Office of the Press Secretary, "Statement by the President on Ukraine," *The White House President Barack Obama*, March 17, 2014, <https://obamawhitehouse.archives.gov/the-press-office/2014/03/17/statement-president-ukraine>.

recognize it.”²⁶⁰ In the same day, the European Union reinforced this message, refusing to recognize the referendum in Crimea and the subsequent annexation.²⁶¹ March 27th, 2014 the United Nations General Assembly adopted a resolution on the “Territorial Integrity of Ukraine,” “calling on States, international organizations and specialized agencies not to recognize any change in the status of Crimea or the Black Sea port city of Sevastopol, and to refrain from actions or dealings that might be interpreted as such.”²⁶² In a very short period of time, a major part of the international community expressed disapproval for Russia’s actions and denied the recognition of any change in status of Crimea without the involvement and agreement of the Ukrainian government. Furthermore, in an effort to force compromise and to show Russia the consequences of its actions, Europe and the United States imposed economic sanctions both against Russian individuals and against certain sectors of the economy. The strong reaction shows how far from acceptable international law Russia had strayed, but has this had an effect over the last couple of years?

The sanctions had a definite effect on the Russian economy, contributing to the start of their recession in 2014. Russian Prime Minister Medvedev estimated that 100 billion dollars were lost to Western sanctions in just two years following the

²⁶⁰ Anders Rasmussen, “NATO Secretary General condemns moves to incorporate Crimea into Russian Federation,” *NATO*, March 18, 2014, https://www.nato.int/cps/en/natolive/news_108100.htm?selectedLocale=en.

²⁶¹ Henry Van Rompuy and Jose Manuel Barroso, “Joint Statement on Crimea,” *European Commission Press Release Database*, March 18, 2014, http://europa.eu/rapid/press-release_STATEMENT-14-74_en.htm?locale=en.

²⁶² 68th General Assembly, “General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region,” *United Nations Meetings Coverage and Press Releases*, March 27, 2014, <https://www.un.org/press/en/2014/ga11493.doc.htm>.

annexation.²⁶³ The combination of low oil prices and the international response to Crimea forced Russia into an economic crisis, making it harder to justify the actions in Ukraine to the common Russian citizens being affected by these consequences.²⁶⁴ Surveys have found, however, that the economic impact has become less of a concern in 2017 and 2018.²⁶⁵ From one perspective, the sanctions seemed to have achieved their intention; Russia was negatively impacted and faced undesirable consequences. Still, if the sanctions were meant to force change or a return of the illegally taken territory, then the outcome can be seen as much less triumphant. At present, it is highly unlikely that Crimea will be returned to Ukraine. Even after four years of sanctions and non-recognition of the territorial change, Russian officials maintain that Crimea belongs to Russia and that there will be no discussion about giving it back.²⁶⁶ Opinion polls amongst ordinary Russians also show continuing strong public support for the annexation.²⁶⁷ Nevertheless, non-recognition can have other significant effects.

John Dugard's explanation of the tie between recognition and secession can be useful in looking at the future of Crimea and its place as a case in international

²⁶³ Ivana Kottasova, "Sanctions will cost Russia more than 100 billion," *CNN Money*, April 21, 2015, <http://money.cnn.com/2015/04/21/news/economy/russia-ukraine-sanctions-price/index.html?sr=fbmoney042115russia1210story>.

²⁶⁴ Paul Roderick Gregory, "A Russian Crisis with No End in Sight, Thanks to Low Oil Prices and Sanctions," *Forbes*, May 14, 2015, <https://www.forbes.com/sites/paulroderickgregory/2015/05/14/a-russian-crisis-with-no-end-in-sight-thanks-to-low-oil-prices-and-sanctions/#688f715f11a5>.

²⁶⁵ Dina Smeltz, Lily Wojtowicz, and Stepan Goncharov, "American and Russian Opinion at a Standoff on Crimean Sanctions," *The Chicago Council on Global Affairs*, January 24, 2018, https://www.thechicagocouncil.org/publication/american-and-russian-opinion-standoff-crimea-sanctions?utm_source=media&utm_campaign=rpt18&utm_medium=article&utm_term=ccs-russian-sanctions&utm_content=mc-blog.

²⁶⁶ Andrew Osborn, "Russia Tells White House it will not return Crimea to Ukraine," *Reuters*, February 15, 2017, <https://www.reuters.com/article/us-usa-trump-russia-ukraine/russia-tells-white-house-it-will-not-return-crimea-to-ukraine-idUSKBN15U0U0>.

²⁶⁷ Dina Smeltz, Lily Wojtowicz, and Stepan Goncharov, "American and Russian Opinion at a Standoff on Crimean Sanctions," *The Chicago Council on Global Affairs*.

law. In cases of secession leading to the formation of a new state, recognition is crucial to allow the state to function as a legal entity and to be accepted within the international community.²⁶⁸ While recognition can be a matter of policy, and is sometimes arbitrary or inconsistent, it is still governed by certain rules of law.²⁶⁹ For example, “United Nations and State practice shows that an entity will not be recognized if it was created by the unlawful use of force.”²⁷⁰ Although Crimea’s absorption into Russia reduces the burden of being recognized as a new State, general non-recognition of this change still puts a strain on Crimea and on Russia. It also influences the validity of the precedent in international law. Dugard writes, “Each case is a precedent. Precedents based on principle and sound policy provide normative guidelines for future cases.”²⁷¹ For example, the Kosovo case normalized and expanded the concept of remedial secession in cases of extreme oppression and the denial of internal self-determination, which had previously been more restricted. However, the response to a case could also point to unacceptable expansions or interpretations of the law. Through non-recognition of Crimea, the case as a precedent is invalidated and instead shows the failings of an annexation that circumvented generally accepted norms of the law.

Nonetheless, there is a danger of some of Russia’s arguments becoming entrenched in international law and being used by other countries if there is an eventual recognition of the territorial ownership change. For example, many of the historical arguments that Russia put forward regarding their relationship to Crimea

²⁶⁸ John Dugard, *The secession of states and their recognition in the wake of Kosovo*, 63.

²⁶⁹ *Ibid.*, 36.

²⁷⁰ *Ibid.*, 56.

²⁷¹ *Ibid.*, 34.

could be used by other countries with their own territorial claims.²⁷² The looser interpretation of self-determination, presented in this case, could also lead to greater internal turmoil between minority groups and governments or to outside forces interfering in countries with the alleged aim of assisting self-determination. Non-recognition of the annexation is one of the easiest ways to prevent the influence of these arguments on international law. The decision of a country to break the law and to illegally claim territory cannot become a precedent without the acceptance of their claims and ownership by a large proportion of other states, creating the potential for new customary international law. Even if Crimea stays a part of Russia long term, the implications of this outcome on international law can be nullified through a united international front condemning the incident. Relatedly, Wilson points out, “That secession and/or union with another state may be successfully effected de facto does not of itself have any legal bearing.”²⁷³ There have been multiple cases, such as East Timor and Western Sahara, where the international community did not accept a change in a territory’s status even after it was occupied for considerable periods of time.²⁷⁴ As evidenced by my “Table of Annexations,” annexations have happened infrequently over the last century, and recognition of these annexations has been even rarer. This illustrates the uneasiness with which the international community approaches annexations and the stability of this view over time. Continued non-recognition of similar situations represents the international community’s unwillingness to change legal norms and could limit Crimea’s influence in the future.

²⁷² Thomas Grant, *Aggression against Ukraine*, 200.

²⁷³ Gary Wilson, "Secession and Intervention in the Former Soviet Space," 169.

²⁷⁴ *Ibid.*, 169.

Table of Annexations

<i>Territory</i>	<i>Annexed by</i>	<i>Year of Annexation</i>	<i>Reversal?</i>	<i>Recognized Today</i>
<i>Crimea</i>	Russia	2014	No	No
<i>Kuwait</i>	Iraq	1990	Yes, 1991	No
<i>Golan Heights</i>	Israel	1981	No	No
<i>East Timor</i>	Indonesia	1975	Yes, 2002	No
<i>Western Sahara</i>	Morocco	1975	No	No
<i>Sikkim</i>	India	1975	No	Yes
<i>Western New Guinea</i>	Indonesia	1962	No	Yes
<i>Goa</i>	India	1961	No	Yes
<i>Kuril Islands</i>	Soviet Union	1945	No	No
<i>Austria</i>	Nazi Germany	1938	Yes, 1955	No
<i>Ethiopia</i>	Italy	1936	Yes, 1941	No
<i>Svalbard Islands</i>	Norway	1925	No	Yes
<i>Korea</i>	Japan	1910	Yes, 1945	No
<i>Hawaii</i>	United States	1898	No	Yes

~Counter-Arguments on the Impact of Crimea~

Some scholars have proposed contradictory viewpoints on the future of Crimea that must be presented to offer a more nuanced analysis. One counter-argument is that Crimea will serve as an important precedent in the future of the law and that this will be a tipping point in the expansion of self-determination and of territorial transitions. William Burke-White, an American expert on international law and foreign policy, writes, “In the Crimea crisis, Putin articulated a masterfully crafted, albeit revisionist legal argument that exploited the tension between self-determination and territorial integrity. Through that argument, Russia may well seek not only to justify its actions in Crimea, but also to reassert its role as a leader in a

multi-hub international legal order.”²⁷⁵ The point he makes, in “Crimea and the international legal order,” is that, although Putin clearly needed to rewrite some of the currently held standards of international law to defend his actions in Crimea, he may very well have that power. The expansion of legal principles through state actions is a definite possibility, for example the actions of NATO, and specifically the United States, in regard to Kosovo. In fact, he argues, the international legal order has changed and can now be shaped by many more actors than before, especially ones that have power and can create their own coalitions.²⁷⁶ This argument is one found in other legal scholarship as well. Chief legal advisor to the President of Georgia, Anna Dolidze, argues that historically Russia oscillated between two approaches to the language of international law: as an estranged foreigner disengaging from international law completely or a multilingual non-native speaker attempting to shape and control the interpretation of international law.²⁷⁷ Russia as a non-native speaker of law has the potential to create a second parallel language through the interpretation of the law, and through disagreement with the “native” speakers, which it has more actively participated in since the fall of the Soviet Union.²⁷⁸ These academics believe that Russia’s interpretation of the law has the potential to split the international order into two or more categories and to reinvent some of the core principles of international law.

While I concede that international law is fluid, there are key points that should stop us from leaping to the conclusion that Crimea will immediately shift legal norms.

²⁷⁵ William Burke-White, "Crimea and the international legal order," 3.

²⁷⁶ *Ibid.*, 9.

²⁷⁷ Anna Dolidze, "The Non-Native Speakers of International Law: The Case of Russia," 90.

²⁷⁸ *Ibid.*, 101.

First, territorial integrity and the prohibition on the use of force are the most fundamental and crucial building blocks of international law. Although Russia might have chosen to circumvent them in this instance, this is an important norm to keep from the perspective of self-interest that I argue is Russia's motivating force. Looking at very recent Russian statements and scholarship regarding the balance of self-determination and territorial integrity, it is difficult to believe that their ultimate goal is to shift the balance towards self-determination.²⁷⁹ To the extent that Russia has argued for self-determination in Crimea, it has attempted to use the Kosovo precedent and the language of the United States and Europe regarding self-determination in order to capitalize on the law that exists. The most influential potential precedent was the use of the historical connection with Crimea, but that would still greatly undermine territorial integrity for most countries, including Russia. Although Russia's focus on territorial integrity and sovereignty is more often used in relation to other global powers, with less attention paid to the sovereignty of post-Soviet countries, it is still a highly valued principle.²⁸⁰

Secondly, the majority of the community still villainizes Russia for their actions. Although Burke-White points to the countries abstaining and voting for the recognition of the Crimean referendum, the fact remains that the majority was still unhappy with it and that sanctions did follow. The principle of territorial integrity is pivotal not just for Russia but for every country. This makes building a legal coalition that weakens this principle fairly difficult, even if we accept the concept of creating two divided languages of international law. It is telling that even key Russian allies

²⁷⁹ Lauri Mälksoo, *Russian Approaches to International Law*, 141.

²⁸⁰ *Ibid.*, 175-177.

such as China, Belarus, and Kazakhstan did not vote for recognizing the annexation of Crimea. Furthermore, there are crucial weaknesses in Russia's legal arguments that would not hold up in other cases. Russia used multiple arguments for both self-determination and the use of force because it hoped that one of them would hold legally and would apply to Crimea, not because it hoped to expand every single approach to the principle itself. For example, while Russia argued that the persecution of Russians in Crimea was a human rights violation that allowed for a self-determination referendum, and for Russian intervention to protect Russians abroad, there was an absence of facts that would confirm this persecution. This invalidated the legal argument used and was not a new concept that would greatly change the interpretation of future cases, since, in cases of real human rights abuses and oppression, the Kosovo precedent would still apply. There do not seem to be any meaningful reinterpretations of legal principles that would be upheld by other countries, or that Russia actively wants to advance long-term, in the Crimea case.

It is fair to assume that there are several factors operating at once within Russia and influencing its actions in relation to the law. Mälksoo writes, "In Russia's case, the country's historically unique on and off and periodically hostile relationship with Europe and nowadays the West, its historically established tendency of authoritarian government, relative weakness of the rule of law inside the country, and the utmost desire to preserve the territorial integrity of Russia as the world's largest territorial state have decisively shaped post-Soviet Russia's approaches to international law."²⁸¹ The language of Russian government officials regarding Crimea shows the injustice they feel regarding the West's acceptance of the United States' interpretation of law,

²⁸¹ Lauri Mälksoo, *Russian Approaches to International Law*, 3.

while discrediting Russian interpretation. Simultaneously there is a lack of appreciation for the law within Russia, evidenced by substantial levels of corruption within the country.²⁸² Circumvention of the law through the acceptance of bribes is a commonplace occurrence and normalizes a mentality of bypassing the law.²⁸³ As such, one can look at the annexation of Crimea as an example of Russia attempting to showcase its power and its opposition to the West, in line with the general disregard for the law that exists in Russian mentality. This type of argument, however, leaves out the importance of Russia's desire to preserve territorial integrity and the self-interest Russia has to convince the world of its power and to maintain generally advantageous relationships with other countries.

While Russia did serve its interests in returning Crimea, it quickly attempted to prove the legality of their actions to the international community. Whether or not the rest of the world accepted these arguments or whether they were valid, does not discount the fact that in the language around it, Putin, and other government officials, attempted to convey a respect and appreciation for international law. It would be naïve to deduce that this symbolizes an inherent love for the law. Clearly a line was crossed and President Putin recognized that he crossed it, feeding into his decisions to initially deny the presence of Russian troops in Crimea and his attempt to rework aspects of the law in his favor. Yet, it also shows that Moscow recognizes the importance in staying within some passable version of the law so as not to negatively affect Russia's place in the international community. It is unclear whether the Russian

²⁸² А.Л. Журавлев, А.В. Юревич “Коррупция в современной России: психологический аспект,” *Знание. Понимание. Умение*. No.2 (2012): 56-65.

²⁸³ J.V. Keyzerova, “Corruption As a Social Phenomenon,” *Contemporary Problems of Social Work*, Vol. 2. No. 1 (2016).

authorities truly believed that the world would accept their legal arguments and that the international response to Crimea had been poorly calculated, or whether it was a calculated effort to risk a limited negative reaction but regain an important territory. Either way, in the long term it does not serve Russia's interests to repeat a similar operation outside of the law, both because of the severity of the reaction to the Crimea situation, and because of Russia's own self-interest in preserving territorial integrity and restrictions on the use of force.

~The Cases of Georgia and the Donbass~

To help illustrate Russia's view and usage of the law, I will present two specific cases involving Russia that have certain similarities to Crimea, but that symbolize a more careful approach to the law from the Kremlin. The first occurred in 2008 with the separation of South Ossetia and Abkhazia from Georgia. The second is the ongoing armed conflict in the Donbass Region of Eastern Ukraine, between pro-Russia separatists and the Ukrainian government.

The 2008 conflict between Russia and Georgia centered on the question of Georgian territories and their existence either within the state of Georgia or as autonomous states. Following the fall of the Soviet Union, tensions had been taking place between Georgia and its two provinces of South Ossetia and Abkhazia, with the two republics being primarily autonomous since the early 1990s.²⁸⁴ Both territories had a history of claims to independence, with various bursts of activity throughout the

²⁸⁴ Ekaterina Stepanova, "South Ossetia and Abkhazia: placing the conflict in context," *Stockholm International Peace Research Institute (SIPRI)*, (2008), 1, <https://www.sipri.org/sites/default/files/files/misc/SIPRIPB0811.pdf>.

1990s and early 2000s.²⁸⁵ South Ossetia in particular had maintained the goal of independence, attempting to declare it in 1991 and again in 2006.²⁸⁶ In the early 2000s the existence of the territories was brought to the forefront once more, following the election of President Saakashvili, who made one of the objectives of his presidency the regaining of control over South Ossetia and Abkhazia.²⁸⁷ The attempt to impose Georgian control led to the necessity of negotiations regarding the regions and to the eventual collision of Georgia and Russia. In 2008, Russia supported Abkhazia and South Ossetia, which sought to maintain their autonomy, leading to increasing hostility with Georgia. While a cease-fire had seemingly been agreed upon, on August 7th, 2008 the Georgian government attacked South Ossetia and took control of Tskhinvali, triggering a military response from Russia.²⁸⁸ It is fair to assume that Georgia's decision to pursue NATO membership significantly contributed to Russia's opposition to the incorporation of South Ossetia and Abkhazia back into Georgia. Dr. Emmanuel Karagiannis points to this and other political motivations of their intervention, including "regaining geopolitical influence regionally" and "responding to perceptions of insecurity."²⁸⁹ While the formal mission of protecting Russian citizens should be looked at tentatively, given the multiple other political reasons for Russia's involvement, it is not insignificant that Russia's response was a reaction to Georgia's actions. As political analyst and scholar, Dr. Lincoln Mitchell noted, "The

²⁸⁵ Andrei Kazantsev, Peter Rutland and Svetlana Medvedeva, "Russia's Policy in the Frozen Conflicts of the Post-Soviet Space (1991-2017)," work in progress.

²⁸⁶ "Backstory of Russian-Georgian Conflict," *PRI's The World*, August 12, 2008, <https://www.pri.org/stories/2008-08-12/backstory-russian-georgian-conflict>.

²⁸⁷ "Analysis: South Ossetian Conflict will Cost Russia Dearly," *Deutsche Welle*, August 8, 2008, <http://www.dw.com/en/analysis-south-ossetian-conflict-will-cost-russia-dearly/a-3548662>.

²⁸⁸ *Ibid.*

²⁸⁹ Emmanuel Karagiannis, "The Russian interventions in South Ossetia and Crimea compared: Military performance, legitimacy and goals," *Contemporary Security Policy* 35, no. 3 (2014), 400.

Georgians made the determination that they were going to go into South Ossetia, take it back, and they did that for a day. And it is that to which the Russians are responding. So, to say that the Russians are doing this out of the blue is wrong.”²⁹⁰ This, among multiple other reasons, makes it a very different situation from the one in Crimea.

In the conflict with Georgia, Russia maintained the importance of territorial integrity, but also used the language of self-determination and the precedent of Kosovo to better position themselves and their actions. In a statement on South Ossetia and Abkhazia, President Medvedev declared, “Our country came forward as a mediator and peacekeeper insisting on a political settlement. In doing so we were invariably guided by the recognition of Georgia’s territorial integrity.”²⁹¹ This assertion emphasizes the value placed by the Russian government on the laws governing state sovereignty, even as they were aiding the secessionist territories. It also reinforces the notion that in carrying out self-determination, agreement with the parent state should be attempted and should be the main goal of the involved parties, rather than outright secession. Yet further down, Medvedev stated, “Saakashvili opted for genocide to accomplish his political objectives. By doing so he himself dashed all the hopes for the peaceful coexistence of Ossetians, Abkhazians and Georgians in a single state.”²⁹² The language here mirrors the language of the secession of Kosovo; it incorporates the expanded understanding of external self-determination in the face of oppression and human rights abuses by the parent state. The legal argumentation

²⁹⁰ Lincoln Mitchell, “South Ossetia Crisis Explained,” *NPR*, August 8, 2008, <https://www.npr.org/templates/story/story.php?storyId=93436232>.

²⁹¹ Dmitri Medvedev, “Medvedev’s Statement on South Ossetia and Abkhazia,” *The New York Times*, August 26, 2008, <http://www.nytimes.com/2008/08/27/world/europe/27medvedev.html>.

²⁹² *Ibid.*

around this case shows a careful fusion and balance of both principles, in a way that served to maximize Russia's interests.²⁹³ Nonetheless, their actions and their legal explanations were in line with the norms and uses of these concepts, especially given the similarities between the Kosovo and Georgia cases in regard to the levels of independence of the discussed territories and the human costs in terms of displacements caused by the conflicts.²⁹⁴ Although there can be debate as to the reasons behind Russia's support and recognition of the sovereignty of South Ossetia and Abkhazia, as well as the extent of force applied by Russia, they had a plausible legal case based on case precedent and the actions of Georgia's government.²⁹⁵ In recognizing Kosovo, the international community accepted it as a case which has the potential to shape future actions of self-determination and for later applications of the new legal precedent.²⁹⁶ In many ways Russia's recognition of South Ossetia and Abkhazia was similar to the West's recognition of Kosovo, and it can be seen as Russia's response to the new legal framework introduced by the West.²⁹⁷

There are distinctions to be drawn between the legal language used in the case of Georgia and the case of Crimea currently being examined. The use of emerging international law to pursue national interests is neither illegal nor uncommon, whereas attempting to change or circumvent the law is. Although Russia might have

²⁹³ Thomas Hodson, "Verbal Strategies from Kosovo to Crimea. Part One," *Institute of Modern Russia*, February 6, 2018, <https://imrussia.org/en/law/2910-verbal-strategies-from-kosovo-to-crimea>.

²⁹⁴ Ekaterina Stepanova, "South Ossetia and Abkhazia: placing the conflict in context", *SIPRI*.

²⁹⁵ Lauri Mälksoo, *Russian Approaches to International Law*, 180.

²⁹⁶ "It is obvious that without the Kosovo argument, the Russian Federation were unlikely to have intervened in Georgia... The example of Kosovo gave the Russian Federation the reference and the confidence to do so."

James Summers, *Kosovo: A Precedent*, 426.

²⁹⁷ John Dugard, *The secession of states and their recognition in the wake of Kosovo*, 214; Lauri Mälksoo, *Russian Approaches to International Law*, 180; James Summers, *Kosovo: A Precedent*, 406-408.

pushed the law to its boundaries in their actions in Georgia, they still stayed within the principles of the law. In Crimea, the bounds were broken and the legal justifications either attempted to create some new understanding of the law or went against it completely. Again, I do not discount that one could see this as a new push of Russia attempting to change the law or not considering it paramount at all. However, the Georgia case shows a continuing trend of Russia becoming an interpreter and user of international law, and of establishing the law's importance in government statements.²⁹⁸ South Ossetia and Abkhazia also signify the political advantage gained by Russia effectively using the law and exploiting the West's interpretation for their own benefit, juxtaposed with the negative consequences and greater pushback faced by Russia after the situation in Crimea. Looking at the recent past, in combination with rational-choice theory, it seems more likely that Russia will continue to use the law to its advantage rather than ignoring or defying it, making Crimea an outlier. As Karagiannis writes, "Blatant disregard of international law has not been common in Russian diplomacy. Like most (if not all) great powers, Russia prefers to reinterpret and redefine legal rules to serve national interests."²⁹⁹ Examining Russia's actions in the more recent case of Donbass contributes to this theory.

The Donbass conflict is a product of the same factors as Crimea, mainly the revolution of 2014 and the increased activity of pro-Russians within the region, with the support of the Russian state. Nonetheless, there are significant differences in the severity of the conflict and the actions of involved actors. Unlike the relatively

²⁹⁸ Anna Dolidze, "The Non-Native Speakers of International Law: The Case of Russia," 98.

²⁹⁹ Emmanuel Karagiannis, "The Russian interventions in South Ossetia and Crimea compared," 401.

peaceful and fast transition in Crimea, the Ukrainian government was not going to let Donetsk and Lugansk secede without a fight. Since April of 2014, there has been an ongoing war with Ukrainian state soldiers on one side and the opposition groups, Donetsk and Lugansk People's Republics, on the other. This has resulted in approximately 10,000 deaths and 1.7 million people displaced over the course of 4 years.³⁰⁰ In February, 2015, Ukraine, Russia, France and Germany generated the "Minsk agreement", which called for an immediate ceasefire and the granting of special status to Donetsk and Lugansk as territories within Ukraine.³⁰¹ Unfortunately, this peace deal has not been upheld, and the solution of this conflict continues to be out of reach.³⁰² Russia's involvement in supporting the Ukrainian separatists so far, as well as the legal language around the conflict, might provide some clarity both to the future of the Donbass conflict and to analyzing the aftermath of Crimea.

The way that Russia is acting in relation to Donbass, especially in regard to their desire for self-determination, can inform whether Russia is attempting to turn Crimea into a precedent and what Russia's relationship to the law is following Crimea. Whereas the Russian government has recognized official documents issued by the republics of Donetsk and Lugansk to Ukrainian citizens, it has not recognized the regions as being independent republics, referring to them instead as territories of Ukraine.³⁰³ This signifies that although Russia supports the movements of the LPR

³⁰⁰ Julian Coman, "On the frontline of Europe's forgotten war in Ukraine," *The Guardian*, November 12, 2017, <https://www.theguardian.com/world/2017/nov/12/ukraine-on-the-front-line-of-europes-forgotten-war>.

³⁰¹ "Ukraine ceasefire: New Minsk agreement key points," *BBC News*, February 12, 2015, <http://www.bbc.com/news/world-europe-31436513>.

³⁰² Julian Coman, "On the frontline of Europe's forgotten war in Ukraine," *The Guardian*.

³⁰³ Wojciech Górecki. "Russia recognizes Donbas separatists' documents," *Osrodek Studiów Wschodnich*, February 22, 2017, <https://www.osw.waw.pl/en/publikacje/analyses/2017-02-22/russia-recognises-donbas-separatists-documents>.

and DPR to gain more autonomy, they are not ready to acknowledge them as separate from Ukraine. Vladimir Dzhubarov, first deputy head of the Russian Upper House's International Affairs Committee, further made clear that while Russia wanted to restore rights to people living in Donbass by acknowledging their documents, this was in no way a recognition of independence.³⁰⁴ They have also not granted residents of these regions Russian passports, in contrast to what was previously done in Abkhazia, South Ossetia, and Crimea, which some experts believe stems from the fear of increased sanctions.³⁰⁵ It is difficult to infer whether this analysis is accurate, but this would strongly support the claim that the sanctions imposed following Crimea could influence Russia to stay within the bounds of the law in the future.

Due to events in Crimea, there is a certain fear among the international community that the Donbass regions will similarly be incorporated into Russia, or at least recognized by the state as independent. I argue that this fear is likely unfounded, and that Russia's relationship to Donbass is actually a more accurate measure of their overall relationship with international law. There have been divergent opinions as to the extent of Russian involvement and support for the revolutionary groups within Donbass. Western Media, NATO states, and the Ukrainian government generally assert that, similarly to Crimea, Russia had been the activating force of the independence movement. However, although Russia has supported the pro-Russian separatists of Donbass, there has also been evidence that this movement was not

³⁰⁴ "Why Putin's Humanitarian Decree to Recognize Donbass IDs Angers Kiev So Much," *Sputnik International*, February 20, 2017, <https://sputniknews.com/world/201702201050861017-russia-putin-ukraine-donbass-passports/>.

³⁰⁵ Wojciech Górecki. "Russia recognizes Donbas separatists' documents," *Osrodek Studiów Wschodnich*.

instigated by Russia itself, in contrast to Crimea.³⁰⁶ For example, Sergiy Kudelia, a Professor of Political Science originally from Ukraine, argues that there was strong support for the rebellion within the Donbass territories and that it was not in Russia's interests to pursue the revolution for independence in Donetsk.³⁰⁷ Furthermore, the attacks by the Ukrainian government against its own people could have served as a catalyst for the ongoing conflict.³⁰⁸ Other analysts have similarly argued that leading this separatist movement would not have been in Russia's interests either economically or politically, and that it is therefore unlikely that Moscow is the dominant force behind DPR and LPR.³⁰⁹

The standards for the level of control that Russia has to exert over the armed groups in order for it to be an international conflict, and for Russia to be responsible for any international law violations therein, have been defined in past cases by both the International Court of Justice and the International Criminal Tribunal for the former Yugoslavia. As I have previously explained, the two legal tests for control are either "effective control," in which a state controls all actions of a group, or the more lenient test of "overall control", which is defined as both financing the group and helping plan the group's military activity. While it is almost certain that Russia has been providing financial help, and sending troops to assist the DPR and LPR, it is unclear whether they are controlling or helping to plan military operations. The Office of the Prosecutor of the ICC has stated that it "continues to examine

³⁰⁶ Natylie Baldwin, "Review and Analysis of 'The Donbas Rift' by Serhiy Kudelia," *Natyli's Place*(blog), August 3, 2016, <http://natyliesbaldwin.com/2016/08/review-analysis-of-the-donbas-rift-by-serhiy-kudelia/>.

³⁰⁷ Sergiy Kudelia, "The Donbas Rift," *Russian Social Science Review* 58, no. 2-3 (2017), 18.

³⁰⁸ *Ibid.*, 16, 21-22.

³⁰⁹ Natylie Baldwin, "Review and Analysis of 'The Donbas Rift'," *Natyli's Place*(blog).

allegations that the Russian Federation has exercised overall control over armed groups in eastern Ukraine.”³¹⁰ While the United States and the EU has continually stated their belief in greater involvement from Moscow, Russia has denied these claims admitting only to their political support for the Donbass republics.³¹¹

At this point, the only people that know the absolute truth are those directly involved in it, and many of the claims surrounding Russia and Donbass are speculative. Yet this situation offers some indication that Crimea might not serve as critical of a precedent as was feared. First, Russia has not shown to be an avid supporter of a new form of self-determination that favors secession, as could have been the case following Crimea. Moscow continues to stress that Donetsk and Lugansk are territories of Ukraine and that the Minsk agreement should be enforced, reincorporating the Donbass region back into Ukraine. Russia’s decision to recognize the documents of the territories, while not recognizing their independence or distributing Russian passports, further points to a desire to stay within the norms of the law and to not continue to agitate the international community. Although this decision angered the Ukrainian government, and provoked disapproval in the West, it was cloaked in the language of law and human rights, which actually illustrates a return back to international legal norms. It is in Russia’s interest to uphold the law, both to avoid further backlash from the international community and to avoid the economic expenses and problems that might follow Donbass independence if they

³¹⁰ International Criminal Court, Office of the Prosecutor. “Report on Preliminary Examination Activities 2017.” December 4, 2017, 22.

³¹¹ Lizzie Dearden, “Vladimir Putin issues executive order recognizing documents issued by separatist ‘republics’ in Ukraine,” *INDEPENDENT*, February 18, 2017, <http://www.independent.co.uk/news/world/europe/vladimir-putin-donald-trump-ukraine-war-crimea-rebels-separatists-executive-order-documents-donetsk-a7587666.html>.

were to express desire for joining the Russian state. These are key aspects present in Russian decision-making that are overlooked by simply ascribing the entire Donbass conflict to them or by writing them off as ignoring the law. If this case can be indicative of the future of Russia's relationship to international law, then it offers hope for further compliance and a retreat from the dramatic legal reinterpretations present in the Crimea case. An exception to this is the possibility of Russia being proven to have had "overall control" of the DPR and LPR movements, making them responsible for the use of force against the Ukrainian government by the groups. However, this has not yet been demonstrated. As opposed to the annexation of Crimea, in which standards of territorial integrity, self-determination, and deliberation had been ignored, the case of Donbass seems to be much more in line with these principles.

~Preventing More "Crimeas" in the Future~

If international law is indeed a guiding force or at least a limit for state actions, and if it is beneficial for countries to stay within the bounds of the law to secure their own interests, then the next question becomes how to strengthen principles of the law to prevent reinterpretations that, while not necessarily illegal, do not comply with international community standards. Powerful countries can use the language of the law but twist it to produce readings that are much more favorable for the actions they want to take. The United States has been known to reinterpret and circumvent international laws, for example the decision to classify people as "enemy combatants" in order to circumvent "prisoner of war" rights guaranteed under the

Geneva Conventions during the “war on terror.”³¹² Similarly, although many countries disapproved of Russia’s actions and legal claims in South Ossetia and Abkhazia, these were not necessarily illegal. Although I argue that the annexation of Crimea was illegal and that this precedent will not be far-reaching, I believe there are ways to further ensure that situations like Crimea do not happen again. Through non-recognition of the transfer of Crimea and the events that led to it, the international community can exhibit their disdain with this case becoming precedent and affect how this case is seen by other countries during their own calculations of self-interest, power, and the law. Likewise, international courts have a role to play in clarifying the definitions of legal principles, thus making it harder for countries to offer a wide range of interpretations.

Self-determination must be clearly defined through legal systems and avenues. If not, then the risk of misinterpretation for political advantage could grow into many more “Crimeas.” I stand by Cavandoli who concludes “that the current law of self-determination needs a clearer and more consistent approaching order to avoid posing a serious threat to the stability of the existing state system.”³¹³ The global response to Crimea and the language that Russia has used in relation to territorial integrity and self-determination both prior to and following Crimea, indicate that the annexation of a territory without permission of the parent state will not be normalized or accepted as a precedent. Nonetheless, this case should serve as a warning of states’ potential to use the undefined nature of self-determination to their advantage. Even Kapustin, who defended Russia’s actions in Crimea and attempted to craft a legal argument

³¹² Ingrid Detter, “The law of war and illegal combatants,” *Geo. Wash. L. Rev.* 75 (2006).

³¹³ Sofia Cavandoli, “The unresolved dilemma of self-determination,” 876.

validating them, writes, “Current design of the right to self-determination and the right to secession is not able to eliminate these threats (to regional and worldwide security). Further analysis and development of proposals for the advancement of the relevant institutions of the system of modern international law is mandatory.”³¹⁴ In his case, this is an argument used to advance Russia’s own interpretation in relation to Crimea of self-determination as developing in the direction of secession to ensure minorities their rights. But his logic also points out that without clearer definitions and analysis of this principle in modern international law, the ability to interpret and expand the principle will be up to countries who have special political interests in relation to the law. There is some room for this, as states are the actors who must agree to and enforce international law, yet courts must also rise to the challenge. As I have explained in Chapter 1, there was a need and a desire from the international community for a clearer understanding of self-determination following the conflict in Kosovo, which was not fulfilled by the courts. Setting standards in relation to self-determination, in future cases brought to international courts, will be crucial for setting clear, legal boundaries that states will have to think carefully about before crossing.

For example, as I have noted in Chapter 1, there is significant controversy about who “the people” that self-determination applies to are. Former Judge Antonio Cassese, who served as the first president of the Yugoslav war crimes tribunal, writes:

“Nowhere in international law can one find a definition of the peoples enjoying the right at issue. However, can such a definition be legitimately expected from international legal rules?... Given the great confusion existing in this area and the broad differences of opinion, why should states try to agree upon legal

³¹⁴ Anatoly Kapustin, "Crimea’s Self-Determination," 118.

definitions that would inescapably be exceedingly vague and controversial and would accordingly lend themselves to highly subjective interpretations?”³¹⁵

This quotation highlights the problem, the lack of a clear definition of who self-determination applies to, but it also sets up an odd contradiction. Arguments that this would needlessly constrict the definition into something vague with subjective interpretation, like the one seen above, seem to imply that having no agreed upon definition whatsoever will somehow fix the problem of vagueness and subjective interpretation. In fact, having some definition would at least limit the extent of possible interpretations and put forward certain restrictions, making it more stable and potentially addressing some of the concerns relating to territorial integrity or manipulation of people. There is clearly a need to define who “a people” is more strictly under international law, in order to have a more accurate standard with which to judge self-determination claims. The divergence of opinions on whether the people of Crimea make up a separate “people” could at least partially be solved if everyone is working within the framework of a single definition. Courts have the power to define tests for these principles and this should be taken advantage of to create one cohesive understanding of aspects of international law, limiting discrepancies.

The ability of courts to assist in strengthening international law and developing a singular understanding of the law extends to principles of the use of force as well. Self-defense, one of the only exceptions to the prohibition on the use of force, has been split into multiple different interpretations from the desire of states to use it in justifying pre-emptive or anticipatory force. McCormack gives two factors for the uncertainty associated with analyzing self-defense claims: “ 1) the lack of an

³¹⁵ Antonio Cassese, *Self-determination of Peoples: A Legal Reappraisal*, (Hersch Lauterpacht Memorial Lectures, Cambridge University Press, 1995), 326-327.

authoritative judicial body able to legally assess a claim of self-defense, and 2) the lack of a clear statement of the limits to a claim of self-defense.”³¹⁶ He further points out that “there is little international lawyers can do in a system which allows individual states to decide whether or not to submit to the jurisdiction of the ICJ.”³¹⁷ It is fair to say that it is difficult to enforce laws in an international system where states can choose whether to allow the court to impose consequences on them. Yet, as I have argued, there are other incentives for states to follow the laws through their own self-interest calculations. Under this framework, the necessity of “a clear statement of the limits to self-defense” is more important. If a legal definition of the limits is set and becomes the norm, states that defied it would face stronger opposition and negative consequences from the international community and would have to defend their decision to break the law instead of presenting a plausible interpretation under the current vague language. I am not suggesting that by defining principles of the law we will end the illegal use of force, but it will at least make an assessment of legality less ambiguous. Furthermore, as more attention becomes paid to international law and it gains significance globally, illustrated by the increasing use of legal language in government statements and the institutionalization of a relatively new conception of international law,³¹⁸ it will become harder for states to justify breaking the law both to other countries and to their own people.

As Wilson writes, “Crimea is only the latest in a line of secessionist pressures which continue to challenge fundamental international legal norms. The task of

³¹⁶ Timothy McCormack, *Self-Defense in International Law*, 240.

³¹⁷ *Ibid.*, 240.

³¹⁸ Given that the modern understanding of international law originated with the formation of the UN following World War II.

international law is to ensure that these norms are clear, consistently applied, and capable of responding to the diverse range of situations which arise to threaten existing state boundaries,”³¹⁹ In order to protect the objectives of international law, the norms must be clearly defined. This will at least assist in understanding where the legal line is drawn and could prevent it being crossed, as it was in Crimea.

~Conclusion~

Andrew Guzman, dean of USC Gould School of Law, states, “International law has the potential to influence state behavior, but always does so in a political context.”³²⁰ As evidenced throughout this work, the law does not exist in a vacuum, and international law in particular is inextricably tied up with politics and with international relations. Nevertheless, that does not mean that the law does not have influence within the political sphere. The international community, including Russia, has presented international law as a guiding principle of states’ behavior and as an important backbone of a peaceful world. This makes analyzing the legal aspects of individual cases especially vital to understanding not only the future of international law, but also the future of state relations and the international order.

In this chapter, I have asserted that Crimea will not become a lasting precedent and that it will not reshape international legal norms. The annexation of Crimea conveys a departure from the law, and, specifically, an infringement on Ukraine’s territorial integrity. Through sanctions and non-recognition of the annexation, the international community has shown that it will not support this type of state behavior. This has a twofold effect of both maintaining the international

³¹⁹ Gary Wilson, "Secession and Intervention in the Former Soviet Space," 170.

³²⁰ Andrew T. Guzman, *How International Law Works: A Rational Choice Theory*, 217.

community's views on annexations, illustrated by their rare occurrence and rarer recognition, and of influencing Russia's actions in the future. As a self-interested power, it serves Russia to stay within the bounds of the law in order to maintain relations with other states and to receive the benefits of legal principles, such as territorial integrity. Crimea was a deviation that was not in line with Russia's legal approach, and it would be misguided to assume that it represents the future of Russia's actions and interpretations of the law. Still, Crimea shows us that it is imperative to enforce stricter definitions and clearer applications of the law and to maintain a united, global front in condemning violations when they occur, in order to limit future breaches.

Conclusion

Before beginning to research this topic, I had been exposed to news coverage on Crimea and to accusations and perspectives from multiple sides of the conflict. These always seemed political or emotional, rather than based on fact, and while I had a general sense that what happened in Crimea was illegal, the case was confusing and multifaceted. It also seemed like it didn't really matter whether it was legal or not; multiple people I talked to expressed informal opinions that countries didn't care about international law beyond using it to pursue their interests or as political rhetoric. After investigating these questions, however, it became obvious to me that this wasn't accurate. Crimea's seemingly convoluted nature actually illuminated multiple aspects of international law and demonstrated the importance of it. Russia's attempts at defending their actions in Crimea, as well as Crimea's right to self-determination, could help explain the current legal norms and their potential for change. Furthermore, they suggest the possibility of a greater Russian regard for the law than one would initially presume.

In the Crimean self-determination debate, Russian arguments attempted to capitalize on the development of this principle, but key differences emphasized the divergence of this case from legal norms. Self-determination has been expanded past the right of self-rule for an entire recognized territory, as applied in decolonization, and can now be pursued by minorities or a defined "people" living within sovereign states. Yet, in the majority of cases, this right is restricted to internal self-determination that does not infringe on the territorial integrity of the state; the permissible, rare exception being in cases where the state oppresses these people or

does not allow for their lawful pursuit of self-determination. Crimea did not follow these norms, instead undertaking a secession representative of external self-determination. Given the extreme importance of the principle of territorial integrity and the international community's lack of support for external self-determination claims, there is a significant burden of proof to defend the legality of Crimea's secession. As I have demonstrated, the arguments used by Russia to defend the right of self-determination in this case are insufficient. Even if Crimea qualifies as a group of people with the right of self-determination, this right should be pursued internally and has been in past negotiations for Crimean autonomy within Ukraine. There had been no ongoing persecution of the Crimean people, nor adequate cause for concern, that would justify a secession. The domestic transition of government is, likewise, not a legitimate reason for the dismantling of a state's territory, especially in the incredibly short time span between the Ukrainian revolution and the Crimean secession. Finally, perhaps the most important argument to heed is the flawed idea of a historical connection enabling external self-determination. This is not only at odds with the global acceptance of Ukraine's territorial boundaries, which nullifies any historical alternative, but also signifies a misunderstanding of self-determination as a return to a previous parent state, which could be a worrisome idea in the future. On its own, Crimea's secession already demonstrates an infringement of international law. Combined with Russia's involvement within the territory and the subsequent annexation of Crimea, the illegality becomes even more apparent.

Russia's military presence in the region challenges the idea of Crimean self-determination, as this could have put considerable pressure on referendum voters and

implies external interference. Furthermore, the annexation itself is an extremely contentious decision by Russia. Even if Crimea chose to exercise self-determination without Russia's influence and had wanted to secede, Russia's acquisition of the territory without Ukraine's approval is equivalent to the use of force. Considering that Russian soldiers had, in fact, been in Crimea prior to the referendum and had contributed to the resistance against the new Ukrainian government, Russia's use of force consists of two parts, doubling culpability. Russia utilized different legal principles to defend this, but ultimately their use of force should be deemed illegal as the arguments either did not have sufficient evidence or were misinterpretations of the principles. The naval agreement between Ukraine and Russia did not permit activity outside the outlined scope, which specifically excluded infringements on Ukraine's territorial integrity. Yanukovich was not representative of Ukraine and therefore could not invite Russian forces. In addition, the exception of self-defense to the use of force was drafted with the intention of allowing states to protect themselves against attacks on their sovereignty, not to defend people of similar ethnicity within other countries, and especially not when this defense resulted in an annexation of territory. Relatedly, this, and the claim of R2P would require significant persecution of the Crimeans, which was absent in the region. Chiefly, even if these agreements had been persuasive in relation to Russian troops in Crimea, none of them warrant the annexation of Ukrainian territory. The decision to claim Crimea ties back to the arguments of self-determination; Russia was accepting the referendum results and honoring them by annexing the region. What I have shown, however, is that there was not a right for external self-determination. Furthermore, in combination with Russia's

use of force in Crimea prior to the referendum, the entire argument of the annexation being carried out as a reaction to Crimeans' wishes loses validity. Russia's interference weakens the self-determination argument, which then weakens their defense of the annexation itself.

Reading about the illegality of Crimea's annexation and the variety of flawed arguments presented by Russia, a grim image of international law and Russia's role within it, emerges. Admittedly, this is a fair reaction, but my research has led me to a more optimistic interpretation. As Professor of Law Mary O'Connell points out, "To the extent war persists, the problem seems to lie in the weakness of the enforcement system, not in law's irrelevance."³²¹ We tend to think of an enforcement system as a powerful entity punishing those who disobey, similar to the domestic legal system in which the state enforces its laws. Such a system does not work in international law, where every state has sovereignty and is unlikely to give up its independence and submit to some type of supreme enforcer. But this does not mean that there is no enforcement whatsoever. If we accept that the law does have relevance, as I have attempted to demonstrate, then there is some incentive to follow it and to abide by it. The difficulty is in making sure that in the state's calculations of self-interest, obeying the law outweighs breaching it. In this case, I have argued that non-recognition and sanctions from the international community can impact the relevance that Crimea will have in international law, as well as send a signal to the entire community about what is permissible in the future and what consequences will follow. The enforcement system can therefore be perceived as the pressure of the international community, which upholds and reinvents international law. Even if states are primarily concerned

³²¹ Mary Ellen O'Connell, "Enforcing the Prohibition on the Use of Force," 456

with their own interests, they exist in a globalized world where interactions with other countries are critical for their own gains. If every country is concerned about circumventing legal norms, because of the strengthened enforcement from an international community unified to uphold international law, the values of the community will be fortified and engrained over time. These strengthened norms would provide even more pressure and incentive to follow international law and could eventually reach a point of subliminal acceptance. The international community must continue to hold firm and to inflict negative consequences when states disobey laws, thereby acting as a better enforcement system and improving state behavior in the future.

Crimea shows us that transgressions do occur, but that they are moderated by international law. Even as Russia performed illegal acts, it attempted to explain itself through legal argumentation and the use of legal principles, thereby acknowledging the importance of the law. In other cases, Russia has shown its willingness to stay within the bounds of the law, conceivably either to avoid international backlash or because of the personal benefits secured through legal norms. It might be naïve to assume that we will ever get to a point without wars or violations of the law. Yet, there are substantial ways to limit these instances, and international law is a vehicle through which to get this done. While Crimea might not be returned to Ukraine, it can still serve as a warning and prevent similar situations. Although at first, this case might suggest a bleak outcome, it could actually be beneficial in limiting future circumvention of the law. What the world does in response to Crimea, and to pivotal cases like it, will shape the development of law and international relations.

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