TC

ATILIM UNIVERSITY

INSTITUTE OF SOCIAL SCIENCES

DEPARTMENT OF INTERNATIONAL RELATIONS

INTERNATIONAL RELATIONS THESIS MASTER'S PROGRAM

THE LEGITIMACY OF NATO'S 1999 INTERVENTION IN KOSOVO AND RUSSIA'S 2014 ANNEXATION OF CRIMEA: THE USE OF FORCE AND THE RIGHT TO SELF DETERMINATION

Master's Thesis

Selen Ceylan

Ankara- 2021

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Ankara- 2021

ACCEPTANCE AND APPROVAL

This is to certify that this thesis titled "The Legitimacy of NATO's 1999 Intervention in Kosovo and Russia's 2014 annexation of Crimea: The Use of Force and The Right to Self-determination" and prepared by Selen Ceylan meets with the committee's approval unanimously/by a majority vote as Master's Thesis in the field of International Relations following the successful defense of the thesis conducted in 5/07/2021.

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May 31, 2021

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ÖZ

CEYLAN, Selen, Nato'nun 1999'da Kosova Ve Rusya'nin Kırım'ı İlhak Edişinin Meşruiyeti: Güç Kullanımı ve Kendi Kaderini Tayin Hakkı, Yüksek Lisans Tezi, Ankara, 2021

Birleşmiş Milletler Sözleşmesine göre devletlerin birbirlerine askeri güç uygulamalarına ve iç işlerini karışmalarına izin verilmiyor. "İnsani müdahaleye" örnek olarak gösterilen 1999'da NATO'nun Kosova'ya müdahalesi uluslararası alanda bazı tartışmalara yol açtı. Kosova'nın Sırbistan'dan ayrılarak bağımsızlığı BM Güvenlik Konseyi kararı olmadan ancak NATO, ABD ve AB'nin tek taraflı kararları ile ortaya çıktı, ancak Uluslararası Güvenlik Konseyi'nin tavsiye görüşü ile yasal olduğu onaylandı. Kosova'ya müdahale 1999'dan sonra önem kazanan insani amaçlarla yakından ilişkilidir. İlk başta Ruslar karşı çıksa da Rusya, Kırım davasında yasadışı işgalini ve ilhakını uluslararası hukuk açısından meşrulaştırmaya çalıştı. Öte yandan kendi kaderini tayin karmaşıktı. Benliğin "kim" olduğuna ve "kendi kaderini tayin" kavramının "hangi koşullarda" geçerli olduğuna karar vermek sorun olmuştur. Kosovalılar kendi kaderini tayin hakkını kullanarak bağımsızlıklarını ilan ettiler. Ancak Kırım referandumu uluslararası hukuka uygun değildi.

Bu çalışmada, 1999 NATO'nun Kosova'ya müdahalesinin ve 2014'te Rusya'nın Kırım'ı ilhakının meşruiyeti, yasadışı olarak nasıl güç kullandıkları ve son statüleri için izledikleri yollar inceleniyor. Çalışma, iki davanın hem benzer hem de farklı yönlerini araştırıyor ve aynı zamanda müdahalelerin uluslararası hukuka nasıl aykırı olduğunu da inceliyor. NATO'nun müdahalesinde ve Rusya'nın ilhakında uluslararası hukuku görmezden geldikleri anlaşılıyor. Öte yandan, Kosova'nın bağımsızlık ilanı yasal iken, Kırım'ın Rusya'ya katılma referandumu tamamen yasal olarak kabul edilmedi. Rusya, 1999 yılında NATO'nun eylemini yasal olarak kabul etmemesine rağmen Kosova örneğini referans göstermeye çalışmıştır. Ancak Rusya'nın Kırım'ın ilhakını yasal kanıtlama girişimi uluslararası arenada destek görmemiştir.

Key words: NATO'nun Müdahalesi, Kırım'ın İlhakı, Kendi Kaderini Tayin Etme Hakkı, Güç Kullanımı

YL GCRIS

ABSTRACT

CEYLAN, Selen, The Legitimacy of Nato's 1999 Intervention in Kosovo and Russia's 2014 Annexation of Crimea: The Use of Force And The Right to Self-Determination, M.A. Thesis, Ankara, 2021

According to the United Nations Convention, states are not allowed to apply military force to each other and to interfere in their internal affairs. NATO's intervention in Kosovo in 1999 which has been shown as an example of humanitarian intervention led to some discussions in the international field. The independence of Kosovo by separating from Serbia, emerged without the UN Security Council decision but with the unilateral decisions of NATO, the USA and the EU but proved as legal by the Advisory Opinion written by the International Court of Justice. Intervention in Kosovo is closely related to humanitarian aims which gained importance after 1999. Although Russians opposed at first, Russia tried to justify its illegal occupation and annexation in terms of international law in the case of Crimea. Self-determination on the other hand has been complex. Deciding "who" the self is and under "which conditions" the concept of self-determination is valid has been the problem. Kosovar people declared their independence by using their right to self-determination. However, Crimean referendum was not appropriate with the international law.

In this study, the legitimacy of both 1999 NATO intervention in Kosovo and 2014 Russian annexation of Crimea, how they illegally used force, and their path for their recent status are examined. The study explores both the similar and the different aspects of two cases, and it also studies the way the interventions are against the international law. It is understood that NATO in its intervention and Russia in its annexation ignored the international law. On the other hand, declaration of independence of Kosovo was legal whereas Crimea's referendum to join Russia was not totally accepted as lawful. Russia tried to refer to the Kosovo case as a reference although it did not accept NATO's action as legal in 1999. However, Russia's action to prove Crimea's annexation legal did not gain support in the international arena.

Key words: NATO Intervention, Annexation of Crimea, self-determination, use of force

YU GCNS

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ABBREVIATIONS

ECOWAS	Economic Community of West African States
EU	European Union
FRY	Federal Republic of Yugoslavia
FPRY	Federal People's Republic of Yugoslavia
ICJ	International Court of Justice
ICTY	International Criminal Tribunal for the former Yugoslavia
IFOR	Implementation Force
ILC	International Law Commission
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
LDK	Democratic League of Kosovo
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Co-operation in Europe
SFRY	Socialist Federal Republic of Yugoslavia
SU	Soviet Union
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSC	United Nations Security Council
US	United States

INTRODUCTION

NATO's intervention in Kosovo in 1999 has been a major conflict in international community about whether it's a humanitarian intervention or an act of aggression of member states. Later in 2014 Russia annexed Crimea which was also created conflicting ideas among the international actors. The change in the status-quo in both territories became the comparison issue since then. The arguments sometimes are discussed under legal and moral aspects which branches the subject even more. The States always try to prove themselves acting in accordance with the international rules, both morally and legally. However, this may lead to confusion and as a result the situations need to be examined more carefully from each and every perspective. On the one hand, there is the international law accepted and adopted by all states on the other hand, there is the international law which is not written but has been talked. It is important to acknowledge this difference because after the case of Kosovo the ideas about use of force in terms of "humanitarian reasons" and the right to self-determination have evolved. (Dunay,2015)

The principle of territorial integrity is accepted as indispensable both in the international legal order and in the United Nations Charter system. During the Second World War, the United Nations highlighted the importance of the principle and prohibited the use of force which could be against the territorial integrity or political independence of a state. The forced fragmentation or loss of control of a State's territory means a violation of the principle of territorial integrity. Thus, an occupation done by another state also leads to violation of the principle of territorial integrity. In addition to this any kind of support to the rebel groups in a territory is considered as an indirect involvement therefore it is against the principle. (van den Driest, 2015, p.469) On the other hand, in a system where anarchy is present non-intervention and sovereignty are the two main principles that prevents chaos. However, there are some occasions where intervention may be necessary. Having good purposes alone cannot justify an intervention. It is better not to intervene. (Nye, 2003) Also, there is a rule which forbids the use of force in relations. Only if the United Nations Security Council authorizes or it is an act of self-defense, the use of force may be legal. If there is an armed attack towards its civilians a State may exercise the right to self-defense which is stated in the Article 51 of the UN Charter. (Green, 2014:8)

Since the emergence of the principle of self-determination it has been an unsolvable dilemma. Neither in theory nor in practice there is no accepted solution. The word itself reflects the complexity. The main questions have been firstly, who is “self” secondly, under what conditions this self may have the possibility to exercise this right. The debates about self-determination of the people remained unsolved but it is widely embraced as the primary right of all nations. Other than colonial cases, the right to self-determination is accepted as an internal issue of the states. (Shirmammadov, 2016)

Even though when it first happened Russia was against the intervention that NATO maintained, later in its own annexation Russia showed Kosovo as an example for its action. Since then, two cases started to be compared in terms of legitimacy. Although NATO’s action has been considered as a humanitarian intervention by some, it was not legal. Knowing that, NATO tried to justify its action. On the other hand, Russia was in a similar position. Russia’s annexation was also against the international law under the principle of self-determination and the prohibition of use of force. Thus, it did not stop Russia from defending what it had done. Contrary to Crimea, Kosovo’s declaration was legal. (Ejdus, 2019)

Albanian leaders unilaterally declared independence in 1991. However, during the 1990s, the passive resistance operation aimed at securing independence and restoring autonomy failed. Kosovo Albanians were subjected to systematical discrimination. They were facing the violence that the Serbian authorities creating. The Albanians started mass protests against Serbian rule. Following the continued pressure on Kosovars, NATO started air campaign against the targets in Kosovo and Serbia in March 1999. Thousands of refugees started to flee to Albania, Macedonia, Turkey and Montenegro. After 11 weeks of NATO bombing, Milosevic was forced to withdraw the troops in the region. Then the United Nations took the control of the region.

Crimea was given to Ukraine by the Soviet leader Nikita Khrushchev in 1954. With the referendum held in 1991, it gained the status of “autonomous republic” and continued its existence as an autonomous structure affiliated with Ukraine after the dissolution of Soviet Union. Demographically, Crimea was one of the least populated places in the Ukrainian-speaking population. The expulsion of Tatars to far Asia and

the policies of Russification increased the Russians in the Crimean Peninsula. The number of ethnic Russians against Tatars and ethnic Ukrainians also increased. While Tatars and Ukrainians in the region opposed Russian dominance; ethnic Russians supported parties advocating close policies with Russia. In 2014, after months of demonstrations Ukrainian President Viktor Yanukovych fled to Russia. A referendum was held on March 16, 2014 in Crimea which resulted in joining to Russia.

The main subject of discussion among the international community has been the legitimacy problem. In this research it is concluded that even though NATO claimed it was necessary to use force, the results and the way it carried out the intervention proved the opposite. While so called "humanitarian intervention" did not end the conflict with humanitarian results in Kosovo, Russia's protection of nationals policy using the right to self-defense was unnecessary because there was not any discrimination against the Russian civilians living in Crimea. However, it is understood that the legitimacy of current political status of Kosovo and Crimea are different. Although the Serbs were against the independence of Kosovo and claiming that it violated the international law after the advisory opinion prepared by the International Court of Justice the opposite was proven. The referendum held in Crimea for determining their future was not considered legitimate in the international law Thus, the independence of Kosovo was not against the international law whereas it was in the same category with Crimea's joining to Russia.

It should be pointed out that this thesis used the Western point of view in the discussions. Due to the fact that I did not know Russian, the sources that are applied are either written in English or Turkish. This point should be taken into consideration as a limitation, while evaluating this study.

This is a comparative case study of the 1999 NATO Intervention of Kosovo and 2014 Russian annexation of Crimea. The thesis provides a comparison between these two cases whether the use of force is legal and whether their political status gained after is legitimate. The study seeks to answer these questions: Was the NATO intervention in Kosovo legal? Was the Russian annexation of Crimea legal? What were the claims of NATO and Russia to legitimize their actions in terms of "the use of force" and "self-determination"? Were they accepted by the international community?

In international law, the concept of legitimacy has highly been applied while the definition of it has never been adequate. Legitimacy puts some canon for the evaluation of law and actions. due to the fact that there is no defined authority empowered to assess legitimacy and no decided procedure for carrying out that kind of an assessment It is possible to say that the concept of legitimacy is less precise than legality. It is not easy or logical to try to definitively separate legality from legitimacy. law helps to distinguish legitimate actions from illegitimate actions and thus aims to guide behavior. Legitimacy can be used as an escape by the powerful actors in the system if their interests clash with the legality. (Roberts, 2008) According to Merriam-Webster legality is defined as “attachment to or observance of law or the quality or state of being legal: lawfulness”. (Merriam-Webster) While legality clarifies the fundamental obligations to force, legitimacy seeks to identify and delimit a zone of exception that takes into account the so-called special case. An action may be illegal but legitimate. According to some, NATO’s action was illegal as it was against the prohibition of use of force but legitimate because it aimed to stop the catastrophe. (Falk, 2005) It is important to distinguish these two terms. In this study both concepts are discussed.

This thesis compromises of five chapters, the first chapter clarifies the concepts of territorial integrity; the use of force; the right to self-determination and the obligations that the United Nations put forth. Why the territorial integrity is important, under what conditions an international actor can use force, how the right to self-determination is limited and how it can be used are summarized in the first chapter.

In the second chapter, the historical backgrounds of Kosovo and Crimea, how the situations evolved and turned into conflicts are described orderly. The ethnic conflicts among the Balkans and the oppression of Serbs among the territory are explained. Also, Crimea’s important position starting from the Ottoman Empire, the changes in its political status and how Crimea became desired land are expressed.

In the third chapter the legitimacy of NATO’s intervention in Kosovo is discussed. What NATO’s claims were, why Kosovo case is different in terms of “humanitarian aims”, how the intervention affected the future status of Kosovo and the path to independence under the right of self-determination are presented.

The fourth chapter lists the claims of Russia in its annexation of Crimea for legitimizing the actions. The chapter starts with the arguments of Russia about the legal aspects of its annexation. The chapter reflects the points where the annexation is not legal under the principles of “the use of force” and “self-determination”. In addition to this the chapter also denotes the reaction of the international community towards the annexation of Crimea. In the last chapter the similarities and differences of two cases are compared and concluded.

GCIS

CHAPTER 1
INTERNATIONAL LAW

International law is the law of the international community. According to the traditional view based on the idea that the international society consists only of states, international law is defined as the set of rules that regulate the relations between states. On the other hand, according to the sociologist view, which accepts the international society as the whole of humanity consisting of individuals, international law regulates the relationships that individuals belonging to various political societies engage individually or collectively at the international level. Today, international law encompasses the rules directly addressing individuals in cases that concern states, international organizations, non-state organized communities, and individuals that concern the general interests of the whole of the international community or the values they share. (Pazarcı,2017, p.4)

In this chapter, some of the concepts of the international law, such as self-determination, secession, territorial integrity, humanitarian intervention are summarized as they are related to 1999 Kosovo intervention and annexation of Crimea.

1.1Self-determination

The right of people to form their own state is usually considered as the definition of self-determination. However, the question occurs, who determines in other words; "what is the self that will determine?" (158) Even though voting can be reflected as a way for self-determination, it is also problematic because the ones who are voting and the place where it has been held are important factors. (Nye, 2003)

Before the concept came to exist, there were ideas about it like, John Stuart Mill's opinion:

> "Where the sentiment of nationality exists in any force, there is a prima facie case for uniting all the members of the nationality under the same government, and a government to themselves apart. This is merely saying that the question of government ought to be decided by the governed. One hardly knows what any division of the human race should be free to do if not to determine with which of the various collective bodies of human beings they choose to associate themselves." (Mill, 1972, p.361)

Since the World War II, the concept of self-determination has been frequently applied by different people and classes in every part of the world. The minorities, colonized communities, or non-self-governing peoples used this concept for liberating

themselves from their colonizers. The French Revolution can be considered as a realization for people who were ruled and recognizing their rights. (Vashum,1996, p.64)

According to the Websters Encyclopedic Unabridged Dictionary of the English Language (1989) the meaning of "self-determination" is sorted like:

> "1. determination by oneself or itself without outside influence.
> 2. freedom to live as one chooses, or to act or to decide without consulting another or others.
> 3. the determining by the people of the form their government shall have, without reference to the wishes of any other nation, especially, by people of a territory or former colony." (Websters Encyclopedic Unabridged Dictionary of the English Language)

Self-determination has been one of the basic principles of French foreign policy after the Revolution. What is important in self-determination is people being able to choose the state or its own government or the right to choose the form of government in which they live. It can be argued that as the nations have the right to determine their own destiny in the political sphere it results with national sovereignty. Later in purposes section of the United Nations, Article 1(2) self-determination is mentioned; "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace". Also, in Article 1(4) it is clearly stated that all the articles in this section, including the article related to the concept, have the purpose of harmonization as per the UN Charter. (Tatar&Toprak, 2015, p.57)

Basically, self-determination can be exercised as long as it does not violate the territorial integrity of a state. The laws in international law advocates the importance of territorial integrity. Thus, the principle of territorial integrity may limit the other principles. In fact, it may limit interpretation of who has the right to self-determination. In the United Nations General Assembly resolution 1514, the Declaration on the Granting of Independence to Colonial Countries and Peoples was adopted in 1960. According to this resolution this right should under no circumstances interfere with territorial integrity. What this document stood on was "fighting against colonial domination and alien occupation and against racist regimes." (Dubinsky, 2018)

Article 1/4 of the 1977 1st protocol on international conflicts supplemented to the 1949 Geneva Conventions claims that "armed conflicts in which peoples are

fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". It has implicitly recognized that the struggle of the colonized communities can involve the use of force. However, it will not be wrong to say that there has not been a universal acceptance on this issue yet, since many western states are not party to this protocol, and NATO states vote against or at least remain neutral in the event that many resolutions adopted in the UN General Assembly explicitly stipulate that they may engage in armed struggle in the struggle of the colonized communities. What can be interpreted is that the colonized communities have the right to resort to the use of force within the framework of the principle of self-determination in order to gain their independence. (Pazarcı, 2017, p.492)

In addition, in 1970, in the celebration held for the 25th anniversary of the UN's establishment, the "Friendly-Relations Declaration", determining the basic principles of the Law of the States adopted by the UN General Assembly, declared the right of Self-Determination as one of the seven principles. (Tatar&Toprak, 2015, p.58)

In the 1970 Helsinki Final Act self-determination and the rights were told to be respected by all the states in accordance with the UN Charter and its obligations while not surpassing territorial integrity of others. According to this document, "all people 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". (Helsinki Final Act, 1975) However, the states were giving political autonomy to the minority groups within themselves rather than letting them exercise their right to self-determination. So, a difference occurred between internal and external self-determination. It can be concluded in internal self-determination that the people can decide on their political, economic and social structures while in external self-determination the people can construct a new state or unite with an existing one. (Dubinsky, 2018)

Liberal theory is based on the principle that individuals have rights and freedoms that the state should not violate. In this context, the legitimacy of states is directly related to these rights and freedoms of individuals. If a state disposes of an

individual's rights and freedoms, that individual has the right to migrate, resist or leave. Today, there are various subgroups among the states in the international system that do not want to establish a new state. Interpreting self-determination as a universal principle of international law lets those subgroups establish their own states. (Tatar&Toprak, 2015, p.58)

What is interpreted from the United Nations declaration and practice is that self-determination almost completely reduces it to the prohibition of forced intervention in the internal affairs of existing states. Those who can have such a right are “territorially defined political communities”. As a result, it may be seen as a right for territorial populations governing themselves in accordance with their own ideas and fighting in a peace during their civil wars. (Roth, 2011, p.80)

The concept of national self-government refers to the group of people deciding their own social and economic position, their wealth, the course of their development, and their future and existing actions. Mainly, sovereign states own the political power, the right to determine whether a region will be an independent state or not is naturally accepted as the basic means of realizing the ideal of self-determination. The group should take into account the interests of not only its members but others who may be affected by its decision. The group shares a common culture that determines various lifestyles. Their thoughts need to shape and reflect this culture. The right of self-determination is attributed to the group and it is over a territory. The right needs to be used for the right reasons, that is, to provide the conditions for the welfare and self-esteem of the group. With this the misuse would be prevented. (Margalit & Raz, 1990, p.441)

Secession

There is no agreement on the concept of secession. Because of this deficiency sometimes a case may seem as an example of secession for some people, while the others may interpret it as an example of dissolution. The literature let many interpretations to occur due to this uncertainty. According to James Crawford "[s]secession is the creation of a State by the use or threat to use force without the consent of the former sovereign”. However, what Marcelo Kohen claims is different. According to Kohen secession is:

> "the creation of a new independent entity through the separation of part of the territory and population of an existing State, without the consent of the latter. [...] [also] in order to be incorporated as part of another State" (Cismas, 2010, p.538)

The questions that can be asked are: Does it have to involve force? Or does it have to create the new state in a new place? Another issue is accepting decolonization period as an example of secession. One of the article in Draft Articles on State Responsibility, states that the colonial ruler has to let the other to exercise self-determination or it would be a crime. Some argue that because se means "apart" and cedere "to go" it does not make the colonized state to leave. Rather it is the colonial ruler's duty to leave those lands. Another idea is that on the Friendly Relations Declaration, it is claimed that the colonized territory or Non-Self-Governing Territory is a separate entity from the state under which it is governed. (Cismas, 2010, p.539)

Although the internationally sanctioned secession appears to function as the primary right of peoples free from state-led repression, international organizations have failed to endorse such a policy. First, the existence of the commission sets a precedent for international participation in the issue of secession. In light of the commission, the international community has a special obligation to set up such commissions as cases arise. Although some argue that the Badinter Commission was designed only for closure cases, not secession, a closer examination of the storyline reveals that Croatia and Slovenia left the Socialist Federal Republic of Yugoslavia (SFRY) a month before the commission accepted it. However, SFRY was in the process of dissolving; this shows that the situations were an example of secession, not dissolution. Another issue learned from the Badinter Commission is the problem of territorial integrity when discussed under secession. The "Opinion Three" examines how the boundaries are to be legally designed under the title of secession. According to the Badinter Commission, the borders of seceding state should be determined under the principle of uti possidetis which creates "existing internal federal borders of such federal units are transformed into international borders of the new state". Although some did not agree that the "Opinion Three" was legal, logical the years show that it has been accepted as logical extension of international case law. The principle of protecting internal borders as the new international border if a state secede has turned into situation acceptable in international law. (Day,2012)

The five principles of self-determination show that secession is not only legal but also mandatory in order to recover some kind of damage. It would seem that self-determination from the outside can be a healing exercise when a population is denied the right to self-determination. Some thinkers argue that separation is not justified except in cases of extreme abuse by the majority against a regionally concentrated minority. Theorists, on the other hand were interested in dividing states as a safeguard measure for a minority population and would not be interested in breaking up a democratically governed state with minority lands. Choice Theory or Primary Right theorists defended that the secession could be justified by association or appointment through the voting mechanism based on referendum. According to the system that is achieved by both types of Choice Theory, a group may easily accomplish secession. David Copp claims that "to answer in a morally tenable way the question whether there ought to be an international legal right of secession, we need first to be clear about the conditions under which a group would have a moral right to secede". *Erga omnes* refers to the rights which can be universally enforced and applied. Those kinds of rights are different from contractual rights. In contractual rights the penalty can only be assigned to one contracting party and enforced at the jurisdiction of the other party. Likewise, *jus cogens* occupies the first place in international law and is often referred to as a preemptory norm for which no exceptions are allowed. The Vienna Convention on the Law of Treaties says that any state action of treaties contradicts with both preemptory norms are invalid, and the United Nations Security Council may punish them. Even though there is no such a document that defines the obligations, the jus cogens obligations which are *erga omnes* comprises; torture, genocide, slavery and bans on piracy. According to Primary Rights theorists, if the stated criteria is met, secession is minority groups' moral right. They have to hold a referendum. They should not abuse the rights of minority groups while partitioning. A state has to defend the rights of its minority groups. It has to behave equally democratic to them either. If they prefer to secede that means they have right to do so. As long as a group is not only "territorial" but also "political", has the power to secede and create a new state, it has a general right secede. States let people or groups exercise individual and collective autonomy. According to the United Nations a state is responsible for protection of human rights. So, a state should not prevent any group in a defined

territory from exercising their right to define their political status when it comes to self-determination. A minority group does not have any right to statehood under *erga omnes*, neither does a state has a responsibility to create a state for such group under *jus cogens*. What is important for a state is to behave properly with its people. The remedial rights, theorists think that, if a government threatens the lives of group members, they have a right to secede. In other words, a group cannot decide to secede only by claiming an independence, there has to be some evidence harm. For remedial rights theorists, secession is a way to prevent any other *erga omnes* rights. With this the state will be protecting any violation of human rights. They also argue that the International Court of Justice would decide whether an allegation was justified depending on a state's action, if it was appropriate according to jus cogens obligations. (Day, 2012)

According to the theory of fundamental rights, "a group has the general right to secede the country according to the principle of self-determination, even if it is not subjected to injustice". Individual autonomy gives people the right to both freely form a union and or secede from the previous one. As a result, if those who are not happy in the state in which they live can withdraw their consent to their state and establish an alternative state to consent to. (Tatar&Toprak, 2015, p.59)

There are cases when the right to secede is recognized by international law; if a state in its domestic law recognizes the right of secession or if multinational states accept that their people has right to self-determination. (Cismas, 2010, p.554)

1.2. Territorial Integrity

The principle is rooted back to 19th century. The starting point was to respect the defined borders of states, and with the establishment of League of Nations, this principle gained more importance. To protect the territorial integrity of states the use of force is forbidden by the UN Charter. This reflects the sovereign equality of all states from most powerful to least. Territorial integrity and political independence are inseparable because they together constitute the statehood. The interventions both done by force and without force are not allowed. (Marxsen, 2015, p.2)

Sovereignty includes internal qualities and an international legal status, and the latter is summed up by the concept of non-intervention. Territorial integrity is a natural result of State sovereignty, as it maintains the "territorial" unity "or" integrity

"of the State. With political independence the State's autonomy will be protected and it will continue on exercising its duties. While territorial integrity tries to maintain the regional status quo, external self- determination causes to unwanted changes in the territory of the State and the loss of control of part of it. It has therefore been frequently claimed that the principle of territorial integrity prevents unilateral secession even rejects accepting such a right to exist. The principle of territorial integrity can only lead to the external enforcement of the right to self-determination under and certain specified situations. However, if a group of people is prevented from exercising their right to self-determination, they may have a right to secede as a last option. (Van den Driest, 2015, p.469)

The direct violation to a state's territorial integrity is accepted when there is a use of force. It is related to the customary law on state liability as it is stated in International Law Commission's Draft Articles on State Responsibility. Actions that can be directly attributed to a state, in particular, are those that are often related with its organs, especially its military. These organs are shaped by their full subordination to a state and determining this status according to the internal laws of the state based on the draft clauses of the ILC. (Marxsen, 2015, p.10)

On December 14, 1974 United Nations General Assembly Resolution 3314 which is about Definition of Aggression was adopted. According to Article 3 of the resolution, "An invasion or attack by the armed forces of a State of the territory of another State, bombardment by the armed forces of a State against the territory of another State , the blockade of the ports or coasts of a State by the armed forces of another State; an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State; the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State" are accepted as an act of aggression. (UN Resolution 3314)

Indirect violations are defined as "less grave forms of the use of force" by the International Court of Justice but these kinds of actions are also prohibited. (Marxsen, 2015, p.11)

Use of force

The states have to protect and respect the rights of people as it is stated in the dominant doctrine in the law of state responsibility which is also known as *erga omnes*. It is

stated in the Declaration on Friendly Relations of 1970, no states must threat or use force as a countermeasure. According to Article 2(4) of the UN Charter:

> "[a]ll Members [of the UN] shall refrain in their international relations from the threat or 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."

The article was designed not to accommodate any exceptions to the ban but to make the ban irresistible. Under the 1969 Vienna Convention on the Law of Treaties, the prohibition to use of force brought by the Article2(4) of the UN, is considered as jus cogens. All the international actors recognized it as a rule. As a result, international organizations are also bonded to this obligation. However, there are two exceptional situations where the use of force is accepted. (Simma, 1999) The first one is expressed in the Article 51 of the Chapter.

> "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, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security." (Article 52, UN Charter)

So, in case of a collective self-defense, aggression may be experienced. If there is an armed attack against itself, a state is allowed to react it with an armed force. Due to the fact that the states tried to use "self-defense" as an excuse, the broader right of self-defense, is strictly restricted to any situation of armed attack. It is forbidden the jus cogens of the Charter to create aggressive threat or to use armed force without any reference to Chapter VII. The second condition is; if the UN Security Council, detects a threat against the peace and security or any act of aggression, it may initiate military action gathering the armed forces of its Member States. Now, in practice, that kind of involvement may be achieved through a mandate or authorization of the UN either indivually or together with regional or international organizations. Thus, any kind of threat or use of force without any authorization of the UNSC or without being self-defense will be recognized as a violation of the Charter. The Security Council stated in Article 53 that, whenever it deems appropriate, it would use such regional regulations or institutions for enforcement activities under its authority. However, the

Security Council clearly stated that the authorization is compulsory. According to Article 103 of the Charter:

> "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

In the Declaration of Friendly Relations dated 1980, it was discussed whether the article 103 also referred to the rules of customary international law and in the last text of the Declaration, it was stated that the obligations in the Charter were superior to those that could only arise from international treaties. Article 103 does not imply obligations arising from customary international law. As Article 2 (4) reflects a jus cogens norm, all agreements, decisions and obligations that contradict it are void. It makes the Security Council obligations superior to other treaty obligations. Without any authorization, military pressure used to force the state to respect for human rights means the violation of 2(4) of the Charter. Unless a humanitarian crisis cross borders or forms an armed attack against others Article 51 cannot be referred. (Simma, 1999)

1.3. Peacekeeping

Article 1(1) of the Charter states accordingly that the first purpose of the United Nations is:

> "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace".

Preserving international peace and security is the main objective of the Security Council. The disputes need to be settled down by peaceful ways and the use of force is prohibited. However, there is no clear definition on "peacekeeping" and sometimes it is mistaken with peacebuilding and peacemaking. Even though the main aim of the UN Charter is to preserve peace, there is no such an authorization by the UN about establishment of peacekeeping forces. Peacekeeping forces come across with domestic demands to expand their functions, on the other hand external difficulties weaken their credibility. It was born as a replacement for the failure of the original mechanism of collective security. (Chetail, 2004, p.77)

1.4. Humanitarian intervention

What shapes today's international politics is the sovereign rights of states. In the system established after the Second World War with the United Nations, sovereignty of the states is the main principle and because of this the states have to adhere the principle of non-intervention. Over time, the idea that sovereignty is not only a right but also a concept that includes a series of responsibilities has emerged. It is recognized that sovereign states are responsible for providing their people with fundamental rights such as the right to life, safety and health. Today's international politics deals with the question of whether humanitarian intervention, which means intervening in the sovereign sphere of states in the name of protecting civilians, should be done or not. When a state fails to fulfill or violate its obligations should sovereignty be suspended? Under which conditions the humanitarian intervention will occur, which authority will carry out, and its ultimate purpose, are still debated. Humanitarian intervention can be defined as an intervention in the sovereign area of a state by another state, an international coalition or an international organization, using military force in the cases of massacres, violation of fundamental human rights. However, "humanitarian intervention" is not same with "humanitarian aid". In humanitarian aid is the actions are not based on a political agenda in terms of its content. Mostly international organizations and international non-governmental organizations carry out such actions. They gather the urgent needs of people under severe cases such as famine, natural disasters, epidemics. Humanitarian intervention may have a political purpose, which can be stopping the conflict and forcing the parties to a ceasefire or sometimes even a regime change. (Halistoprak, 2019)

After the Cold War the concept gained importance, as there was a threat to the security of the international order. Conflicts within the state; as it turns into human rights violations such as genocide, ethnic cleansing, forced migration, starvation and exile; increased the threat to the security of neighboring states and to international peace. In this way, the use of force for humanitarian purposes, or the idea of intervention, in order to manage the humanitarian crises and the threats they cause, are started to be discussed. (Acar, 2015, p.8)

International Commission on Intervention and State Sovereignty was established in 2001 by the United Nations. However, there was no certainty as to what

the conditions make the intervention necessary. There is also no clarity as to which authority belongs to the realization of humanitarian action. The UN can be seen as the main authority and legitimate actor in taking the decision of humanitarian intervention and carrying out the operation. It can be implemented by the decision of the UN Security Council under the Chapter 7 but to be adopted by the UN none of the five permanent member states must exercise their veto power and in total, at least nine member states must vote in favor. On the other hand, sometimes, regional organizations take action without any authorization of the UN, like in the Sierra Leone Civil War; the Economic Community of West African States (ECOWAS) took action before discussing with the UN. The ultimate purpose and limits of humanitarian response operations are also unknown. Whether the protection of civilians and ensuring basic human rights is enough or not is also another question. Advocates of restricted operations argue that the main issue that humanitarian response operations should focus on is the security of civilians and that the political agenda that goes beyond this should be excluded from the scope of humanitarian intervention. (Halistoprak, 2019)

The UN banned member states from intervening in the internal affairs of a state, and the "intervention ban" has been officially included in the international law rules. The prohibition of intervention has been shaped. First of all, the UN Charter extended the intervention ban for all states, which was previously valid only for European states, creating equality between states. Then the UN Charter allowed interference in the internal affairs of a state only if the international security was threatened and the intervention is limited only restoring peace. Lastly, the approval of the UNSC as a representative of the international community is required. (Acar, 2015)

CHAPTER 2
HISTORICAL BACKGROUND

2.1. History of Kosovo

Geographically, Kosovo is neighbors with Albania in the west, Macedonia in the south, Serbia in the east, the Sancak region of Serbia in the north where Muslims live, and Montenegro in the northwest. The territory of Kosovo has changed hands between Bulgarians, Macedonians, Byzantines and Slavs during the historical period. This Serbian domination, which came under the rule of the Serbian Kingdom in the 13th century, ended with the First Kosovo War (1389). the Ottoman domination started in 1389 and lasted for five hundred years. First Kosovo War has been a turning point for the Serbs, as they wanted to rebuild the Serbian nationalism by creating some heroic stories from their defeats and pain. Kosovo fell into the hands of the Serbs during the I Balkan War, but it shifted between Bulgarians and Austrians during the Balkan and World Wars. 1913 London Agreement ended the Ottoman domination in the region. In 1918, when the whole of Kosovo was taken over by the Serbian Kingdom, Serbs began to follow a policy of ethnic cleansing based on forced Christianization or immigration against the Albanians who formed the majority. 120.000 Albanians left the region between 1913 and 1915 due to the oppression. Later during the years between 1916 and 1918 some of the population migrated to Turkey and the Serbian government settled eighteen thousand Serb families in Kosovo to replace the Albanians who migrated. Also, in 1920, because of the economic crisis in Serbia 75.000 more came to Turkey. It is clear that this was the strategy of the Serbs. The Yugoslav Federation lands included Macedonia and Kosovo when it was founded after the World War 1. The lands of Kosovo that were in the hands of Bosnians and Albanians were taken from them and given to Serbs. The partisans who fought under the leadership of Tito managed to attract the people of Kosovo, promising them self-determination during the World War 2. However, Tito ignored his promise and attacked Dreniça killing forty thousand Albanians. After the establishment of the Albanian state, Kosovo (although its population is Albanian, but not affiliated with Albania) has always remained a source of problems in the region. Socialist Federal Republic of Yugoslavia was founded by Tito and his friends after the World War 2. The republic included Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro

and Macedonia. Vojvodina, where the Hungarian majority population was living became an autonomous province, while Kosovo, with an Albanian majority, became an autonomous unit. In 1963, Kosovo was transformed into an autonomous region with a new Constitution. Although, it was still within Serbia, Kosovo became an autonomous federal unit. Then Albanians took the governance of Kosovo. The nationalist ideas started to occur in Kosovo. The Albanians also began doing some demonstrations for independence. Kosovo Albanians were allowed to fly the Albanian flag as their flag starting from 1969. On the other hand, Tito was not comfortable with the Serbs becoming more effective. In the new constitution established in 1974, Kosovo and Vojvodina were granted a status like the other six republics. Tito was trying to strengthen them to prevent the Serbs from becoming powerful. However, this was realized by the Serbs and make them uncomfortable. Unfortunately, Tito's death in 1980 marked a new period. After 1981, attempts were made to constantly make Kosovo a Serb land. The demonstrations that started in the University of Pristina in 1981 turned into slogans for "Independent Kosovo". They were against the oppression. Milosevic captured the position of previous leader of the Communist party leader Ivan Stambolic and became the president of Yugoslavia in 1989. Together with Milosevic, the Serb oppression increased in Kosovo. The autonomy of Kosovo was abolished. Upon Milosevic's speech in the Gazi Mestan plain, the Albanians in Kosovo gathered and adopted the Constitution of the Independent Republic of Kosovo in a secret session in Kaçanik City on 7 September. Serbs closed schools, removed books written in Albanian, and Albanians were fired from their jobs. Political parties and organizations were founded upon these cruelties. (Arslan,2009)

Democratic League of Kosovo was founded in 1989 by some of the intellectuals however it was banned due to its nationalist ideas. Its first leader, Ibrahim Rugova established an Albanian government to promote a sovereign and independent Kosovo. (Ku Leuven,2020)

99% of the population showed that they wanted independence in the referendum in 1991. Later in 1992, multi-party elections were held for the new parliament and presidency and a government was formed. The only person who recognized the government was Sali Berisha the president of Albanian state. Anti-Rugova opposition was formed in Kosovo. As they thought that only way would be

by using force to defeat Serbia, they created Kosovo Liberation Army. They attacked Serbian Police Stations in 1996. The conflict between Milosevic and Rugova through the force increased. They tried to solve it but did not succeed. (Arslan,2009)

Rugova and LDK(Democratic League of Kosovo) aimed to show the West what they were doing and getting their help for their path to independence like the other four states becoming independent. However, neither the U.S nor the West was interested in Kosovo. (Daalder&O'Hanlon, 2000, p.8)

In January 1999, a deadlock was entered with the murder of forty-five Albanian-born Kosovars by Serbian police in Racak. (Arslan,2009)

The Serbs thought that if Yugoslavia dissolved, the borders of the multi-ethnic republics had to be redrawn and thus, all Serbs would live in a bigger Serbia. In 1990 nearly a third of the Croatian Republic had a Serb majority, while in Bosnia and Herzegovina there were more than 1 million Serbs. As a result, the Serb population would live in three different places: Croatia, Serbia and Bosnia and Herzegovina. According to Croatia, which did not accept that situation, individual groups could be allowed to retract the borders of the country in which they lived. Nevertheless, Croatia wanted to control the regions of Bosnia and Herzegovina where the Croats lived. The geographic dispersion of Croats, Serbs and Muslims in Bosnia and Herzegovina made it difficult to find out a consistent border in accordance with the ethnicity. What Bosnian Muslims wanted was to maintain a federal structure in which multicultural communities would live freely in a single republic. In 1992 Bosnia declared independence knowing that the conflict between Muslims, Croats and Serbs would be worse. Serbia with its population 9.7 million took the decider position. Milosevic's purpose was to unite all the Serb population and he saw any potential independence of Croatia or Bosnia as a treat and he was ready to react by using force. Seceding from federal Yugoslavia was a good idea for Milosevic after he witnessed that Slovenia was able to declare independence in June 1991. Later at the end of June 1991 Croatia also declared independence. If only the regions, where Serbs lived were left to the Serbs, Milosevic would let Croatia leave Yugoslavia. In the Krajina, Serb leaders declared independence from Croatia, which meant that there were already uprisings within the territory. When the Croats decided to stand up for their territory, the crisis reached the top. The European Community first told that none of the independences would be

recognized. However, later Slovenia's claim to independence was encouraged by Western Europe. All the Yugoslav republics recognized Slovenian declaration of independence in July 1991. President Tudjman in Croatia knowing that his country was not ready tried to prevent a war, but he did not succeed. Serbs conquered the Krajina,and the eastern Slavonia was attacked. This was the beginning of next bloody four years. The Serbs killed the prisoners of Croatia in Vucovar. However, Europe accepted the new status-quo without questioning and suggested mediation between the parties. A UN Peacekeeping force arrived at Croatia but the lands, which were concurred by Serbs were decided to stay in their hands. Throughout the years the West would stick to the appeasement policy. It was clear from how mediator Lord Carrington failed to end the conflict, that mediating could not solve anything in this case. Due to the fact that, both parts wanted to expand states at all costs, the mediation failed. The UN imposed and arms embargo in September 1991. Both sides participated in the peace negotiations with international mediators. Yet, they were acting in their ways. As a result, an external intervention was needed. The UN sent “blue helmets” to help starving people. The bloodiest and most brutal phase of the conflict began with the spread of wars to Bosnia. There were a group of Bosnian Serbs under the leadership of psychiatry professor Radovan Karadzic. Within the territory of Bosnia this group declared their own independent republic. Serbia was very powerful. The JNA was also under the control of the Serbs. Bosnian Serb soldiers were trained and got stronger. Although the president of Bosnia Izetbegovic hoped for a humanitarian aid nothing was happening. Serbia was insulated from Montenegro, which was its satellite partner by the UN sanction. Thus, some talks between European countries and Clinton Administration done for the withdrawal of Milosevic. On the other hand, France and Britain were bringing al kind of supplies to the Bosnian people trying to help and save them. By an alliance between Croats and Bosnian Muslims, the Serbs were defeated in 1992. Yet, the sides of the alliance started to attack each other. On 5 April 1992, Sarajevo the capital of Bosnia became a place where the innocent people were killed by the Serbs. They were attacking all of the buildings in the city. The media was demonstrating what was happening there and West on the other hand, continued with the embargo strategy. Nevertheless, Serbs carried on finding arms from their neighbors whereas Bosnians lost all of their weapons. The Serbs continued with their policy of

ethnic cleaning, forcing hundreds of thousands of people leave their homeland and become refuges. The West was still arguing not to intervene. After 2 years of destructive wars, Western governments realized that the conflict was more severe than they thought. The UN declared Srebrenica, and later Sarajevo, Tuzla, Bihac, Zepa and Gorazde as “safe areas”. They were expected to be safe under the UN. During 1993 and 1994 tension rose when Bosnian Muslims found weapons to fight back. After the assault to the market in Sarajevo, the West got very uncomfortable and angry. The Clinton administration suggested a NATO intervention while Britain and France were still refusing that idea. On the other hand, there would be Russia defending the Serbs in such a war. NATO went to Sarajevo to make them withdraw heavy weapons. Serbs obeyed this when Russian troops accepted to occupy the evacuated Serb positions. However, this did not end the conflict. The Clinton administration was helping to pull up the army of Croats and also the secret supplies were brought to Muslims. So, they were starting to reform the alliance. The US, in February 1994, brought the two parties (Tudjman and Izetbegovic) to sign an agreement in Washington. Later, NATO warned the Serbs from air, which made Gorazde remain in control of Muslims. (Grenville, 2005)

In 1995 both parties gathered in the Dayton Agreement. It was reached by the President of the Republic of Bosnia and Herzegovina Alija Izzetbegovic, the President of the Federal Republic of Yugoslavia Slobodan Milošević and the Croatian President Franjo Tuđman in November 1995 near the city of Dayton in Ohio, USA, and the treaty was officially signed on 14 December 1995. The representatives from the United States, the United Kingdom, France, Germany, Italy, Russia, and the European Union came together at the Wright-Patterson Air Force Base. The agreement aimed;

> “Recognizing the need for a comprehensive settlement to bring an end to the tragic conflict in the region, desiring to contribute toward that end and to promote an enduring peace and stability, affirming their commitment to the Agreed Basic Principles issued on September 8, 1995, the Further Agreed Basic Principles issued on September 26, 1995, and the cease-fire agreements of September 14 and October 5, 1995,” (Dayton agreement)

The talks ended the ongoing Bosnian war. Because the U.S. understood how serious the conflict was, a cultural center was opened in Pristina as a “virtual U.S. embassy.” Serbs would not be willing to stop their pressure on Kosovo's majority population, while the international community would neither change anything about

their Serb policy nor help Kosovo gain independence. It was obvious for Kosovo Albanians that only violence would get attention. In March 1998 the Serbs killed eighty-five people to prevent any grow for the importance in Kosovo Liberal Army. A war ensued between the ethnic Albanian population and Slobodan Milosevic's Serbian nationalists. At first, it was only a matter of economic sanctions and establishing a dialogue between the parties to reach a solution regarding Kosovo's political future. The Clinton administration and its European allies were pleased to postpone for as long as possible the unpleasant choice of letting the Serbs evade their bloody campaigns against the Albanians. They were also avoiding giving any decision. At the beginning of March 1998 when the tension raised, with the death of eighty-five people, the ministers of the Contact group members wanted the Serbs to cease fire, let the attendants for humanitarian aims enter the territory, and gather for a talk with the Albanians. However, the Serbs did not accept these. They also threatened the Serbs to impose an embargo. The Contact group was decisive about taking care of the conflict. After the killings Secretary Madeleine Albright went to Europe to discuss the situation. She wanted the entire Contact group and the U.S. be together against the humanitarian catastrophe. She reminded them the 1991 Bosnian War, how they tried for seven years for bringing peace and how they should not be late to take action for this time. As a result, the Contact group forced the Serb police forces leave the territory and imposed the Serbs to act in accordance with the international community. These were not only obligations, they also wanted Belgrade to let not only the investigators of the International Criminal Tribunal for the former Yugoslavia (ICTY) but also the Organization for Security and Cooperation in Europe (OSCE) come to the region. In addition to this, they also allowed the Contact group to search whether the enforcement fulfilled. (Daalder&O'Hanlon, 2000, p.28)

The Operation Allied Force, driven largely by humanitarian concerns, was a US and NATO response to the growing persecution of Serbs against ethnic Albanians, who make up the vast majority of Kosovo's population. The causes of crisis dated back to long ago to Balkan conflict even before the collapse the Yugoslav Federation. During the rule of Marshal Josip Broz Tito, for 40 years Kosovo was an autonomous and self-governing province of Serbia. With the death of Tito, the Serbs started to react with force against the Kosovo Albanians due to what they considered as

discrimination. Milosevic won the election in 1989 by manipulating the Serbs, then he ended Kosovo's autonomy and imposed Serbian sovereignty. The ethnic violence in the former Yugoslav Federation also gained rebirth and millions of innocent people lost their lives in the Balkan Civil war. That ethnic violence made Kosovo Albanians angry and thus they created Kosovo Liberation Army through their independence journey. With the establishment of KLA, the conflicts between the Serbs and the police forces began. A unit of the Yugoslav interior ministry police attacked back to KLA in Drenica and killed 80 Kosovar Albanian civilians inadvertently. Clinton administration assigned Richard Holbrooke who was a special envoy to go Belgrade for preventing Milosevic carry on his violence against the civilians. However, he was not successful at persuading Milosevic to stop. On the contrary, due to the abuses and terror against the Kosovo Albanians, 30.000 were forced to leave their homeland. Seeing this possible humanitarian treat, on 23 September 1998 the UNSC created Resolution 1199, for calling the states to stop the rising conflict in Kosovo. (Lambeth, 2001, p.6) According to the resolution they had to; “cease all actions by the security forces, enable effective and continuous international monitoring in Kosovo, facilitate, in agreement with the UNHCR and the International Committee of the Red Cross (ICRC), the safe return of refugees and displaced persons to their homes and allow free and unimpeded access for humanitarian organizations and supplies.” (UNSCR 1199)

On 24 October 1998, UNSC Resolution 1203, acknowledged that the Alliance had a direct position and interest in the Kosovo issue, demanded the Serbs to abide by the provisions of agreements signed in Belgrade on 15-16 October. It can be argued that if the UN was not in a position of following the resolutions, an external force could use force to stop the situation. (Minear&Baarda&Sommers, 2000, p.126)

2.1.2 NATO Intervention

To use force without the authorization of the UN was a big problem for NATO. In January 1999, the Serb forces killed forty-five people in Racak. The inspector, who was sent there, told that what they did was a horrible humanitarian disaster. With this Clinton administration decided to find a new way to solve the crisis. Although, they wished a military force, it was not an easy decision to take; so, they decided to gather in a diplomatic negotiation. The Contact group, the U.S. and the parties came together

in Ramboillet. However, the talks were not successful. While the Albanians did not want to accept a solution that would keep Kosovo part of Serbia, the Serbs were against restoring the pre-1990 status-quo and they were implacably opposed to any international interference in the governance of the province. According to some, the provisions in Ramboillet were hard to accept and that's why maybe they should have been more compatible like, partitioning Kosovo into two regions belonging to Serb and ethnic Albanian. (Daalder&O'Hanlon, 2000, p.20)

The situation in the Balkans showed that the states in the Security Council were unwilling to support universalism adopted by humanitarian advocacy, thus making the UN impotent. It was argued that, seeing the shortcomings in the international legal system governed by the UN Charter, unilateral and therefore illegal action could be legitimate under certain circumstances. (Hehir, 2008, p.45)

The peacekeeping phase that failed in Bosnia to such an extent was lifted from the Kosovo crisis, where the initial appeal was for NATO support. This practice was carried out unilaterally by the alliance, without referring to the United Nations Charter. The other major powers had no other choice rather than to accept what NATO was doing. (MacQuenn,2006, p.160)

Although opposition to the use of ground forces was based in Washington, the European countries were also curious about the issue. (Daalder&O'Hanlon, 2000)

UN Secretary General Kofi Annan submitted a plan for the civilian UN administration in Kosovo to the Security Council on 14 June 1999. After June 1999 the UN formed an Interim Administration Mission in Kosovo. Under this administration the basic service was maintained by the European Union and the OSCE. (MacQueen, 2006, p.160)

The UN High Commissioner for Refugees was also tasked with ensuring that refugees, who were forced to leave their homes during the war, can safely return to Kosovo. NATO sent a military force, called KFOR, composed of 50,000 people, mostly US soldiers, to serve on Kosovo territory.

In March 1999, NATO conducted a series of air strikes on Serbia. What NATO aimed was to persuade Milosevic to implement the results of the Rambouillet meeting, without creating a real military conflict. However, within the ongoing war conditions,

according to the President Clinton the bombardment was “to demonstrate the seriousness of NATO’s purpose so that the Serbian leaders understand the imperative of reversing course, [to] deter an even bloodier offensive against innocent civilians in Kosovo, and, if necessary, to seriously damage the Serb military’s capacity to harm the people of Kosovo.” “Allied pilots flew 37,465 sorties, of which over 14,006 were strike missions. As the campaign progressed, it grew in intensity. By the time the air campaign was suspended on 10 June, Operation Allied Force had 912 aircraft and 35 ships—almost triple the forces that the campaign started with.” In a month more than half a million people fled from Kosovo to near countries, and thousands were displaced. During the entire depth of the bombing, nearly one million people left Kosovo and half a million people were internally displaced. The failure of the air campaign to prevent a humanitarian catastrophe shows that NATO could not manage to end Serbian's “ethnic-cleansing” policy. (Minear&Baarda&Sommers, 2000, p.133)

2.1.3The situation of Kosovo after 2005

In 2005 discussions on the future of Kosovo have intensified. In June 2005, UN Secretary General Kofi Annan appointed Ambassador Kai Eide (the Permanent Representative of Norway to NATO) to Kosovo as the UN Special Representative and asked him to prepare a comprehensive report on Kosovo. In this report, it was stated that the future of Kosovo should be established by the participation of all parties and their ideas. However, Serbs opposed it because of the possibility that Kosovo would gain independence with it. Martti Arthisaari was appointed for the negotiations. Negotiations began in 2006 between Kosovo Albanians and Serbia, which would determine the future of Kosovo. Discussions were to be held not only on the question of how Kosovo would relate to Serbia, but also on cultural and religious heritage, minority rights and the economy. Serbs considered that Kosovo was an autonomous region dependent on Serbia. However, it was known that Kosovo was an autonomous region of Yugoslavia. Later, the Serbs started to defend the idea "more than autonomy, less than independence" for the status of Kosovo. In this way, Kosovo would have legislative, executive and judicial powers, and internal administration of the region with its own institutions, while Serbia would retain state and country sovereignty in the region. In addition to these they wanted the demilitarization of Kosovo and the region's affiliation to Serbia in terms of customs, borders, monetary and fiscal policies,

being represented under the same name and producing common policies in the fields of Foreign Affairs and Defense. According to the Serbs, Kosovo did not have a right to self-determination. On 2 April 2007, a plan was put forward by the UN Special Envoy to Kosovo, Finnish diplomat and politician Martti Ahtisaari, and this plan was presented to the parties. (US Department of State, 2009) According to the plan;

> "Kosovo will have a new constitution
>
> Kosovo will have the right to negotiate and conclude international agreements and to seek membership in international organizations.
>
> Kosovo should progressively move towards independence under the supervision and support of international organizations." (Ahtisaari Plan)

In addition, a special representative to be appointed by the European Union would assume the role of international representation in Kosovo and this representative would have broad powers in the regulation of civil life. Serbs did not accept the plan. The negotiations, which lasted 120 days, ended on 10 December 2007 without any conclusion. The USA and the EU threatened Russia by demonstrating that if Russia rejects the Ahtisaari Plan at the UN Security Council, they will not give up and reach the solution in the axis of the EU and NATO, not the UN axis. The EU also warned Serbia, which wanted to become an EU member. Due to the mass actions, violations and attacks by the Serbs of Kosovo against them would apply the right to self-determination. In November 2007, the Democratic Party of Kosovo under Hashim Thaci's won the elections. On Sunday, February 17, 2008, the Assembly of Kosovo stated that it has seceded Serbia and declared its independence. The U.S. recognized Kosovo quickly, while Serbia and Russia saw it as illegal. (Tüysüzoğlu, 2008, p.57)

Serbia did not recognize the independence of Kosovo, and accepted it as part of its own territory; also, Serbia accepted Metohiya as an autonomous region.

2.2 History of Crimea

Throughout its history, Crimea has been the key point of Russia's policies to increase its influence in the Black Sea and in the South.

2.2.1 During Ottoman Empire

The Tatars, who threw themselves into Crimea, the southernmost part of Western Eurasia, used geographical advantage of the peninsula and its surroundings, and became both the longest standing and the last Tatar state. In 1475, the Ottomans took the opportunity and responded to the Crimean side's request for help. The

Ottoman Empire captured the Kefe and other Genoa colonies on the coast with one move. With their landing in Crimea in 1475 during the reign of Sultan Mehmet the Conqueror, the Ottomans became its patron and greatest ally until the Khanate collapsed. While Crimea was under Ottoman rule, Russia, which has implemented occupation policies since 1784. It caused pain for centuries, including the 19th century, and forced the Muslims of the region to leave their homeland. Although the Tatar Khanate is considered to be more identical with Crimea, it actually constituted a large state in the Northern Black Sea, including the whole of today's Southern Ukraine and even a part of the Sevastopol and Don River Basin of the North Caucasus. Black Sea trade and security were the main reasons for the Ottomans to keep the Crimean Khanate under its patronage. They supplied grain, oil, honey, salt, fish and meat by sea from the north. The trade of Turkish and European clothes, weapons, spices and sugar started. This turned İstanbul into a center of trade and it lasted years until 1783, Russia’s occupation. The region was not only the westernmost station of the major Asian trade routes, but also had natural harbors connecting Eastern Europe to Asia Minor and the Mediterranean basin. The search for dominance over the entire Black Sea was the main aim of the Ottomans. The Genoa colonies threatened the interests of the Ottomans in Crimea that’s why they made the Crimean aristocracy their ally. An Ottoman province was established in Kefe. In addition to the Ottoman economy, the Khanate was actually the human and material resource required for the Ottoman expeditions. However, at the end of eighteen century when Russia captured the Crimean Khanate, the Russian troops appeared on the shores and this was a shock for the Ottomans. Between 1768-1774 the war began between the Russians and the Ottomans when the Russians entered the Han city of Balta in pursuit of the Polish alliance. Crimea first became de facto independent when the Russian Tsarist regime forced the Ottoman Empire to give up its protective position on Crimea by signing the Treaty of Kucuk Kaynarca (1774). The treaty confirmed that the war ended, and Crimea was lost by the Ottomans. The Crimean Khanate was declared independent in the region between the peninsula of Bug and Kuban rivers. The Kapburun Castle, controlling the region opened to the Azov Sea, was left to Russia. Unfortunately, this act not only opened the attacks but also the future occupation. During the first years of independence the Crimean leader Devlet IV Giray wanted Crimea under the

Ottoman Empire again, but due to reforms in the empire it did not happen. Sahin Giray came to Crimea with the Russian army and created a plan to rebuild the old power of the Khanate; and reforms were made in military and economic area. However, the Crimean Tatars, who were religious and living a traditional life, opposed these innovations. With the support of the Ottomans, a big hate against Sahin Giray started. The displeased environment caused the rebellion in a short time. In 1779, an uprising occurred. Sahin Giray escaped and Selim Giray came with the help of Russian army to suppress the rebellion. The Ottomans and Russians in 1779 signed the Treaty of Aynalıkavak. The terms of the Treaty of Küçük Kaynarca were ratified. According to the treaty, both empires would not interfere with Crimean politics, The Russians would withdraw their troops from the Khanate, Sahin Giray was recognized as khan by the Ottoman Empire, Russian merchant ships would have the right to free passage in the Mediterranean Sea. (Treaty of Küçük Kaynarca) Then, in the 1790s, the region was annexed by Russia and became a part of the Russian Empire. (Kireççi& Tezcan, 2015, p.28)

However, The Russians did not withdraw their soldiers, nor did they comply with the treaty. They tried to provoke the Crimean people in order to annex Crimea. The Ottomans also supported the Circassian and Cuban Turks against Russian provocations. Şahin Giray, with the help of the Russians, separated Crimea from the Ottomans and established a Russian-style army. The number of uprisings increased. Sahin Giray this time escaped to Yenikale. Sahin returned with an army commanded by Potemkin. Thousands of Crimeans were killed while repression of the uprisings. In 1784, Crimea, recognized the occupation of Taman and Kuban and later Kuban river was decided to be the new border. In 1785 Russians accepted the occupation of Crimea. Ottoman state could not respond to Russia due to the situation it was in on this date. After the Russians annexed the Crimea, they did not indulge Şahin Giray. Thus, Giray had to return to İstanbul and exiled to Rhodes. Then, he was executed. (İnal,2007)

The Ottomans started a new war in 1787. However, they lost the war and signed the Treaty of Jassy in 1792, they left the areas extending to Dyniester. In 1812, Crimea became the part of Russian Empire with the treaty of Bucharest. (Kireççi& Tezcan, 2015, p.32)

Russia followed a strategy, which was the support of Crimea’s independence against the Ottoman Empire, to invade Crimea from Dniester to Circassia. Russia had a policy for expelling and destroying the Tatar-Turkish Muslim population in Crimea to make the territory a Russian base for the future interests. Hundreds of thousands of Tatars migrated to Ottoman Empire. (İnalcık,1982)

The Crimean Tatars started a migration movement to the Ottoman Empire because of the economic, religious, administrative and psychological pressure. This movement lasted for 150 years. It can be divided into seven periods: 1812, 1828-1829, 1860-1861, 1874, 1890 and 1902. It is thought that between 1783-1922, 1,800,000 Crimean Tatars were expelled from their homeland. That’s how the Tatars became minority in Crimea. (Kireççi& Tezcan, 2015, p.35)

Russia created a local government for Crimea. With this way, it would make Crimea a part of itself. After the Russians captured Crimea, they quickly took the resources of economic value in the Crimean Peninsula under their control. Southern Russia's salt need is met from the saltworks near Or Gate. Fertile agricultural lands were taken from Tatars and given to immigrants and Russian nobility. On the other hand, Russian nobility seized the water resources in the steppe land in Crimea, especially between Kefe and Simferopol, as well as the agricultural lands and condemned the people of that region to them. Russian Tsarism followed a policy to eliminate values of Tatars reflecting their cultural relations with Crimea. They changed names of the place bearing the traces of Turkish and rather used the names in ancient times. In addition to this kind of policies, the Russian government started Christianization towards the Tatars. Mosques, minarets and tombs representing the religion of Islam were attacked and demolished. The mosques in the Kefe were turned into churches or shops, minarets and fountains were demolished, the shrines were looted and the remains inside were removed and ridiculed. In addition, the Russian government wanted to spread schooling in Crimea. Tatar, Russian, Greek, Italian and French were taught in the school established by Emperor Alexander in Kefe. The administrative center of the Crimean Peninsula became Simferopol and the city of Bahçesaray lost its importance. Simferopol became the civil administrative center of Crimea. Akyar, on the other hand, became the center of land and naval forces belonging to the military structure. (Baser, 2010, p.38)

Crimean cities were handed over to Slavs, Greeks and Armenians, causing great changes in their population structure. The artisans and the craftsmen of the region became impoverished with the development of Russian capitalism. (Kireççi& Tezcan, 2015, p.38)

Between 1828-9 Nicholas went on another war with Turkey, the Treaty of Adrianople enabled Russia to control southern Bessarabia and thus give more influence over the Balkans. However, he clearly stated that he had nothing to do with the territory of Turkey but would not allow anyone else to have it either. The Ottoman Empire was weakening at that time and according to Russia it was the “sick man” of Europe. Russia had to secure the rights of Orthodox Christians living in the Empire, and to stay as a great power. The closure of the Straits was also another important issue for Russia. Infuriated by Greek independence claims in the 1820s, Nicholas supported legitimacy of the Sultan despite Turkey’s never being a member of the Holy Alliance. In 1828, he entered a war with the Ottoman Empire in order to maintain special relations with the Balkan Christians and to establish a new balance between Orthodox Christians and their allegiance to the Holy Alliance. Nicholas believed in the need to occasionally act unilaterally to support the Balkan Christians and dictate policies that he considered "in the best interests of Europe". In this way Europe would support Russia in its Christian policies. He had no ambitions about Turkey without Europe, he would act together with France and Britain. He was rather after a diplomatic achievement. The bloody suppression of the Hungarian uprising that started in 1848 against the Austrian Empire with the help of Russia was a reflection of Russia’s increasing power. By 1853, Russia and France, which had been advocating Catholicism worldwide, began to clash over privileges in the Ottoman lands. In February 1853, Nicholas sent Menshikov to Turkey to visit Sultan to force him accept the terms of Russia which were “to settle the Holy Land dispute in favor of Russia and recognize the right of Orthodox Christians to visit holy places”. Menshikov’s mission did not work. When his requests were rejected, he left Istanbul on May 19, 1853. Nicholas sent Britain a dismemberment plan that suited his interests, but this plan was rejected by England. Russia acted alone over the plan. On the other hand, France was against such an idea. The possibility of re-establishing an independent Poland made France become ally with Turkey. The Russian armies began invading Wallachia and

Moldavia on June 22, 1853, without even declaring war. The main Ottoman army of the Caucasus front was defeated. In November 1855 seized Kars, won the battle. Russia's desire to split the Ottoman Empire in line with its own interests drew the reaction of Russia's rivals, Britain and France. When Britain and France entered the Crimean War on the Ottoman side, Russia was not ready to fight alone with them. In January 1856, Austria suggested negotiation, which Russia unconditionally accepted. Peace preparations were held in Vienna until June 1855 and the principles of the Paris Conference were determined. The war ended with the signing of the Paris Treaty between Russia and the Ottoman Empire, the United Kingdom and France. (Tsygankov, 2012, p.195-215)

The third and last generation of Tatars were educated in İstanbul and they were known as nationalists. Because they were in İstanbul, they had connection with the Young Turks. They founded the Crimean Student Society in 1908. One year later, the Vatan branch with the goal of establishing an independent Crimean state was established. They met with other secret nationalists in Crimea. (Kireççi& Tezcan, 2015, p.43)

2.2.2 During the First World War

On April 7, 1917, the Congress of Crimean Muslims Deputies convened under the chairmanship of Seyit Celil Calligrapher in Simferopol. In this congress, it was decided to establish the Central Executive Committee of the Crimean Muslims and 45 members were elected to this committee. Numan Çelebi Cihan was elected not only as the chairman of the committee but also as the President of Tavrida and Western Russia Mufti and Ulema Administration. At the Crimean Tatar National Congress, the first Crimean Tatar Constitution was accepted on December 26, 1917. The democratic national states were a reflection of how Crimean Tatars wanted to live freely. However, on January 27, 1918, the Bolsheviks occupied Simferopol. Turmoil in Russia was increasing day by day. The "provisional government" was both trying to fill the lack of authority and to keep the Russian army fight in the World War I. Bolsheviks' activities were spreading over the country. The riots that broke out in the vicinity created tension. The Crimean Muslims Executive Committee brought the equestrian regiment from Kherson to Crimea to reach the defense force. However, when they arrived from Kherson to Simferopol, the October Revolution took place in

St. Petersburg and the Bolsheviks took power as a result of the armed uprising organized by Lenin and Trotsky on November 7. The October Revolution paved the way for people who are seen as minorities in Russia, like the Crimean Tatars, to declare their independence. As a result, the Crimean Tatars convened a national congress on December 9, 1917, and on December 26, they accepted and declared the principle of the Crimean Ahalî Republic. After the February Revolution there were administrative and political division across the Russia and Crimea. In the north of Crimea, the Ukrainian Ahalî Republic was established, and they arranged boundaries. But the Bolsheviks were still in the territory, which was a threat for them. Some 2,000 Russian officers, who had survived the Bolshevik terror, became allies with the Crimean Tartars. They were also trying to eliminate the power of Bolsheviks, like seizing their guns. This led to first clashes between the Crimean Tatar and Bolshevik forces in Kefe and Yalta in January 1918. First Yalta, then Bahçesaray and finally Simferopol passed into the hands of the Bolsheviks. So, the terror of Bolsheviks began. People in their homes or in the streets were shot which was a way of terrorizing the people to prevent any opposition towards Bolsheviks. Many members of National Government were arrested, Mufti of Noman Çelebicihan was killed. Members of parliament and nationalists continued their gatherings. The ones who were killed were Crimean Tatars and anti-Bolshevik Russian officers, the wealthy, prominent intellectuals. After Germany and Russia signed Brest-Litovsk treaty, Germany recognized the independence of Ukraine. In order to secure the newly independent country and clean the region from the Bolsheviks, in April 1918, Germany entered Crimea and took over the administration in Crimea until the end of the month. During this period, the Ottoman Empire could not provide any help to Crimea because it did not have enough power to achieve this goal. After the German armies entered Crimea and dominated the peninsula, the Crimean Tatar national administration could not be established in Crimea. Later between the Red army (of the Bolsheviks) and the White army (of the Tsarist Generals) clashes started. The turmoil and anarchy were the main issues until the Soviet Union established a well working administration. (Aykol, 2018)

2.2.3 During the Second World War

During the "Great Purge", between 1933 and 1939, almost all of the remaining Tatar intelligentsia, including the clergy, were executed or died in labor camps. In addition to these people in 1933, 150,00 people, about half of the Crimean Tatar population, were killed or exiled. Soviet forces launched a terror movement against all Tatars remaining on the peninsula within two weeks of their arrival. They were sent to 3-4 weeks journey with no food, or any other supply. The doors of the vehicles were full-brimmed. They were left to starve and die. The ones who survive on the other hand, were sent to labor camps. (Kireççi& Tezcan, 2015, p.48)

Because of its location, Crimea functioned as a natural base to reach all parts of the sea by air and from the sea. Hitler wanted to prevent any threat to Ploashti basin in Romania, the largest oil reserve he had. Crimea was to be taken under control due to its importance over Turkey. Between 1941-1944, Nazi Germany invaded Crimea. The fact that Crimea fell into the hands of the Germans was an important point for the German advance in the Caucasus. They could move towards the Caucasus from both sides of the Sea of Azov. More than 35,000 Crimean Tatars from Crimea served in the ranks of the Red Army. around 60,000 Crimean Tatars fought. But there were up to 3.5 thousand Crimean Tatars fought on the side of the Nazis too. Operation Citadel (Fortress), which the Germans embarked on in July 1943 was not successful. The Germans were first stopped around Kursk and then the Soviet attacks increased in the Eastern Front. When Kiev was captured by the Russians, and Red Army troops began moving south of the Pripet Marshes in Ukraine, in the direction of Poland. The Soviets attacked the German Army on October 28, 1943, between the Dnieper River and the Azov Sea coast. The ongoing fighting between the Bug and Dnieper Rivers in the first half of November increased the threat with the participation of fresh Soviet troops. The operation to take Crimea from Germany started on April,8. On May,6 they entered the city. Sevastopol fell on May 9th. The biggest attacks were between Crimea and Romania on 23 April, 3 May and 11 May; It occurred on April 12 and May 11, off Sevastopol. When 25,000 German soldiers surrendered in Kherson on May 12, Crimea passed to the Russians. From that point on the control of the Black Sea was in the hands of the Russians. (Çınar, 2019, p.548)

In order to erase the historical, cultural and linguistic traces of the Tatar population the Soviets started destroying all remaining historical buildings, monuments and other artifacts such as houses, vineyards, gardens, tombs of the exiled. All works printed in the Crimean Tatar language were collected and destroyed from libraries in Crimea and the Soviet Union. The names of the towns also were changed. Russians and Ukrainians were placed in the regions inhabited by Tatars in 1944. Tatars lived in exile in harsh conditions until Stalin's death in 1953. The Tatar National Movement was born. With the pressure they made, the official authorities had to heed the demands. Their situation had been slightly improved. When they rejected some of their demands the Crimean Tatars contacted with the Soviet intellectuals who were interested in human rights. Some were able to return to Crimea. However, their numbers never exceeded 10,000. With the liberalization of state policies of Gorbachev's “Glasnost” and “Perestroika” the situation for Tatars changed. In April 1989, the number of Crimean Tatars coming back to their land exceeded 40,000. (Kireççi& Tezcan, 2015, p.51)

2.2.4 After the Second World War

With the referendum held in 1991, it gained the status of “autonomous republic”. When the Soviet Union collapsed, the Crimean Peninsula, which was under the rule of Moscow during the Tsarist Russia and the Soviet Union, was attached to Ukraine by the Soviet leader Nikita Khrushchev in 1954. In 1994, with the memorandum Russia accepted the new legal status. Due to the Black Sea Fleet, new problems occurred between Russia and Ukraine. 26 February 1992, they gave a new name to themselves and it became Republic of Crimea with a self-government. They also created a Crimean Constitution. Crimea stayed as a part of Ukraine. Russian president Boris Yeltsin and Ukraine's Leonid Kravchuk discussed dividing the Soviet Black Sea Fleet. The Crimeans held a protest in Sevastopol in January 1992 for “Republic of Crimea”. On October 14, 1993, the Crimean parliament was to decide a president and decided that only 14 Crimean Tatars would be representing in the council. According to Alexander Kruglov, the head of the Russian People's Council in Sevastopol, the number was too much. On the other hand, according to the chairman of the Tatar Mejlis, Mustafa Abdülcemil Qırımoğlu it was against the election and there could not be two presidents. Later terrorist attacks occurred. Mykola Bahrov was

Mejlis's candidate. Yuriy Meshkov was elected in on 30 January 1994. He had clashing ideas with the parliament so Ukrainian government intervened and took Meshkov from power for not taking into account the Crimean constitution and for his ideas on unification with Russia. So, an interim constitution was established in Crimea made the name; Autonomous Republic of Crimea. (Hedenskog, 2014)

In 1994, the Russian Federation agreed to protect the borders independent Ukrainian nation in Budapest Memorandum like the United States and the United Kingdom. (Kirchner, 2015) The Russian Federation, the United Kingdom, and the United States and Northern Ireland signed it. According to the Memorandum these states would:

> "Respect independence and sovereignty in the existing borders
> Refrain from the threat or use of force against the territorial integrity or political independence of Ukraine,
> Refrain from using economic coercion designed to subordinate to their own interest
> Not use nuclear weapons against any non-nuclear weapon state Party to the Treaty on the Non-Proliferation of Nuclear Weapons" (Budapest Memorandum)

On May 1997 Treaty of Friendship, Cooperation, and Partnership was signed by the President of Ukraine Leonid Kuchma and Russian President Boris Yeltsin. According to this agreement both parties;

> "Shall base their relations upon mutual respect and trust, strategic partnership and cooperation, respect each other's territorial integrity the inviolability of the borders existing, guarantee rights and freedoms to citizens of the other Party on the same foundations and to the same extent that it does to its own citizens". (Treaty of Friendship, Cooperation, and Partnership)

In the Partition Treaty on the Status and Conditions of the Black Sea Fleet, Russia would take 80 percent of the Black Sea Fleet and lease the use of military facilities in Sevastopol for 20 years. In the 2004 presidential election, the Prime Minister Viktor Yanukovych, who he was former governor of the Donetsk region, was elected as "Russia's candidate". The other candidate was Viktor Yushchenko whose election campaign was unsuccessful. On 21 November 2004, Yanukovych was thought to have more advantage in the election. However, according to the polls Yushchenko got more support, so protests began, and Orange Revolution became successful in Independence Square, in Kyiv. January 2005 Yushchenko was elected which was a "free and fair" election. Nevertheless, Russia and Yanukovych did not accept the result of the elections. The conflicts over gas deliveries, Yushchenko's

pursuit of NATO membership and his support for Georgia during the Russian-Georgian War of 2008, caused worsening of Russian-Ukrainian relations. On the other side, the population was upset about the lacking political and economic reforms. Yanukovych, this time, won the February 2010 presidential election with little votes against Prime Minister Yulia Tymoshenko. OSCE's international observers were the judges in this election so it was for sure transparent. He wanted the power to be hands of himself and his Party of the Regions. He brought back the presidential system and a new parliamentary majority was created, reinstating the 1996 Constitution. He started to sentence his opponents, there were restrictions on media and democracy. Ukraine was going towards to authoritarianism. The Kharkiv Pact, was signed on 21 April 2010 and extended the lease until 2042 in exchange for a multiyear discounted contract to provide Ukraine with Russian natural gas. When Yanukovych gave a break to the negotiations with EU in 2013, strong oppositions protested this act in Kiev. The demonstrations rose even they wanted the president to resign. For three months the protests and fights continued between the Maidanists and the Berkut riot police, causing a lot of deaths. Pro-Russian demonstrations began in the city of Sevastopol on 23 February. In Simferopol and Sevastopol, pro-Russian militias started to form local militia organizations. In the end Yanukovych was forced to sign an agreement with the ones who were opposing him on February 21, 2014. The foreign ministers of Poland, France, and Germany, and also the special envoy sent by Putin were there during the signing of the agreement. This agreement firstly brought the 2004 Constitution back, secondly limited the powers of the president and lastly stated that earl presidential elections would be done. However, Yanukovych did not leave the country so did not comply with the agreement. Thus, he lost his legitimacy as the president of the country. Oleksandr Turchynov came to power as a president and Arseniy Yatseniuk formed an interim government. This was accepted by the majority of the Crimean Parliament. On March 6, the Crimean Supreme Council announced on March 16 that they would hold a referendum determining whether Crimea would join Russia. (Hedenskog, 2014)

Within days Crimea was full of Russian troops. In his statement, Putin said that the intervention was necessary "to ensure proper conditions for the people of Crimea to be able to freely express their will." The Supreme Council of Crimea and the City

Council of Sevastopol declared independence. They used the right to self-determination for their people and showed Kosovo as an example. They held a referendum on 16 March 2014. If they wanted to join Russia, Crimea would be sovereign and independent. They had to decide either to unite with Russia or stay a part of Ukraine. As the result of the referendum with 83% participation rate, 96.77% in Crimea and 95.6% in Sevastopol voted to join Russia. After the referendum the Republic of Crimea was established. President Putin recognized it. Russia accepted Crimea and Sevastopol as its federal subjects. Then the Treaty on Accession of the Republic of Crimea to Russia was signed. On March 17, 2014, Russian President Vladimir Putin signed the approval of Russia's annexation and Crimea officially joined Russia. (Bowring, 2018, p.26)

CHAPTER 3
JUSTIFYING NATO'S INTERVENTION IN KOSOVO

NATO, in March 1999, started its seventy-eight-day bombing campaign in order to stop the Federal Republic of Yugoslavia in its actions of repression of ethnic Albanian population and to make the FRY accept its terms for the political future of Kosovo. (Wippman, 2001, p.129) Despite all of the serious crimes such as; destruction of houses, attacks and killings of civilians the international actors did not take Kosovo as an important situation. (Mertus,2000, p.1744)

3.1. Article 2(4) of UN Charter

Article 2(4) prevents States to use force against any state's territorial or political integrity under the UN Charter. From 1945 onwards, with the help of some agreements like the International Covenant on Civil and Political Rights and the Genocide Convention the developments in human rights gained more importance and a State's own treatment to its citizens has become an external matter. This includes "widespread and systematic human rights violations". Some argue that since the United Nations Charter includes a prohibition of the use of force in Article 2(4) and there are no clear exceptions for humanitarian intervention it is not possible for the international law to recognize the right to humanitarian intervention. However, this argument degrades the international law and the UN Charter's role into only non-intervention and respect for sovereignty. On the contrary, both the UN Charter and the international law enhance the importance of human rights. One of the purposes of the UN and the international law is to give people and states access to those rights. The Security Council has had the main responsibility to preserve the international peace and security under the international law. Yet this does not make the Security Council the only authority to take action. If it is not in a position to act due to a veto among the permanent members, another states or organization may intervene in severe cases without the authorization of the Security Council. Whether a right to humanitarian intervention exists is one question and what the conditions for such a right to be is another question. Under extreme situations States can have a right to humanitarian intervention. On the other hand, humanitarian intervention was also seen as an excuse for States to intervene another country in accordance with their self-interests. According to modern customary international law this right of intervention can be used

if “there is an immediate threat of humanitarian emergency involving large scale loss of life: and if military intervention is needed to stop or prevent the loss of life.” This intervention was a joint movement of the world’s most powerful states that were concerned with the continuity of the rule of the law in international relations. In addition to this, the intervention was done without UN authorization. (Wipmann,2001)

3.2 Article 51- Collective self-defense

NATO was founded on the legal basis of Article 51, which refers to self-defense. Only states may apply to self-defense and the protection of individuals is not included. Because Kosovo was not an independent state, FRY’s using force against the people in Kosovo was not considered as an armed attack on a State. There was not an attack either against any of the member states of NATO or neighbor countries by FRY leading the operation of NATO. In addition, the NATO’s operation was designed to prevent FRY from launching a close attack on another state. (Wipmann,2001) So, NATO would only act in accordance with self-defense and would not undertake other tasks.

According to the U.S. Army Operational Law Handbook “to constitute a legitimate act of collective self-defense, all conditions for the exercise of an individual State's right of self-defense must be met-with the additional requirement that assistance is requested." Firstly, Kosovo was not an internationally recognized state. Secondly, they did not request for help. (Mertus,2000, p.1757)

They relied on to be based on Article 51 rather than Chapter VIII, and therefore they considered this exempt them from the requirement of Article 54 of Chapter VIII which argues that in any circumstances the Security Council has to be informed before the action. In 1992, the Resolution 781 was adopted declaring no-fly zones over Bosnia-Herzegovina. This resolution urged countries to take all necessary measures to provide assistance to the United Nations Protection Force, nationally or through regional agencies or regulations. NATO's next task was to assist in the implementation of the embargo on Yugoslavia, which was authorized by Resolution 787. NATO’s actions were not against the Chapter VIII of the UN. The Security Council only referred to Chapter VII when it allowed NATO to join the enforcement and stabilization forces in Bosnia and Herzegovina. So, it showed that NATO was not going to be treated as a Chapter VIII organization. Although NATO organized the

IFOR, the Security Council declared its mandate as a call for the sides to stop their terrorist actions or excessive use of force and rather come to a political solution. (O'Connell,2000, p.60)

3.3 Chapter VII

The Security Council is offered to have a duty to "determine the existence of any threat to the peace, breach of the peace or act of aggression" with article 39 of Chapter VII and with the help of Articles 41 and 42, the Security Council would make recommendations or decide how to take action to maintain and restore international peace and security. The authorization of this Chapter includes "peacekeeping and authorization of regional organizations". (O'Connell,2000, p.67) NATO's draft policy on peacekeeping states that the organization will obtain a mandate from a UN Security Council or an Organization for Security and Co-operation in Europe (OSCE) before it takes action. When sanctions are required, NATO policy is in accordance with only Chapter VII. The main point is that authority will be acquired. In any possibility UN authorization is required to take action except from collective self-defense. (O'Connell,2000, p.69)

3.4Authorization by the UN to use force

If military force needed to be used in the Kosovo conflict, it must have been nondefensively. Unless there was authorization by the UNSC, the legal bases for a nondefensive use of force would be meaningless. (Mietz, 2018, p.728)

The UN Charter emphasizes that the use of non-defensive force can only be accepted if it is confirmed by the qualified majority of the Security Council, which includes all the permanent members. This way, the Charter prevents any possibility of interstate violence getting out of control, because international consensus involving the consent, or at least the consent of the great powers, is required to be reached. (Wipmann,2001) It is clear that justifying an action under the title of "use of force" is very hard. If the specific criteria or certain conditions to use of force are not met under the Charter's prohibition it is not accepted. If any of these criteria is not met while using force the state is violating the Charter. Julius Stone argues that using force to forestall the crimes that are already internationally recognized is not needed. While the use of force may be accepted under certain and defined situations, more than 23,000 attacks and an 11-week air campaign are not acceptable. There was no justification for

the air strike. NATO developed a claim to prevent any possible threat against European stability. If the interventionist does not change the borders of the state it intervenes permanently, it does not violate the territorial integrity of that state. NATO has a wider mandate than its each member to decide whether there is a threat against the security of international community and take action to end the violence. There was another opinion on the fact that Security Council had not been successful to end intrastate genocide. According to this opinion the use of force is insufficient under the international law when it comes to the violence which occurs within the territory of a state itself, as self-defense is only allowed on a state's territory in response to attacks by regular forces. The United States disapproved how its intervention was acknowledged in a limited, defined circumstances. What the US wanted was its action's legality to be examined with all reasons together under the title of self-defense. It is important to fulfill the required standards and purposes of the Charter to expose the legality. (Sofaer,2000, p.3)

NATO did not formally demand an authorization by the UN as it knew that the UN would refuse it because it undermined the idea that the intervention had to protect the rule of international law. Thus, if the UN rejected NATO's demand for an authorization, it would diminish the legitimacy of the intervention. It would be an obstacle for NATO to prove its action as legal. (Mietz,2018, p.748)

UNSC did not authorize such a military action expressly. There were 3 resolutions: SCR 1160(31 March 1998), SCR 1199(23 September 1998) and SCR 1203(24 October 1998). These resolutions were adopted under Chapter VII, addressing threats to peace and security, and their essential provisions were legally binding all of the States. (Greenwood,2000, p.927) The Security Council requested the FRY to agree to negotiate a settlement to the dispute in accordance with the principles of the Organization for Security and Cooperation in Europe ("OSCE") and the Contact Group recommendations. (Wipmann,2001) According to them Kosovo issue became an international problem which must be solved as it was threatening international peace and security. They reflect the humanitarian disaster. A year before the NATO's intervention, on March 1998 SCR 1160 was adopted, in which there was a call for the sides to stop their terrorist actions or excessive use of force and rather come to a political solution. The Resolution 1160 only accepts peaceful means to resolve the

conflict and invites all states to rebuild the peace among the region. The economic sanctions did not work. The Russians insisted on resolving the conflict within the UN. Europeans disapproved of NATO's action without an authorization of the United Nations Security Council. They rather created a diplomatic monitoring group and observed displacement of about 200.000 and 500.000 Albanian people. On September 1998, SCR 1199 was adopted. In this Resolution it talked about the worsening of the situation in the Federal Republic of Yugoslavia of Kosovo poses a threat to peace and security in the region. The Resolution also wanted both sides to cease fire and let the diplomatic monitoring group to stay in the region and "the OSCE, and the International Committee of the Red Cross to have access to the province". (O'Connell,2000, p.77) The resolution 1199 proposed:

> "intense fighting in Kosovo and in particular the excessive and indiscriminate use of force by Serbian security forces and the Yugoslav Army which have resulted in numerous civilian casualties and, according to the estimate of the Secretary-General, the displacement of over 230,000 people from their homes"

The resolution also requested immediate steps to end the humanitarian catastrophe in the region.

With the adaption of this resolution, UNSCR 1160 was repealed. There were some obligations imposed on the FRY and the KLA like withdrawal of Serbian forces from Kosovo however, they were never met. (Wipmann,2001)

Between the years 1998 and 1999 there were many efforts to find an agreement, which Belgrade would accept. Milosevic agreed withdrawing troops from Kosovo when he faced the threat of NATO in October 1998 and also let the OSCE's Kosovo Verification Mission send 2000 observers for monitoring how the FRY's treat ethnic Albanians. Later both the United States and the Western countries requested Kosovo Albanian representatives and the FRY come together in Rambouillet for a comprehensive political solution between the parties. However, Serbs did not agree on anything and their military actions started once more. (Wipmann,2001) Not only the Secretary General of NATO, Solana claimed that what NATO did was to assist the Resolution 1199 but also Thomas Pickering who was serving under Secretary of State for Political Affairs of the Unites States, showed 1199 as the foundation of the intervention. (O'Connell,2000, p.78)

The last resolution adopted by the UN was 1203 which ratified the OSCE and NATO agreements with the FRY, demanded that the FRY comply with the conditions set out in Resolution 1199, and again mentioned the ongoing threat among the region. (Mertus,2000, p.1759)

Before NATO's intervention thousands of Kosovars were driven from their homes by FRY's aggressive attacks on the places, which were controlled by the KLA. However, after March the number of the Kosovars who were driven to other countries as their places were destroyed increased much more and even 10.000 people died. According to NATO, FRY benefited from this intervention and intensified its attacks to fulfill the requirements of its plan called "Operation Horsehoe". China and Russia were against this support and were curious about the bombing. NATO did not want to appeal to an authorization of the Security Council, as it knew for sure that in any case Russia would veto it. The General Assembly stated in the Resolution "Uniting for Peace" that,

> "if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefore."

So, if the Security Council cannot succeed in achieving peace the General Assembly will be involved. The military action can only be suggested by the Assembly when the states will have the right to take such action without a Security Council resolution. Likewise, collective self-defense can only be suggested by the Assembly when a country is under an armed attack.

After the intervention of NATO, on May 4, the UNSC constituted the resolution 1239. The Resolution did not approve the intervention, yet it did not clearly blame it either. In Resolution 1244 they settled "on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required,". This was for the future scenario. The resolution restricted commenting on the earlier intervention. These decisions did not lead to a subsequent ratification. Kosovo was not an exceptional event for using force. The

United Nations did not want to create Kosovo as an exceptional to prevent further cases in the international community which would show Kosovo for their reference for their actions. (Mertus, 2000, p.1761)

3.5 Humanitarian Intervention

Human rights refer to morality when understood as "natural" rights. However, when incorporated into international law, the same human rights can be used as legal rights. As a result, human rights are not only moral but also legal part of the international community. Rather than being an indication of underestimating the fundamental rules of international law, the reprimand that causes human suffering is more logical in a moral discourse than legal discourse. (Mietz, 2018, p.744)

According to the views of those who claim that the intervention for humanitarian reasons is in accordance with international law, the way a state treats its own citizens in its own country under the 2/7 principle of the UN, which states that “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.” As a result, domestic behavior of a state towards its citizens does not concern international law. However, this may change. If this state does not treat its citizens in such a way as to deny fundamental human rights and to shake the conscience of humanity, this issue will no longer be its internal affair and it will be possible to intervene for humanitarian reasons. Humanitarian intervention is the use of force by one state against another state to prevent widespread human rights violations here. In accordance with Article 2/4 of the UN Treaty, all members refrain from using force or threat of force in their international relations, either against the territorial integrity or political independence of any state or in any way that is incompatible with the purposes of the UN. Two exceptions to this are the legitimate; self-defense against armed attack and the use of force with the authorization of the UN Security Council. NATO's intervention was neither an act of self-defense nor it was authorized by the NATO Security Council. (Keskin, 2007, p.51)

After the killing of 40 Albanians at Racak in January 1999, the observers were removed and the talks for bringing peace to Kosovo began again with the Contact

Group, which was consisted of Britain, the US, Germany, France, Italy and Russia. They gathered to react what was happening in Bosnia during 1990s. Discussions lasted between Yugoslavia, Albanians and the Contact Group close to Paris in Rambouillet. What they intended to do was to persuade both sides to end the violence. Kosovars did not accept the agreement as it did not include the withdrawal of Serbs' troops and give them an independence. On the other hand, Serbs did not accept the agreement as they were unwillingly to abandon Kosovo and allow an armed international military force. The international assistance would be stopped if the Kosovars did not agree to sign whereas Serbia would be bombed unless the Serbs accepted the terms of the agreement. (Mertus,2000, p.1745) Unfortunately, while the Kosovo Albanians agreed, the Serb side was against it. NATO's intervention goal was not about what happened there before, on the contrary to prevent ethnic cleansing, which would occur later. Acting on anticipation of future persecution does not meet any assessment of whether there is a need of emergency intervention. As a result, the question was whether the violence that emerged after the failure of Rambouillet would appear in the same way if NATO had not started its bombing campaign. Also, whether NATO tried all other diplomatic options was another question. During Rambouillet discussions, while trying to come to terms with FRY, NATO presented difficult conditions for any state to agree. For example, NATO requested its forces to be allowed to move across the FRY in order to check compliance with proposed requirements. However, this was an unconstitutional act for the FRY and against sovereignty of a state. One of the biggest reasons for NATO to use force was because the FRY did not accept any of the terms. At the end of March 1999, NATO initiated its bombing campaign without an UN authorization. Again, they were showing the violations of human rights as their excuse. Kosovo Albanians started to flow out of the state after the start of the bombardment. More than 900,000 people left with a big destruction. (O'Connell,2000, p.80) At the end NATO agreed to decrease demanding terms that it offered at Rambouillet. Some argued that NATO knew for sure that Milosevic would not accept the terms and NATO was taking a step towards future alliance. There was another thinking that NATO planed all these to remain as a great power in the Balkans like it used to be during the Cold War. NATO openly sought to end the tension. It wants neither any innocent people to die nor the region to be

destabilized. NATO might have expected Milosevic to agree with the terms faster if he had seen the treat of use of force and a unity, as a result the conflict would have resulted easier. Since NATO had already started its threats, it had no chance of not using force. (Wipmann,2001)

The contrast between "national sovereignty and maintenance of peace" and “protection of human rights across and within state borders” has been an issue for the maintenance of humanitarian intervention. However, they are not opposing ideas. In fact, without human rights “territorial integrity” is unthinkable and the integrity of a region may be assisted by the implementation of human rights. What the UN supported was to resolve the conflicts by applying “negotiation, mediation, inquiry and conciliation.” (Mertus, 2000, p.1754)

The UNSCR 1244 makes no reference to this bombardment; it only accepts it as a unilateral act of NATO. (Keskin,2007, p.59)

3.6 NATO’s claims

According to some NATO officials, if West had intervened earlier especially in Bosnia, the deaths of thousands of people could have been prevented. (Wipmann,2001) FRY forces acted against most of the human rights like prohibitions against genocide, raping, killing and plundering of the innocent people. For NATO, all of these crimes must be considered for the aim of the use of force if they are not enough to justify it. An individual’s right to use force in order to stop a crime against him or herself is recognized by the whole world. The events in Kosovo were disturbing other countries in Europe. It was seen as a threat to peace and security of neighbors. Although the Security Council did not let anyone to use force, it wanted FRY to stop its actions against Albanians and ratified the agreements to be signed by FRY, which NATO put forward with threat. NATO saw the words of the Security Council as a permission to use force and that’s why all the member countries were there to help. (Sofaer,2000, p.1) Some argue that there shouldn’t be a need for UN authorization to protect people whose rights have been violated. There was an argument on the “concept of necessity” that NATO acted necessarily in Kosovo conflict. However, when considered the situation in Kosovo, the defense of necessity, as devised by the ILC, would seem unlikely to justify the illegal use of force. There are only two circumstances that a State may apply to defense of necessity defined by the ILC:

firstly, if the action was the only way to protect a fundamental interest of the State from a serious and imminent danger. Secondly, the action did not heavily harm the fundamental interest of the State where there was an obligation. The military action is not covered by the ILC as a sample of the defense of distress. It comes into play when time is of the essence, where there is no other choice or option and no time to request authorization. In the case of Kosovo there is no situation to defend the intervention as an example of defense of distress. (O'Connell,2000, p.72) NATO should have legitimized the use of force not by threatening a leader to choose one way but by following the 1969 Vienna Convention on the Law of treaties which prohibits the use of force and supports respect for human rights. (Mertus, 2000, p.1747)

The last resort may be the public opinion. If the actor who used force manages to convince the public opinion that there was a violation of human rights and it is why it used force, there would be some affect among the people. However, again it would not be enough to justify an action and it would not affect the rules of the Charter. NATO tried to show Kosovo as a dilemmatic crisis which needed not only intervention but also holding back. (Mietz,2018, p.745)

As it was stated previously, forming a peaceful and stable Europe had been one of the most important aim of the Clinton Administration. They also, had fears on national security about protracted war and a huge refugee flow. They wanted to prevent a bigger war with much more costs. On the other hand, their aim was to sustain the reputation of NATO.

The wrong use and understanding of power led the international community not to create multi-ethnic state out of Kosovo. UNMIK did not choose to use soft power like holding local politicians accountable for education and trying to shape media with negligible penalties. The fact that KFOR and most of the police fled risk reflected that the international community was also unable to use hard power sufficiently. The other states expected the UNMIK to transform power to the institutions however it was not that much easy. (King &Mason, 2006)

Legitimacy

Legitimacy is the most important point in the implementation of human rights. Given this, only human rights processes and bodies which are considered to be legitimate will be behaved serious and only the states considered to be legitimate will

be able to successfully implement human rights norms. The rules and practices have to be compatible with the concepts of justice in order to be considered as legitimate and fair. At a minimum, to be seen as both legitimate and fair, the way how the decisions are made not only has to be transparent but also welcome the participation of related ones. However, in Kosovo crisis the international community could not manage to ground their intervention orders on international law and neither did they show their decision-making process transparently nor it was an open process. There are some situations when the UN Charter supports humanitarian intervention such as the Kosovo conflict where an external alliance acts unilaterally to recover the violations of human rights that another state committed. Everything about this intervention must be connected with humanitarian law. If a state fails to pay necessary attention to these justifications and limitations that means the action undermine the legitimacy if the international law. Although NATO is a regional organization, which tried to build the peace and to make the FRY stable and defend human rights, nothing legitimizes NATO's intervention. NATO does not have a right to use force independently. In the use of force, a legal basis for entry must still be established from other sources of international law external to collective self-defense treaties. In any case the UNSC needs to decide the action. NATO action in Kosovo cannot be considered to fall within the exceptions to Chapter VII or Chapter VIII, as ex post authorization for action was not mentioned or not stated by the Security Council. (Mertus, 2000)

3.7 The International Court of Justice Advisory Opinion

An advisory opinion was given by the 'principal judicial organ of the United Nations' in July 2010. It was about “the legality of the unilateral declaration of independence outside the context of colonialism”. (Christakis, 2011, p.74) The United Nations General Assembly asked: “Is the unilateral declaration of independence by the Provisional Institutions of Self Government of Kosovo in accordance with international law?”. The Court stated that the General Assembly requested its opinion on the compatibility of the declaration of independence to the international law. As a result, it was not the Court’s duty to talk about the statehood question of Kosovo. Kosovo did not comply with the real conditions of statehood, but the Court did not comment on this issue. The court says it has not been asked for an opinion on whether

international law gives Kosovo a positive mandate to unilaterally declare its independence and explains;

> "The question is narrow and specific; it asks for the Court's opinion on whether or not the declaration of independence is in accordance with international law. It does not ask about the legal consequences of that declaration. In particular, it does not ask whether or not Kosovo has achieved statehood. Nor does it ask about the validity or legal effects of the recognition of Kosovo by those States, which have recognized it as an independent State. Accordingly, the Court does not consider that it is necessary to address such issues as whether or not the declaration has led to the creation of a State or the status of the acts of recognition in order to answer the question put by the General Assembly". (Advisory opinion)

Based on the Lotus Judgement, of International Court of Justice "stating restrictions on the independence of States cannot be assumed due to the consensual nature of the international legal order" the Court decided that, it was not necessary to show a permissive rule regarding a particular act unless there was a prohibition. (Cirkovic, 2010, p.899)

The Court concluded that the authors of the declaration did not act or intend to act as an institution established by the legal order created by Resolution 1244 and empowered to act accordingly. So, they acted as the representatives of Kosovo, who were acting for a common purpose, not for the interim government. Because the independence was declared not by the Provisional Self-Government but by the people, this does not mean there was a violation of international law. (Muharremi, 2010, p.867)

At the end there was an advisory opinion put forward claiming that Kosovo's declaration of independence was not illegal. The Court did not give any opinion about "external self- determination outside the colonial context or to the theory of 'remedial secession". Even if the Court decided that declaration of independence was not against the international law, this decision did not imply that the declaration has been 'ratified' by international law or the exercise of a right recognized by it. The absence of a prohibition on attempting to secede does not encourage doing so and does not imply the existence of a right. Although most of the states saw Kosovo's declaration of independence as a "'sui generis" case, the Court dealt with Kosovo under international law. This showed that international law cannot be abandoned as a matter of political discretion and convenience. Some argued that the international law does not adjust declaration of independence. For them, the international law cannot lead to a state's

creation. However, the Court does not agree with such arguments. According to the Court:

> "the illegality attached to the declarations of independence stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*jus cogens*)."

The Court held that, other than exceptional situations, a general ban against unilateral declarations of independence could not be derived from the Security Council's application or other factor (s). An important point of the ICJ's rationale for the declaration of independence is that the declaration of independence could be evaluated by international law. Nevertheless, the declaration was not enough to turn an entity into a state. It's obvious that the ICJ tried to avoid expressing its stance on secession, and how a state is established. That's why, it differentiated declaring and effecting independence. However, when it comes to Kosovo's statehood, the process had already begun in 1999. Kosovo was brought under the administration of the United Nations and Serbia abandoned all political powers over Kosovo. In 2008 they declared independence; all the government structures were working for Kosovo. So, Kosovo needed a little bit more to fully become a state. Kosovo's declaration would be interpreted as a step to start a new state not a new process to begin creating a state. The ICJ indicated that in international law there is no rule to prevent an entity from declaring independence, behaved Kosovo in accordance with international law and wanted each state's recognition to such evaluation. The ICJ took the Vienna Convention on the law of Treaties as a guide and gave same importance to the resolutions of the United Nations Security Council, the speeches done by representatives. According to the ICJ, Resolution 1244 suspended the legal order already in force with its political responsibility and rather constituted a better structure, which was civil and secure. However, the interim government established in 1999 was especially created for humanitarian aims, so it could not be turned into a permanent one. As a result of the lack of a provision about the final status of Kosovo in the resolution 1244, the declaration was not included. With the Resolution 1244 legally binding obligations and powers were valid only for United Nations bodies and member states, and that this was not binding for those declaring independence. Thus, there was no violation of international law. (Muharremi, 2010, p.868) Self-determination has a

bond with the right of every citizen to participate in the running of public affairs. Therefore, governments should represent the entire population, regardless of race, color, ancestry, or national or ethnic origin. In Kosovo when accepting the ones who declared independence as the representatives, the right to self-determination was applicable for them. (Cirkovic, 2010, p.904) Although the ICJ does not wish to articulate itself about a right of secession and the scope of the right to self-determination, certain conclusions on these aspects can be drawn from the opinion of the ICJ. (Muharremi, 2010, p.867) The Court behaved "respect of territorial integrity" as a principle that is limited between states, which was contrary to the practice which added the entities of the states into the principle. (Christakis, 2011, p.84)

What can be understood from the ICJ, that a group of people, whether they have the right to self-determination or not, has the freedom to declare independence without necessarily violating international law. Likewise, one may say that as there is no international law rule prohibiting the declaration of independence, there are no international legal norms prohibiting secession. It was stated that, "the Court considers that general international law contains no applicable prohibition of declarations of independence". Whether a declaration of independence led to a creation of a new state is decided by the general international law particularly by the principle of effectiveness. Similarly, the secession's achievement is decided again by effectiveness. These are all the opinions made by the ICJ on the given question. (Muharremi,2010, p.867)

NATO and the Russian Federation met in May 1999 for G8 and the UNSC Resolution 1244 was established during an accord agreed by Belgrade. The Resolution created an interim administration led by the United Nations and placed the NATO security forces within the region which is known as KFOR. There were two main obligations of the United Nations Interim Administration Mission in Kosovo (UNMIK). The UNMIK was responsible for "promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords." In order to transfer administrative responsibilities to Kosovo's local temporary institutions a process was started. In addition to this the UNMIK was to check whether the institutions were working properly. In addition to this, the Interim government was needed to establish the way

for “political process designed to determine Kosovo's future status, taking into account the Rambouillet accords.” (Cismas,2010, p.572)

The UNMIK was removing the existence of Federal Republic of Yugoslavia for the security of Albanian people not by establishing an independent Kosovo but by the UN administration. With the help of UNSC Resolution 1244, the process was not in rush. (Wilde,2011, p.151)

After seeing that all the institutions were in the right position, only the final settings were left for the creation of a State. The responsible person for this path was the UN Secretary-General Martti Ahtisaari. Both of the parties in the negotiation process were warned to “a number of principles, among which sustainable multi-ethnicity and the protection of cultural and religious heritage in Kosovo, in particular the Serbian Orthodox sites.” (Cismas,2010, p.573)

The Contact group made sure that the process should neither involve use of force nor a unilateral action. The SC Resolution created a temporary arrangement for property rights over the region which was called “pending for a political settlement”. According to the United Nations disputes are to be solved by international law. So, settlement was not enough for a legal solution. The main question was whether the right to external self-determination applicable for the people of Kosovo. In the SC Resolution 1244 it says;

> “the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2.” (UNSCR 1244)

Both the Helsinki Final Act and the Rambouillet accords, talk about territorial integrity and the right to self-determination and as it was written in Rambouillet, Kosovo Albanians were the representatives, so they had the right to self-determination. It meant that they would have a right to secession. However, showing it as a threat to the territorial integrity of the FRY and prohibition secession was not acceptable. (Cismas,2010, p.574)

The International Court of Justice noted in the Advisory Opinion that the phrase “settlement” in Security Council Resolution 1244 was only made in relation to UNMIK's duties, even though many interpretations could be made, this did not mean prohibition of declaration of independence. (Wilde,2011, p.151)

Plan made by Ahtisaari portrayed how the independence would be achieved. The parties were urged to have better relations. The provisions established reflect that formal entity occurred. “Famously, it stipulates the right to negotiate and conclude international agreements and the right to seek membership in international organizations , the right to have "its own, distinct, national symbols", including a flag, seal and anthem' , and in language reminiscent of the Vienna Conventions on State Succession, the duty to take over part of the external debt of the Republic of Serbia, whereas immovable and movable property of SFR or Serbia located within the territory of Kosovo shall pass to Kosovo.” (Cismas,2010, p.576) Ahtisaari supported the independence and his recommendation reached to the UNSC in March 2007. Ban Ki-moon, the Secretary General of the UN was also in favor of the plan. They believed in negotiating with both Pristina and Belgrade. The motives behind these ideas were;

> “a history of enmity and mistrust exacerbated by oppression, systematic discrimination and repression of the Milogevi6 regime during the 1990s, the recent reality of de facto discontinued Serbian rule over Kosovo given the UNMIK administration, the will of the "overwhelming majority of the people of Kosovo”. (Cismas,2010, p.576)

The reason why the Security Council was unresponsive was due to the disagreements between its members. While the United States and members of the European Union thought that it was the only possible solution and upheld a draft resolution to approve it, Russia continued to be in favor of Belgrade’s claim. Pristina and Belgrade met again in the negotiations with the United States, European Union and Russia. However, they could not agree on anything further even after four months effort. (Cismas,2010, p.577)

3.8 Right to secede in the case of Kosovo

There are 5 main implementations of self-determination in international law. First of all, it was about the basic human rights rather than just being a legal law. It is applicable to the people who have been abused and excluded from their homeland. It is directly subject to a defined and separated territory. The population in that area are the ones who are governing accordingly to their own ideas. Lastly, governing and determining their status both external and internal are the right *erga omnes* and *jus cogens*. What is understood from these five principles is, misusing and disregarding the self determination of the minority groups is considered as a violation of human

rights and the other states need to protect. Remedial secession would be an alternative if a population is prevented to exercise self-determination. (Day, 2012)

The independence of Kosovo meant that a part of the territory and the people living there separated without Serbia's consent. International law accepts that an entity has the right to secede if that state confirms such a right or if it acknowledges that its constituent people have the right to self-determination. During the dissolution of Yugoslavia, the international actors defended Serbia’s territorial integrity and denied Kosovo's alleged right to secede. Although in practice there was not a lot cases to be example for remedial-secession, Kosovo included reasons for it. Firstly, there was a massive discrimination against the Kosovo Albanian population. Secondly, the Kosovo Albanians formed the majority of the population in Kosovo. Lastly, as they failed to have any kind of peaceful solution, there was no other option. All these abuses made the states realize that the status of Kosovo needed to be determined. It also showed a new approach to secession in international community, which was firstly seen as a violation of state entity. Accordingly, state practice in the case of Kosovo would become an example and also remedial secession would be a way to create new state. However, the opposing ideas prevented remedial secession to be a right and continued to defend status quo. (Cismas,2010, p.569)

Unilateral Declaration of Independence

On 17 February 2008 Kosovo unilaterally declared independence after the negotiations, which were not achieved at the United Nations. Belgrade rejected what Kosovo did and reflected it as a move against their territorial integrity and the national identity of Serbia. They also claimed that it was a violation of international law. With the start of negotiations for the future of Kosovo together with Martti Ahtisaari, Serbia became curious about Kosovo becoming independent with the help of European countries. Seeing after the intentions of the negotiations, Prime Minister Koštunica felt even more threatened and spoke out;“the creation of another state within our state which would take away part of our territory [...] cultural heritage, spiritual homeland, property and much of what our historic and modern identity is built upon”. On September 30, Serbia created a draft of new constitution, which was approved by a referendum on 28 and 29 October. In a speech of Koštunica, he rejected the idea of losing Kosovo and related it to losing Serbia, and their identity. When Ahtisaari came

to Belgrade to discuss on 2 February 2007, Koštunica refused to meet him. He also refused the plan of Ahtisaari by saying “Serbia was requested something that no other country would ever be ready to give unless it wanted to lose its statehood, its identity and its place among the peoples and nations”. So, the Serbs were totally against this plan and the fact that Kosovo was to separate from Serbia. Even though the Serbs did accept the plan, the Albanians were ready to agree. Ahtisaari introduced the plan to the UN Secretary-General. The independence of Kosovo was defended by the international community in the Final Report. While not accepting the plan, Serbia did not present any other possible solution. The authorities reiterated Serbia's readiness to give Kosovo "more than autonomy, less than independence". The Ahtisaari Plan, approved by states in the West, was not officially adopted quickly due to Russia’s veto to change the adoption of the UNSC Resolution 1244. Later come the Troika talks, gathered by the EU, The US and Russia. The West supported the plan B for the Albanians. With the declaration, Koštunica in his speech spoke, “Serbia refused to be humiliated [...] as long as there is Serbian people Kosovo is part of Serbia”. He also refused to recognize Kosovo’s independence. In February, they even gathered in front of the National Assembly to protest. In addition to this, they were attacking to the embassies, which defended the declaration. The rapid support of so many countries for Kosovo's secession displeased Serbia. According to Serb leaders the UDI not only violated the UN Charter, but also Resolution 1244. They were also afraid of the fact that Kosovo would be an example for secession and would lead to other situations. Kosovo’s secession created some fear about incoherence in Serbia’s being a nation-state. Serbia tried to defend itself as a sovereign country and observed the independence as a consequence of NATO’s illegal intervention. As a result, the intervention was seen as a break with Serbia's biographical persistence as a sovereign state. Serbia continued to not recognize Kosovo as a sovereign state and carried its claims about Kosovo still being in Serbia. It also became an obstacle for Serbia’s EU membership. Later, Serbia has made important concessions on Kosovo. After the advisory opinion made by the ICJ in 2010, Serbia acknowledged the EU's role in normalizing relations with Pristina. In April 2013, Kosovo and Serbia signed the Brussels Agreement. By signing this Serbia agreed to abolish its "parallel structures" in northern Kosovo, where the Serb population live, thereby handed over one of the

last remaining administrative tools to the Kosovo authorities. Serbia became more pragmatic towards Kosovo as; the Serbs saw it as a path for their aims of becoming a member of the EU and to demonstrate itself as a partner. Controlling the area of Kosovo was deleted from calendar. At the end, EU started membership discussion in 2014 for Serbia. (Ejdus, 2019)

Above all, it is a fact that the attitude of the international community, especially those supporting Kosovo's independence, has made Kosovo independent. Internal factors have been very effective through the way to independence. With the moral support of some minorities, Kosovo Albanians had systematic demands for independence and their pressure on the UN, even though sometimes through violence. But these were never enough for the achievement of the independence. What made Kosovo independent is the competition between international powers. The USA defended Kosovo the most due to its own aims like controlling Russia, and the EU was the second to defend which aimed to be a global power and saw the Balkans as its inner region. (Ayhan, 2008)

The use of force in the case of NATO's intervention is illegal. Although, it is claimed to have humanitarian aims, it is not an intervention that is accepted by the international law. What NATO hid itself behind to be the repression done by Milosevic against Kosovars. Because at first international community did not act quickly NATO saw itself responsible for providing security. However, the action was against the international law. Firstly, it was not a self-defense as some claimed because there were not any attacks towards the members of NATO. Secondly, NATO did not ask the UN for a permission, neither did the UN have an authorization about the subject. On the other hand, the declaration of independence is legitimate. After the advisory opinion of International Court of Justice, it is clarified that, because the ones who declared independence are the representatives of the living population there is no violation of international law. The representatives are a group of people who wanted to decide their future by using their right to self-determination.

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CHAPTER 4
CLAIMS OF RUSSIA FOR JUSTIFICATION

The internal conflict in Ukraine was jointly used by the pro- Russian Crimean and Russian authorities in order to detain the Ukrainian government in its control over Crimea, to hold a referendum and later to declare Crimea's independence. One day after the declaration, Crimea was accepted as an independent state by Russia. Likewise, in a few days, the accession agreement was signed, Russia's constitutional requirements for Crimea's accession to Russia were met. While the Crimean authorities and Russia argue the Russian intervention in Crimea is legal, this argument is rejected by most of the states.

4.1Self defense

One of the arguments of Russia about the intervention was the protection of Russian minority who lived in Ukraine. They justified it by showing the Russian Council's permission to Putin to use military units in the territory of Ukraine. According to the chairperson Valentina Matviyenko military action was necessary not only because the life and security of Russian people who were living in Ukraine were under threat but also military in Sevastopol and the Black Sea Fleet were in danger. The Article 51 of UN Charter "Rescuing your own people who are in danger in another country's territory is partly accepted as self-defense or as it is stated in Article 2 (4) of the UN Charter it can be accepted as an unwritten customary exemption of the prohibition of the use of force. (Marxen,2014)

4.1.1 Use of force

The right to self-defense essentially entails an ongoing *armed attack* or the threat of an imminent attack against a state. The armed attacks against the territory of a state or military posts or military units abroad ensure the right of self-defense. However, when it comes to armed attacks on citizens of a state residing in the territory of another state it is debatable. When the population is considered to be a constituent part of statehood it can be claimed that a violent attack against a certain number of a state's people will mean an armed attack against the state itself. (Marxen,2014) For a lawful self-defense there are three basic criteria to be met. First of all, there has to be an armed attack. Secondly, there has to be a response to the first attack. Lastly, the response has to be proportional to the attack. (Green, 2014) According to the French

scholar Giraud, “The defense must be "necessary" under some conditions: Firstly “The danger must be real and present. While a threat to life is not a sufficient provocation, the attack need not be consummated to give rise to legitimate self-defense; it needs only be imminent.” Secondly, “There must be no available alternative to the use of force.” Thirdly, “The defense must be in proportion to the danger run and must cease when the danger ceases. When the attacker runs away, the defender may not pursue and inflict injury.” (Weightman, 1951, p. 1097)

There are two exceptions to the use of force, namely, force sanctioned by the UNSC to protect international peace and security, and the right to self-defense stated in Article 51 of the UN Charter. First of all, Russia's action cannot be justified by the sanction of the UN Security Council, since a decision was not taken to allow the use of force in Ukraine. Secondly, Ukraine did not attack Russia therefore did not have right to use force under the title of self-defense. (Olson, 2014, p.33)

In his speech Putin stated that:

> “When we see this we understand what worries the citizens of Ukraine, both Russian and Ukrainian, and the Russian-speaking population in the eastern and southern regions of Ukraine. It is this uncontrolled crime that worries them. Therefore, if we see such uncontrolled crime spreading to the eastern regions of the country, and if the people ask us for help, while we already have the official request from the legitimate President, we retain the to use all available means to protect those people. We believe this would be absolutely legitimate. This is our last resort.” (Putin,2014)

However, Putin's explanation made it possible for Russia to use force to both protect and defend Russian citizens and ethnic Russians living in Ukraine. On the other hand, Russia counted on the dissertation of Thomas Franck; “self-defense against attacks on citizens abroad”. This is not a traditional way of formulation self-defense but rather an open-ended formulation. Putin also likened this intervention to NATO’s intervention in Kosovo to justify it by claiming it a “humanitarian act”. However, Russia’s being critical about “humanitarian intervention” makes it is problematic to accept this intervention as humanitarian. Putin argued that the use force can be accepted only if it is in self-defense or by the decision of the Security Council in New York Times few months earlier. Putin most likely used language that appealed to the humanitarian sentiment of Western States to increase the legitimacy of his claim to protect Russian citizens. (Murray, 2014, p.14-15)

Yet, none of these criteria met the action of Russia. Russia's military action cannot be seen as a "last resort" because "self-defense" excuse was unnecessary due to nonexistent treat to Russian Nationals as they had claimed. This action represents not only a violation of *jus ad bellum*, but also it is an abuse of the already problematic extension of protection of nationals. (Green, 2014, p.8)

4.1.2 The Protection of Nationals Abroad

For Protection of Nationals there is no need for the UNSC authorization to use force while a State is protecting its citizens under attack or under a threat of an attack abroad. In Article 61(2) of their Constitution, the Russian Federation guarantees "its citizens" protection and patronage abroad". (article 61(2))

4.1.2.1 *Article 2(4)* of the United Nations Charter

Some claim that the protection of nationals is not against Article 2(4) as long as the force used there, does not violate the political independence of that State or its territorial integrity. However, this claim would contravene the "absolute prohibition" the Article 2(4) is providing. This claim will be groundless when it is thought that even the most 'surgical' operations completely committed to protecting or rescuing citizens are defined as the use of force.

For application of Art (2) of the UN Charta there must be enough evidence in which nationals are in danger in a foreign country and that foreign country must be unwilling or unable to offer adequate protection in other words there must be no other reliable way to save the endangered mass. However, in the case of Russia there is no such an evidence therefore, the explanation of the Russian Council's chairperson is not relevant in terms of the international law. There had to be an authorization of the Security Council to led Russia use "responsibility to protect" the minority in Ukraine, but as there was not any violation of human rights against the people the intervention was not acceptable. (Marxen, 2014)

4.1.2.2 Passportization

Russian authorities gave the right to apply Russian passports to the ones who have already had Soviet passports and this process is called the "passportization". "With its passportization policy, Russia offers a so-called "derivative" (as opposed to "original" acquisition of Russian nationality) through a state act called naturalization,

more specifically through individual as opposed to collective naturalization". (Peters,2019) Nowadays what Russia tries to aim with this policy is to prevent its own natural population decline through migration.

In a telephone conversation in March 2014, Putin told President Obama that there was a threat to the life and health of Russian people living in Ukraine. The nationals, whom Russia was trying to protect, were the ones who have been handed a passport recently. The citizenship conferred by such a passport policy can only be applied internationally if the link between the state in question and the new holders there is a real and effective. This policy started in 2008, since the Georgia conflict the warnings have been in effect. After Yanukovych's overthrow, Russia issued approximately 143,000 Russian passports to Ukrainians in the region at the end of February 2014. (Green, 2014, p.7) Because "passport is a manifestation of both citizenship and sovereignty", passportization is complicated when combined with the protection of citizens. In this way, the situation arises that by issuing passports, Russia turns into an internal actor from an external actor and become able to claim sovereignty over the passport holder. As a result, passportizaiton may create a situation of Russia's involvement which even may lead to a violent presence of Russia with the aim of protecting its nationals. International law does not prevent any State from granting passport to whomever it wants. Thereby, it is clear that Russia could legally produce population in order to interfere with the reason of protecting citizens by issuing passports. However, it's not that easy. After the Nottlebohm case, there occurred a condition; for citizenship to be applicable to other States, there must be a genuine and effective link based on strong factual ties. That's why the fact that a large number of Crimeans hold Russian passports alone was not enough to generate population for a Russian intervention to protect citizens. There should be some aspect of actual Russian citizenship not a passport. As, previously, Crimea was part of the Russian Empire and later was an autonomous part of the Soviet Union before being gifted to Ukraine after the dissolution of the USSR, the people of Crimea seem to have a de facto aspect of Russian citizenship. Overall, when the living population is also considered, the historical bond is seen. (Murray,2014, p. 30-31) However, it is very challenging to reconcile Russia's rationale for protection of nationals abroad with the jus ad bellum rules regarding Crimea. Passportization prior to military interventions was an excuse

and insincere by nature. Therefore, the passport policy may be considered as an indication of a hidden agenda behind the interference in order to protect citizens. (Green,2014, p.7)

4.1.2.3 Threat to Russian Citizens

Some think that since the 1960s, the interventions to rescue people became a modern State practice. They turned from Western practice to generalized principle but most of the cases were challenged in terms of fact or proportionality not in terms of principle. The others support the idea that in any circumstances the protection of nationals living abroad cannot be accepted as a justification. Even among the authors who acknowledge the contingency of using this justification, many advocate a traditional unwritten exception to self-defense and the prohibition of the use of force not written in Article 51 of the UN Charter. To uphold this argument some considered that citizens abroad cannot not be regarded as the external positions of their State, most of the time the regional state whose sovereignty is violated cannot take the responsibility of foreign nationals whose life and integrity are in danger. This jurisdiction does not necessitate an attack, it simply requires a probable threat to life and integrity of those people. (Tancredi, 2014, p.11)

President Putin, while addressing to the Russian Council for his request, argued that:

> ".. threats against the lives of Russian citizens... and members of the military contingent of the armed forces of the Russian Federation deployed in conformity with international agreements on the territory of Ukraine".

The threat to Russian citizens in Crimea was considered as a "fiction" and an "excuse" as shown by some states intervening before the Security Council. Later, on 6 March 2016, Astrid Thors who was the OSCE High Commissioner on National Minorities visited Crimea and Kiev and attained no evidence of the treats to Russian citizens. The same conclusion was also achieved on 15 April 2014 by the Office of the United Nations High Commissioner for Human Rights in the *Report on the Human Rights Situation in Ukraine.* (UN Office of the High Commissioner for Human Rights) On 23 February 2014 the new Parliament wanted to adopt the *Law on the Principles of State Language Policy* which would make Crimean the only State language at all levels. Although at first it was seen as an unfriendly move against Russian citizens, the acting president of Ukraine, Oleksandr Turchynov rejected it. For the protection of

minorities, he rather wanted to propose a new draft language legislation in accordance with international standards. (Tancredi, 2014, p.12) Even if they did not veto it, it is difficult to accept such a law affecting only residents and citizens of Ukraine as an "armed attack" of the UN Charter against Russia. The threat to the safety of citizens must be more serious and imminent than trivial or speculative. Although the government who took control was anti-Russian and had nationalist elements, efforts to restore central government control over local administrations, some uncoordinated actions which include violence against Russian-speakers were concerning incidents, they could not be considered as a threat to Russian citizens. It is clear that government institutions were in turmoil during the overthrow of Yanukovych, yet it was neither a complete disorder nor did it last long when Russia intervened. So, there was no general civilian violence that specifically threatened Russian citizens. There is no doctrine or practice that allows military intervention to guarantee that citizens of one state continue to live in the conditions they want in another sovereign state; neither does it let holding of a referendum to annex part of that state's territory. (Olson, 2014, p.37)

Act of Aggression

The Council of the European Union saw the behavior of Russia as an act of aggression against Ukraine and blamed Russia for violating the sovereignty and territorial integrity of Ukraine. Majority of the States in the UN Security Council mentioned Russia’s action as an act of aggression or the individual behaviors which are referred as an act of aggression in Article 3 of General Assembly Res 3314. Although it does not have a legally binding effect The Declaration on the Definition of Aggression is accepted and often used in the international community. The example of individual aggression is Russia’s violation of the 1997 Agreement (its term was extended to 2042) which was signed to regulate the Black Sea Fleet’s presence in Crimea. Article 3 (e) of Res 3314 exemplifies ‘The use of armed forces of one State which are within the territory of another State with the agreement of the receiving state, in contravention of the conditions provided for in the agreement...’ as an act of aggression. Although they had the right to stay in Crimea, Russian troops were not allowed to act freely in the region, Russian soldiers opposed Article 6 of the Agreement by not respecting the sovereignty of Ukraine, not abiding by its laws and interfering with the internal affairs of Ukraine. (Tancredi, 2014, p.19)

Ukraine consented to a Russian presence in Crimea under certain and limited conditions. The movement of Russian ships through Ukrainian ports and the movement of troops and supplies were subject to Ukrainian legislation. The laws of the receiving state continued to be applied to the forces of the sending state. Ukraine did not waive its territory to Russia in accordance with its basic agreements it only ablocated land and infrastructure in Sevastopol and Feodosia to Russia. These obligations make Russia not a territorial sovereign but a kind of leaseholder or a leaseholder with some limited rights. The Black Sea fleet arrangement did not provide Russia with a legal basis for intervention in Ukraine. Black Sea fleet arrangement ensures that "legal sovereignty over the Crimea . . . unambiguously came to reside with Ukraine." So, treaties assured non-intervention and enabled Russia to recognize the borders of Ukraine in the time of independence. (Grant, 2105, p.78)

In addition, a use of force at the request of a government does not contradict the Definition of Aggression. The Definition of Aggression indirectly accepts the legality of invited interventions. It does so by referring the Article 8 (e), stating that if the invited state failures to leave or its actions clashes the invitation given it will constitute an attack. Thus, if there was an adequate invitation from Crimea and Russia behaved accordingly the measure taken the annexation would be legal and consequently would prevent Russia from qualifying the use of force in Crimea as an attack. Yanukovych's invitation could legalize the blockade of Ukrainian military bases securing the violence did not increase but on the other hand it would neither justify Russia's claimed support for the pro-Russian armed men in Crimea nor be suitable for the establishment of law and order in Crimea. Article 8(e) of the Definition of Aggression says that "the use of armed forces ... within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence" which means it is an act of aggression that counts. Due to the fact that Crimea became de facto part of Russia with the use of force and as a result of Russia's permanent expansion of its presence this intervention is accepted as an act of aggression under the Article3(e). (Murray, 2014,p.21)

4.2 Protection of Security Units

Russian officials were concerned about whether the Ukrainian security units would attack the Russian military bases in Crimea. On the other hand, Ukraine assured that there would be no such actions even as a response to Russia's offensive actions in Crimea not only against Ukrainian military and civilian facilities but also personnel. In addition to this, Russia showed it's taking over of public buildings and strategic points as a provision to the attempts of unidentified "armed man", who were thought to be Ukrainian security units, to seize local government buildings. (Olson, 2014, p.33)

4.3 Request for assistance

Another claim of Russian authorities was a letter of Yanukovych inviting Russia to intervene on Ukraine as a precaution against the protests. When the purpose of the invitation of the foreign troops is the implementation reflects that it is hardly legitimate for regional governments to issue such an invitation. The one who is inviting needs to be the highest authority. Thus, State must speak with one voice. When it comes to Yanukovych's invitation it is little bit complicated. Whether Yanukovych was able to ask for help from another state as being the highest authority was debated because he was not in Crimea. (Tancredi, 2014, p.13)

The validity of Russia's claim that Yanukovych was able to seek military assistance depended on whether he was the one who represented the Ukrainian state in providing such consent. Russia defended its argument by saying that how Yanukovych was removed from office did not comply with the Ukrainian constitutional provisions, and this meant that he was to be seen as the legitimate President of Ukraine who had the authority to invite Russian troops. (Hiphold, 2015, p.247)

Article 108 of the Ukrainian Constitution ensures the termination of the President's power if he/she is dismissed by the accusation of treason or any other crime. Article 111 of the Ukrainian constitution claims that more than three-quarters of the seated members have to vote to impeach the president. First of all, most of the members of parliament have to agree to commence indictment procedure, secondly a commission has to be established for investigation, then the results have to be considered by the commission, fourthly two-thirds of the majority of constitutional members have to vote and decide on the evidence to file a criminal complaint against

the president and at the end, after being approved by the Constitutional Court of Ukraine, a decision to dismiss constitutional membership by three quarters must be taken. However, none of the requirements were met, as a result Yanukovych acted against the constitution. He was accepted to be in charge. Unless there is an opposition group, the government may invite a foreign state's troops to its own territory. (Marxsen,2014, p.375)

In the commentary to Article 29 of the International Law Commission the state's the consent must, first of all, be "valid under the rules of international law", secondly "the expressions of the will of the State, it may be tacit or implicit, provided, however, that it is always clearly established", thirdly "the consent must always be really expressed", fourthly "the consent must be internationally attributable to the State. In other words, it must emanate from an organ whose will is deemed, at the international level, to be the will of the State, and the organ in question must also be competent to express that will in the case in point." Fifthly "In order for it to constitute a circumstance precluding the wrongfulness of an act committed by a State in a particular instance, the consent of the State having the subjective right which would otherwise have been infringed must also have been given prior to the commission of the act". Lastly "If one accepts the existence in international law of rules of jus cogens—in other words, of peremptory norms from which no derogation is permitted—one must also accept the fact that the conduct of a State which is not in conformity with an obligation imposed by one of these rules must remain an internationally wrongful act even if the injured State has given its consent to the conduct in question." (International Law Comission) When it is looked at these necessities whether Yanukovych was still the president, or he did not have any control over state when he invited the Russian troops is the main problem. Because of this the consent's attributability to the state is unclear. The highest authorities of the state must express their consent which needs to be recognized internationally. (Hiphold, 2015, p.250) Some authors argue that, governments which are in exile, in some rare situations, may have the validity to request help from foreign troops, although they have lost effective control. There are two possibilities for that rare circumstances. The first one can happen if the origin of the country is internationally illegal like the legitimate government of Kuwait which was in exile but was able to appeal a foreign

help while fighting with Iraqi aggressor. The second one is that, if most of the states in the international community and also the organizations recognize the government in exile, that state will be accepted as the legitimate representative. So, as long as the invitation appears to have substantial support from the general public, international practice proposes that an invitation by an authority, that could reasonably claim to speak on behalf of the state, may be seen as legitimate in some cases. The international recognition is very important to decide the representatives of the states in disorder. In the case of Crimea, neither of these conditions happened. First of all, the transitional government in Kiev did not take office by an outside imposition; it was not minority or racist government and it did not violate human and minority rights. Secondly, the only country recognizing Yanukovych's presidency was Russia, which was the militarily intervening state. However, the whole international community treated the Transitional Government of Kiev as the representative of Crimea. (Tancredi, 2014, p.14)

On 22 February parliamentary votes this number was not achieved, so Yanukovych remained as the legitimate president. However, with his removal from the office he lost the power to invite foreign intervention and he was not in the position of the president of Ukraine anymore. Yanukovych lost effective control after he had fled Ukraine. He had already lost the support inside of the state like police and military forces. Non-state actors or regions within states are not allowed to invite military intervention by the International Law. (Green, 2014, p.6)

When it comes to the legitimacy of governments whether Yanukovych had more power than the Maidan interim government was not proven. Although in 2010 he was elected democratically, a social movement, as well as the majority of lawmakers, opposed his retention. Russia's intervention was not aiming to re-establishing the Yanukovych government and overthrowing the interim administration, but rather pursuing national interests. Its aim was to prepare an occasion to separate the territory. According to the standards applied when questions of government authority arose at the time of the turmoil, the turmoil in Ukraine, no matter how serious, did not justify circumventing government bodies that continue to operate in Kiev and most of the country. The events which led Yanukovych's

presidency's end and to the formation of an interim government did not provide ground for foreign intervention. (Grant, 2015, p.82)

4.4 Aiding Self-determination

It is clear both in the Definition of Aggression and the Declaration on Friendly Relations people in an effort to self-determination can "seek and receive support". However, the given support must be suited to the demands of Charter. Therefore, not only the use of force but also providing non-lethal material to the opposing groups is prohibited.

The General Assembly, in its Declaration of Friendly Relations (1970), argued that certain features of the general non-intervention rule may apply in cases where a colonial country or people are denied the exercise of their external right to self-determination. For example, if a state forcefully prevents another state's right to self-determination, the people of that state may have rights against the state that committed the violation. These rights include the right to "act and resist" against the state violating the principle and a right to receive "support" from other states. (Grant, 2015, p.84) However the Friendly Relations Declaration mainly supports the main two principles:

> "The principle that States shall refrain in their international relations from the threat or 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", and "The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered". (Declaration of Friendly Relations)

Crimea was not in a position of need to exercise an international right to self-determination. In the case of Crimea nothing led another state to intervene.

4.5 Referendum

The effect of the Russian military presence throughout Crimea, on the referendum is another problem. Russia appealed to democratic legitimacy and the will of the people while deciding territorial shift. Can the will of the people overshadow territorial integrity? Did the referendum meet the required obligations? In their article Avishai Margalit and Joseph Raz expresses self-determination as a group's right to determine its future, it "speaks of groups determining the character of their social and economic environment, their fortunes, the course of their development, and the fortunes of their members by their own actions." (Margalit&Raz, 1990, p.440)

People need to be free and genuine while expressing self-determination. In the international community these kinds of expressions are done with referendums on a region's future legal status. However, when a state exercises such force and poses a threat to the state its intervening, it is difficult to determine whether the people actually reach a free decision. It is important to fix whether a state used its free will to self-determination or there was a force of intervening state behind that action. As a result, the referendums are to be monitored. The referendum in Crimea was held and formulated in an armed emergency context. There were pro-Russian military and paramilitary troops in the region. (Vidmar, 2019, p.377)

Holding a referendum in Crimea hastily, during a public crisis and without third party observation, raised questions about the legitimacy of it. (Grant, 2015, p.69) Crimea's vote to join Russia was too high: ninety-five-point five percent at the rate of eighty-three percent turnout. Even if it is democratically legitimate an achieved referendum does not create the right to independence. At most, it can create the task of negotiating a new legal status that can lead to greater autonomy and self-government. There was not any change in existing international borders after the referendum in Crimea. On the other hand, Russia acted against Ukraine’s territorial integrity which according to the UN Charter was prohibited. Due to the fact that there was hardly any time for negotiation and discussion between ethnic groups in Crimea the referendum’s democratic legitimacy is questionable. However, this does not mean that referendum was illegal. (Vidmar, 2019, p.367)

Another question is whether the referendum held on March 2014 was compatible with the Constitution of Ukraine. For holding a referendum there is a rule of law already introduced in 2007 by the Venice Commission as a basic precondition “[...] referendums cannot be held if the Constitution or a statute in conformity with the Constitution does not provide for them [...]

The Commission concluded that this referendum was contrary to the Ukrainian constitution because a local referendum was not appropriate to decide on issues related to changing the territory of this country, according to the Article 73 of the Ukrainian constitution. (Hilpold, 2015)

The good faith is applied during a change in a state’s border. However, the intervening state should not have any strategic interest in the territory, or the

intervention should not be a rapid one. In the case of Crimea; on March 11 they declared independence, on March 16 they held a referendum and on March 26 Russia annexed Crimea. The departure of three thousand Crimean Tatars and ethnic Ukrainians; the reports of harassment against Crimean Tatars; being prevented from their freedom movement and the assault to the parliament building of Crimean Tatars; being forced to resign from their jobs and lastly being internally displaced shows that Russia was not behaving with good faith. (Grant,2015, p.76)

4.6 Remedial Secession

Due to the Russia's forced intervention some argue that Crimea had a right to secede in terms of "remedial secession" and that's why Russia's supporting this legitimate secession was lawful. Under this argument, one could hypothetically claim that Russia's use of force was legal as it supported a remedial secession.

Although it was seen successful, the Crimean Referendum was openly carried out against the will of Ukraine. International law does not grant secession outside the colonial context. Russia with the case of Kosovo, made a statement in which it was said that if some circumstances occurred secession could be authorized. It defined such circumstances. Those conditions should be limited to truly extreme circumstances, such as an outright armed attack by the parent State, threatening the very existence of the people in question. Otherwise, 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.

Considering the multi-ethnic structure of the Crimean people, the existence of collective self-determination is already questionable. Whereas the right of "peoples" to self-determination within an existing state gives some minority rights within that state which can possibly lead to an autonomy, it does not allow the group to be completely separated from the state. "Self-determination is therefore in principle limited to the realization of "internal self-determination". (Marxen, 2014) Although Russia has been an opposing view to the right to secede, in this case it tried to put Kosovo as an example for its justification. Putin in his speech referred to the Written Statement of the United States America in 2009, submitted to UN International Court about Kosovo. He claimed that the UN officials applied double standards on Kosovo.

In the case of Crimea, the criteria for “the right to remedial secession” has not been met. However, it is clear in the case of Crimea that there were no gruesome, widespread human rights violations which is basic and most widely agreed criteria for the right to remedial secession and neither was there a continuously denial of internal self-determination. The Ukrainian political system greatly accepted Crimea's special status. Crimea was given the status of an “autonomous republic” in Ukraine. With this the institutional arrangements for the practice of self-determination existed in Crimea. (Christakis, 2015)

Even if the regional autonomy was not implemented perfectly there was nothing about the continuously denial of internal self-determination. Likewise, no widespread human rights violations were encountered. For a remedial secession the claim of Russia to justify its actions a “humanitarian intervention” and a referendum were not enough. So, Russia’s using of force cannot be justified by defending that it supported the Crimeans through their way to secession or held referendum which helped them to express their right of remedial secession. (Geiß, 2015, p.437)

The reunification of Crime with Russia

Russian scholars of international law interpret the role of Russian military forces in Crimea by "Reunification of Crimea with Russia". For them the purpose of the Russian armed forces was not to shape the expression of free will, but to generate conditions for the expression of this will, that is, to assist the "people of Crimea" in self-determination. Kapustin and Zorkin continued with defending that Russia was only trying to protect its citizens under “responsibility to protect”. They claimed that Ukrainian state collapsed due to the coup in Ukraine which led to the social contract to be broken. This is such an interpretation that clearly transcends the "boundaries" of international law. They seem to exploit the principle of self-determination. They thought of including Crimea to Ukraine like it used to be in 1954. The Russian Association of International Law, in an open letter reflected that with the referendum the Crimean people used their own will and returned to their historical homeland: “Russia became the restoration of historical justice, realization of historically developed legal grounds”. The shared history becomes a factor which diminishes Ukraine's sovereignty over its territory, thereby restoring the time of pre-UN Charter norms. (Leonaitė&Žalimas, 2016, p.46-49) 1954 Crimea’s transfer to Ukraine has

been considered as a fault of Nikita Khrushchev as he not only violated the constitution but also did this without consultation with the people. However, this remains unclear; even if that was the case it would not have any influence on the international level. This wouldn't have changed the legal assessment if Khrushchev had acted under the continuing union of the USSR. Because where state boundaries are at stake, conditions cannot be used to modify a State's treaty obligations even if something unexpected happens. Stability in international relations takes importance rather than other legitimate impulses and interests. Russia and Ukraine signed Treaty of Friendship, Cooperation, and Partnership in 1997 in which they agreed on "respecting each other's territorial integrity and confirm the inviolability of the borders between them." (Geiß, 2015, p.429)

4.7 International Response

The Crimean referendum and the annexation of Russia caused a series of international protests and accusations particularly on the part of the Western governments claiming that Russia had seriously violated international law. Western states and international organizations have declared that the change in the status of Crimea will never be recognized. (Milano, 2014, p.51)

100 Member states of the General Assembly confirmed again the territorial integrity of Ukraine. Armenia, Belarus, Bolivia, Cuba, North Korea, Nicaragua, Russia, Sudan, Syria, Venezuela and Zimbabwe's votes were against the territorial integrity of Ukraine. On the other hand, 58 states abstained, and the other 24 states were not there during voting. (Shirmammadov, 2016)

4.7.1 Nonrecognition

While the General Assembly constituted a resolution and the voting rights of the Russian Federation delegates in the Council of Europe were suspended. A few of states did not openly agree with the view of invalidity of the referendum and annexation. The United States clearly showed its opinion in different platforms. Britain, France and Germany also did this. In addition to this they rejected the referendum and annexation within the European Council. (Grant, 2015, p.92) Angela Merkel stated that "Ukraine's territorial integrity is not negotiable". The Foreign Secretary of Britain, William Hague said, "This action is a potentially grave threat to

the sovereignty, independence and territorial integrity of Ukraine. We condemn any act of aggression against Ukraine". (Wikipedia)

According to Japan the referendum was illegal and any forced changes in the regional status quo were unacceptable.

In addition, G-7 leaders agreed upon not accepting the situation in these words:

> “[...] such referendum would have no legal effect. Given the lack of adequate preparation and the intimidating presence of Russian troops, it would also be a deeply flawed process which would have no moral force. For all these reasons, we would not recognize the outcome.” (Milano, 2014, p.37)

On March 19, Secretary-General of NATO, Anders Rasmussen indicated that “Crimea’s annexation is illegal and illegitimate, and NATO Allies will not recognize it”. (Statement of North Atlantic Council on Crimea)

Norway, Georgia, Turkey, Liechtenstein also made explicit reference to not to recognize the outcome of the Referendum and the Russian annexation of Crimea. (Milano, 2014, p.39)

4.7.2 Other legal policies

Some other states neither reject separation and annexation of Crimea nor recognize it. For China the situation needed to be resolved with law. It abstained after adoption of Resolution 68/262. On the other hand, China supported the idea that settlement processes should be done, and some constructive efforts should be made by the international community. Although some countries abstained from Resolution 68/262 they were not defending the annexation or the referendum. Foreign Affairs Ministry of Uruguay condemned the acts of violence and called the parts to solve the problems through different ways. According to Ecuador “a local referendum is not sufficient to justify a change in the territorial integrity of a State.” (Grant, 2015, p.89)

Resolution 68/262 of General Assembly was adopted on March 27, 2014; one hundred States voted in favor, eleven voted against, fifty-eight abstentions and twenty-four absentees. The referendum could not be a basis for any change in the status of the Autonomous Republic of Crimea or the city of Sevastopol and it did not have any validity. The General Assembly made a call:

> “upon all States, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum and to refrain from any action or dealing that might be interpreted as recognizing any such altered status.” (Geiß, 2015, p.431)

The resolution also called “all States to desist and refrain from actions aimed at the partial or total disruption of the national unity and territorial integrity of Ukraine, including any attempts to modify Ukraine’s borders through the threat or use of force or other unlawful means.” It was the first resolution in which the phrase “or other unlawful means” was used. It is argued that the resolution is not only about actions that fall within a minor "threat or use of force", but that the purpose of the General Assembly is to mention any illegal means that can be used to undermine Ukraine's national unity and territorial integrity. (Geiß, 2015, p.430)

There are two basic authorization of the resolution. The first one is not to “recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the above-mentioned referendum.” The second one is “to refrain from any action or dealing that might be interpreted as recognizing any such altered status.” With these two important calls the General Assembly tried to make sure that the states would not only reject the recognition but also would refrain from taking action which could be seen as an act of recognition.

Russia wanted to reflect its annexation as a legal action. Even though in 1999, Russia was against the intervention of NATO in Kosovo and vetoed it in the UN Security Council, later in 2014 it tried to refer the case of Kosovo as an example to what Russia was doing in Crimea. Firstly, the lives of Russian citizens living in Crimea were shown under threat. However, there was not any kind of aggression towards them. The Russian population in Crimea were not facing any violation of human rights so, the aim of Russia could not be humanitarian as they claimed to be. Secondly, Yanukovych letter was put forward to create an invitation for Russia to take action in the territory. Yet, at that time because he fled from the country, Yanukovych was not the highest authority in Crimea, he lost his powers. So, the letter he sent was not acceptable for a foreign assistance. Thirdly, Russian authorities claimed the right to self-determination. Due to the fact that, it was not monitored by the UN Commissioners; because it was against the constitution of Ukraine; because while holding a referendum there were Russian soldiers in the territory the referendum was not accepted as legal. As a result, it was illegal to annex Crimea.

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CONCLUSION

This thesis aimed at comparing and contrasting NATO's intervention in Kosovo in 1999 and Russia's annexation of Crimea in 2014. The two cases have similarities in terms of the illegal use of force. Yet they are also different when it comes to the right of self-determination. Not only the intervention but also the annexation is considered illegal when it is observed how they were carried out.

The cases, firstly in Kosovo, using force to prevent the people of Kosovo exercise their basic human rights and secondly in Crimea, using force to annex the territory were not approved by the United Nations Security Council. As a result, both actions are considered as illegal. NATO used force by bombing the territory of Kosovo while the Russian Federation used force to annex Crimea which was against the underlying agreement that both parties signed previously. According to UN General Assembly, "bombardment" is an act of aggression which is not permitted. As the Russians used armed forces in Crimea it violated the international law. If the decided, specified situations are met the criteria, a state or a regional organization may see a need to use force. What NATO caused in the territory is not accepted. Despite the thousands of Kosovars driven to other lands before the NATO's intervention, what happened after the intervention was even worse. NATO was not successful in decreasing the humanitarian crisis. The action of NATO was not an act of self-defense either because there was not an attack on any members of NATO.

As it is previously stated, the principle of self-determination was discussed in both situations. Due to the Serbian regime in Belgrade, Kosovo was taken its autonomy by Milosevic. However, Crimea enjoyed considerable autonomy. Although, Russians were claiming that the lives of their citizens living in Crimean territory were in danger, in reality there was no such situation. Because the population were not against a systematic discrimination and neither there was discrimination against the Russian ethnicity the use of force cannot be considered as legal. Also, the exercise of the right to self-determination was not valid. Secondly what Russians likened their position to Kosovo was, exercising self-determination. Kosovo's secession was accepted legal by the International Court of Justice whereas the United Nations General Assembly stated that neither the referendum not the decisions of Russian authorities were legal.

Like the Advisory Opinion of the International Court of Justice said, Provisional government was not the one who declared independence but rather the people who were the representatives of Kosovo. So, declaration of independence was not a violation of international law. Crimea held so called “referendum” to decide its future. However, because there was not a monitoring group deciding whether the Russian presence affected it or not and because the referendum was against the Ukrainian constitution. That’s why it was illegal.

Even though, Russia showed Kosovo as an example, neither Russia nor Ukraine recognize Kosovo. Showing Kosovo as a reference is irrational of Russia. Although the case of Kosovo and Crime have some similarities, they are different.

While Russia reflected its action as a self-defense, it was a violation of sovereignty for the West. Crimean crisis can be interpreted as a persistence of Russia’s struggle versus the West. The West has seen Russia as a power that wants to rise in international community, thus would interpret the international law in accordance with its interest. From the beginning of rise of Putin, the West think about Russia as a state which likes having the privilege to intervene and influence. When Russia started to recover its economy with the help of oil and gas abundance Moscow gained confidence to become equally powerful with the West. However, the international system reflects the ideas of the dominant powers of the West. Likewise, the international organizations and the law has been influenced by those ideas of the West. Russia has been always prepared to challenge the west. Russia appealed almost every argument that the West used for the 1999 intervention in Kosovo. The actions in Crimea show that Russia, in addition to imitating compliance with international rules and norms, tries to relativize the violation of international law by accusing the West of similar actions. On the other hand, the Western countries did not treat annexation of Crimea as the same way they did to Kosovo. They saw Russia as a threat in the system that’s why they were totally against the annexation.

In this paper two cases from different time periods, whose legitimacy were debated for a long time, are presented under international law. It is found out that the use of force both in the NATO’s intervention and the Russia’s annexation are illegal. The NATO’s and Russia’s actions are against the international law. However, while Kosovo’s way to independence is legitimate, Crimea’s joining to Russia is not been

considered as legitimate. The study reflects the right to self-determination’s being open to discussion and shows us that every case has to be studied by its own.

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