THE CRIMEAN REFERENDUM AND RUSSIAN OCCUPATION

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ABSTRACT

The situation in Crimea today, poses major questions to several areas of international law. The paper scrutinizes two vital aspects in this scenario the issues of statehood and its evolution as a concept throughout international law and the applicability of international humanitarian law and more specifically the law of occupation. The Crimean peninsula has been peppered with complexities not only in terms of its current system of government but has been subject to a number of historical oddities. Historical context therefore becomes highly relevant in dealing with these issues which plague the region today. The two propositions furthered by in this case are that first and foremost the Crimean referendum is not in itself sufficient to entitle the peoples to a right of secession. Second proposition made is that in the present case, Russian intervention, invasion and occupation irrespective of ant skirmish or armed conflict, by themselves entail the application of the law of occupation in the present case. In light of a massive international scrutiny on the matter there is a tendency to overlap one with another and this often leads to application of different bodies of law in a manner that ensures that an amicable consensus on burning legal issues pertaining to the region will remain unsolved. For these purposes these issues while perhaps rooted in the common historical narrative of the region must not be conflated with one another and must, from the perspective of international law be dealt intricately but more importantly independently.

INTRODUCTION

In light of the referendum held by the Crimean and the decision to secede from Ukraine and the exceeding involvement of Russia in what has become one of the most multifaceted conflagrations of Eastern Europe, international law concerning the same has come to the forefront. The issue in this scenario is two-fold. The first is the issue of secession and the application of the same within the gamut of the right to self-determination and whether it is

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accorded for the same to the peoples of Crimea. Another aspect of this is the status of civilians in the region and whether the occupying Russian forces are bound to function as per their obligations under International Humanitarian Law ("IHL"). The issue has been embroiled with political overtones over the past three years and while the international community has criticized Russia for its involvement in the region it must be noted that the prospect of Crimean secession is not mutually inclusive with respect to Russian obligations and the status of civilians under IHL. At the core of this conflict is the status of the right to external self-determination i.e. the right to secession. The judicial bodies including the domestic courts as well as the International Court of Justice ("ICJ") and the international law have in the past dealt with this issue at length but to much dismay no conclusive decision on the position of law on this issue has been reached. However while the decisions may not seem conclusive in and of themselves they must be seen in consonance with the behavior of the international community in each instance, be it East-Timor, Eretria, Quebec and most recently Kosovo. The question that continues to arise on each instance is whether the right to secession or external self-determination is a right accorded to individuals and can be exercised as a matter of positive right and not as a remedial right as the ICJ opined in Kosovo. The second issue is, to whom is this right accorded to, and what constitutes "peoples" in such circumstances. Both these matters come within the gamut of statehood and the law concerning the same. The situation of civilians living in Crimea who are now living in the occupied territory however is covered by a completely different corpus of law i.e. International Humanitarian law and is not at all effected by an ongoing process of secession. The questions in this area are centered around the existence of an armed conflict to give rise to such obligations and the subsequent obligations under IHL on parties to such conflicts and their binding nature and applicability.

FACTUAL BACKGROUND AND HISTORY OF THE CRIMEAN PENENSULA

A. HISTORY OF CRIMEA

Crimea's complicated history makes the current issue of secession in the region a problem from the perspective of international law. The origins of the word "Crimea" can be traced to the language of the Crimean Tatars, a Turkic ethnic group that emerged and even today it is often

referred to as "the Crimea" primarily indicating that it is more of a region than an independent province.[2] Place at the tip of the black sea, the Crimean peninsula is both a beautiful and strategically important location and has been the subject of several disputes, feuds and wars. Historically it was known as "Taurica" by the Greek and Roman Empires which acknowledged the importance the peninsula from a strategic perspective. Subsequently the region was both invaded by the Gothic tribes, the Byzantine Empire and even the Mongols. The word "Taurica" may even mean fortress according to some studies on the peninsular however Crimea is most remembered for the Crimean war that lasted over a period of 3 years. The war involved Russians, the Ottoman Empire, the French and the English. Despite defeat in the war, Russia was able to retain Crimea as part of its own. [3]

B. SITUATION POST CRIMEAN WAR

Russia's control over Crimea weakened during the first world war, mainly due to internal events like the October Revolution. However by 1921 Crimea became a part of Russia again and was referred to as the Crimean Autonomous Soviet Socialist Republic. During this time it is pertinent be note that the period of stability stretched to almost ten years for both Crimea and Ukraine. In 1932 – 1933 Stalin's agricultural policies led to the death of almost 10 million Ukrainians and almost 1.5 million people in Ukraine. During the Second World War, Crimea was occupied for great deal of time by Nazi Germany as Russia lost substantial swathes of its territory to Germany. However once the tides of battle shifted the red army retook Crimea in 1944.[4]

C. SITUATION POST WORLD WAR II

While the region itself was once again in Russia's control the situation of the indigenous "Crimean Tatar's "took a dark path. During the war, the Crimean Tatar's had collaborated with the German forces and in the process undermined Russia's authority over the area. As punishment for this collaboration with the Germans, Stalin had the entire indigenous population

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[2]http://www.forumostwest.ch/pdf/Dokumente/Crimea%20Relation%20to%20Russia_2.pdf; (Last Accessed 15th December 2015).

[3]International Committee for Crimea, Pages from the history of the Crimea, the Ukraine, Caucasia, Poland and Moscow,Translated by Dr. Abdullah Zihni; http://www.iccrimea.org/historical/tevarih20100908.pdf (last accessed December 12, 2015).

[4]ORLANDO FIGES, THE CRIMEAN WAR: A HISTORY, METROPOLITAN BOOKS, (Henry Holt & Company: New York 2012);

along with several Armenians and Greek's, deported to Central Asia. As per several studies of that period it is in fact believed that half of the Crimean Tatars died merely making the journey to Central Asia. As the indigenous population disappeared from Crimea it was populated by more Russians and almost seemed to be an extension of Russia at the time. Yet the tale of Crimea does not end there.

D. KHRUSHCHEV'S DECISION & POST COLD WAR SCENARIO

In 1954, Stalin's successor Nikita Khrushchev gave Crimea to Ukraine and in the process committed what is nowadays referred to as one of the greatest blunders in Russian History.[5]The reasons for Khrushchev's decision are debated; speculated and questioned even today, many feel that the decision was influenced by Khrushchev's ties to the Ukrainian Communist Party.[6] At the time of the deal the vast territory under the control of the Soviet Union would have made the decision give away a tiny portion of its territory a minuscule issue however, post 1991 and the collapse of the Soviet Union the decision seemed to be a terrible one from a retrospective perspective.[7] The Russian state already in the process of dismemberment and disintegration demanded that Crimea be returned to Russia. This resulted in a referendum that was held in Crimea in 1991, where the majority decided that they wanted independence from Russia. The status of Ukraine continued to be in a flux from the perspective of international law. While it continued to be a part of Ukraine it retained a great degree of autonomy in the form of its own legislature and constitution.[8]

A major bone of contention for the Russian's in this scenario was the maintenance of its Black Sea fleet at Sevastopol in Crimea. This issue however was resolved by the 1997 treaty on Friendship, Cooperation and Partnership between Ukraine and Russia. Thus the status of Crimea as of today is that of a part of Ukraine. Notwithstanding the fact that it has autonomous government, it still continues to be a part of Ukraine. The same way Kosovo despite being an autonomous province was still a part of the former Socialist Federal Republic of Yugoslavia.

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[5]European Policy Center, Crimea one year after Russian annexationhttp://www.epc.eu/documents/uploads/pub_5432_crimea_one_year_after_russian_annexation.pdf;(last accessed December 12, 2015).
[6]Saluschev, Sergey, *Annexation of Crimea: Causes, Analysis and Global Implications*, Global Societies Journal, Vol.2, 2014 , http://escholarship.org/uc/item/5vb3n9tc;(last accessed December 12, 2015).
[7]*Id.*
[8]*Id.*

Thus it's no surprise that a region which has the highest proportion of ethnic Russians and provides harbor to Russia's navy is today a massively contested feud in the international world. [9]

E. SITUATION IN CRIMEA POST 2010 & RUSSIAN INVOLVEMENT

The current scenario that observes Ukraine and Crimea embroiled in chaos began with the election of President Viktor Yanukovych in Ukraine in 2010. Most international observers agreed that the election was in fact a free and fair election. Subsequently Yanukovych abandoned an agreement relating to nearer trade ties with EU, instead seeking closer co-operation with Russia.[10] The friction between Ukraine and Russia not having disappeared led to protests which continued for years, and while they were peaceful to start, the 2013 deal with Russia ended up stoking the existing sentiment and subsequently the Ukrainian Parliament was required to pass anti-protest laws in January 2014.[11]The government's attempt to silence protest backfired and protests become more violent with each passing day. This culminated in some violent clashes with the authorities, the worst of which was on 20thFebruary 2014, which left 88 people dead. It was at that stage that the Ukrainian Parliament decided to vote on the issue of banning Russian as thesecond official language, triggering a wave of anger in the Russian-speaking regions of Ukraine, only accentuating the violent atmosphere in the county. Subsequently in March 2014 the Russian government agreed to 2 important propositions. The first was to agree with Vladimir Putin's decision to send troops into Ukraine to safeguard Russian interest.[12] The second was the decision to absorb Crimea into the Russian Federation. Both these decisions were widely condemned by the Members of the EU and the United states however Russia continued unhinged. Consequently Pro-Russian separatist groups peaceful and militant, began to arise in Ukraine.

F. VIOLENCE POST 2014

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[9] *Id.*

[10] https://www.washingtonpost.com/news/worldviews/wp/2014/02/27/to-understand-crimea-take-a-look-back-at-its-complicated-history/ (last accessed December 19, 2015).

[11] *Id.*

[12] Amnesty International: Ukraine Report 2015, https://www.amnesty.org/en/countries/europe-and-central-asia/ukraine/report-ukraine/(last accessed December 18, 2015); https://freedomhouse.org/report/special-reports/human-rights-abuses-russian-occupied-crimea#.VnXRb9Kqqko (last accessed, December 18, 2015).

On 11th of May 2014**,**[13] Pro-Russian separatists in Donetsk and Luhansk declared independence after individual unrecognized referendums where 97% of the people voted to become a part of Russia. In October 2014 the Russian Forces deployed near the Ukrainian Boarder returned to their basis however the struggle with the pro-Russian separatists continued and the level of violence escalated, though the decision of a ceasefire between both sides was decided on.[14] Today the UN still recognizes Crimea as a part of Ukraine however it is seen more as an occupied territory which as per Russia is claimed to be annexed based not only on the intervention by Russia but also the referendums conducted in 2014.[15] It is also important to clarify that occupied territory is not the same as annexed territory and also that annexation under international law has categorically been ruled out as a means of acquiring territory.[16]

WHETHER THE PEOPLE OF CRIMEA HAVE A RIGHT TO SELF-DETERMINATION

A. THE RIGHT OF SELF DETERMINATION IN INTERNATIONAL LAW

The concept of self-determination is synonymous with the notion of autonomy and refers to the capacity of an individual or a group to make its own rule and select a system of self-governance. The principle of self-determination of people is contained in the articles 1(2)[17] and 55 of the UN Charter[18] and a plethora of other documents. Thus, the UN General Assembly Resolutions 1514 XV, 14th December 1960[19] (Declaration on the Granting of Independence to Colonial Countries and Peoples) and 2625 XXV of 24 October, 1970[20] (Declaration on Principles of International Law Concerning Friendly Relations among Nations) both also contain explicit references to the principle of self-determination. Along with art (1) of the International Covenant of Civil and Political rights.[21]The dominant view espoused by most of the legal commentators on this issue is that international law neither explicitly prohibits nor recognises the inherent right of an ethnic

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[13] *Supra*,6.
[14] *Id*.
[15] *Id*.
[16] R.Y. JENNINGS, THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW 14, (Manchester: Manchester University Press 1963); SURYA P. SHARMA, TERRITORIAL ACQUISITION, DISPUTES AND INTERNATIONAL LAW 21, (Manchester: Manchester University Press 1997).
[17] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Art. 1(2).
[18] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Art. 55.
[19] UNGA Res 1514 (XV) (14 December 1960).
[20] UNGA Res 2625 (XXV) (24 October 1970).
[21] Art. 1, International Covenant on Civil and Political Rights (adopted on December 16, 1966, entered into force March 23, 1976) 999 UNTS 171 (ICCPR).

group to unilaterally secede from a parent State. [22]States have so far in the international forum opposed any exercise of the right to self-determination through secession because of its direct contradiction of settled *jus cogens* norms of territorial sovereignty and integrity[23] which is also encapsulated in the UN Charter[24]. This view has been elaborated in the 1970 Declaration on Principles of International Law which extended the right of self-determination to peoples under alien domination.[25]

However it also went on to hold that nothing mentioned in the declaration should be construed as sanctioning or encouraging action that would violate the territorial integrity or political unity of sovereign and autonomous States conducting them in consonance with the principle of self-determination.[26] As per the concept of remedial secession, a group has a right to secede only if the physical survival of its members is endangered by acts of the state as with the policy of the Iraqi government toward Kurds in Iraq [27] or it suffers violations of other basic human rights as with the East Pakistanis who seceded to form Bangladesh in 1970[28], or its previously sovereign territory was unjustly taken by the state as with the Baltic Republics[29]. The ICJ in the case of Kosovo[30] recognized several universal conditions which must exist for remedial secession to occur. First that the secessionists are a "people" in the ethnographic sense[31], second that the state has violated their human rights; and last that there are no other effective remedies under either domestic law or international law.[32] It can very clearly be seen therefore, that conditions precedent to secession in Kosovo are absent in the present case as the entire movement is based

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[22] ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL (Cambridge University Press, London 1995).
[23]Ibid.
[24] United Nations, *Charter of the United Nations*,October 24, 1945, 1 UNTS XVI, Art. 2(1), 2(4).
[25] *Supra*, 20.
[26].PATRICK THORNBERRY, INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES 15 (Oxford University Press, London, 1991).
[27] JAMES CRAWFORD, STATE PRACTICE AND INTERNATIONAL LAW IN RELATION TO UNILATERAL SECESSION, (OUP 2000).
[28]ALLEN BUCHANAN, SECESSION: THE MORALITY OF POLITICAL DIVORCE FROM FORT SUMTER TO LITHUANIA AND QUEBEC 129 (Westview Press 1991).
[29]*Id.*
[30]*Id.*
[31]Ved P. Nanda, *Self-Determination in International Law: The Tragic Tale of Two Cities--Islamabad (West Pakistan) and Dacca (East Pakistan)*, THE AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 66, No. 2, 1972.
[32] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion), General List No. 141, International Court of Justice (ICJ), July 22, 2010.

not on human right violations by the Ukraine but a rather an antagonistic view, approach and reaction to foreign policy and alignment with Russia.

B. THE RIGHT OF SELF-DETERMINATION ACCRUES TO "PEOPLE"

There are several provisions under international law, which while providing for self-determination applies in a context of this right as accruing to "peoples".[33] UNESCO Experts stated that "the group must be of a certain number which need not be large but which must be more than a mere association of individuals within a state; "*the group as a whole must have the will to be acknowledged as a people or the consciousness of being a people*"; and the group must have some form of institutional setup or other means of expressing its common characteristics and will for identity.[34] Thus it is reasonable to assert that "peoples" should be entitled to both 'Internal and External self-determination', whereas groups like "indigenous peoples" and "minorities" are entitled only to 'Internal self-determination'.[35] Opinion No. 2 (1992), Arbitration Commission of the European Conference on Yugoslavia [36], in fact reiterated this position, stating that the Serbia population of Bosnia-Herzegovina as also a minority at best. The word people' is to be assumed in the sense of all those person who are given territory.[37] It must be remembered that all members of distinct minority groups also constitute a portion of the people of the territory.[38] Thus they can be classified as individuals who possess and hold the right of self-determination. Yet when it comes to minorities within a state, the right of self-determination is not accorded. Effectively this would mean that the Russian's who are presently in Crimea have no right to secession, to independence or to join with Russia at this point of time. Throughout history a plethora of attempts have been made to define people on the basis criteria such as ethnicity or language, yet each such attempt has ended up being unsuccessful and it has

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[33]The United National Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly Resolution 1514(XV) of 14, art. 2; UN Charter art. 55; The United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR) art. 1; United Nations International Covenant on Civil and Political Rights (ICCPR), December 1960 art. 1; Organisation for Security and Co-operation in Europe (OSCE), Charter of Paris for a New Europe, 1994.

[34]International Meeting Of Experts On Further Study Of The Concept Of The Rights Of Peoples (September 10, 2015) http://unesdoc.unesco.org/images/0008/000851/085152Eo.pdf (last accessed December 15, 2015).

[35]ChinonsoIjezie, *Right Of Peoples To Self-Determination In The Present International Law* (September 10, 2014) http://www.academia.edu/2967647/RIGHT_OF_PEOPLES_TO_SELF-DETERMINATION_IN_THE_PRESENT_INTERNATIONAL_LAW (last accessed December 15, 2015).

[36](1992) 31 ILM 1497.

[37]*Id.*

[38]*Id.*

been explicitly denied by the international community that the right to self- determination does not encompass ethnic, linguistic and religious groups within States.[39] The reluctance to extend this right to self-determination to such groups is often countered with the adoption of international instruments on minority rights.[40] This reflects to an extent the tendency of the international community's to resolve inter-communal conflicts inside a human rights context rather than within the frame of self-determination.[41] It is therefore essential and vital to discard the notion that every ethnically or culturally distinct people, nation, or group has a spontaneous and autonomous right to its own state or that ethnologically homogeneous states are characteristically appropriate.[42] Thus the existing criteria evolved under international law would dictate that the Russian's population living in Ukraine cannot be classified as "peoples" to whom the right to external self-determination can be accorded.[43]

C. QUESTION OF "CONSENT" BY THE PEOPLE OF CRIMEA

In case of the self-determination concerning Eritrea, the former Soviet Union and Czechoslovakia they were clusters identified by a common ethnicity, language or religion within independent States.[44] The most essential and distinguishing feature in each one of these cases is and has been the existence of consent, since the self-determination rights were acknowledged by the major portion of the population in each State. The existence of consent indisputably influenced the international community's response to these claims.[45] The UN participation in the plebiscite process in Eritrea was based on the fact that the Eritreans' right to determine their political status had already been recognized by the Conference on Peace and Democracy, which "assembled all the political parties and social actors in Ethiopia".[46]

The conclusion one can draw from this is that the entire population of Ethiopia had consented to such a referendum and subsequently the Eritreans could hold a referendum and therefore become

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[39]JAMES R CRAWFORD, SELF DETERMINATION, HE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 571 (RudigerWolfrum ed. 2012).
[40]*Id.*
[41]*Id.*
[42]*Id.*
[43]Quane, H, *The United Nations and the evolving right to self-determination,* International and Comparative Law Quarterly, *47*(03), p.537-572, 1998.
[44]Thomas Burri, *Secession,* THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 53-64 (RudigerWolfrum ed. 2012).
[45]*Id.*
[46]*Id.*

an independent State. In the present situation the referendum held on March 16, 2014, was held by the Autonomous Republic of Crimea and the local government of Sevastopol, with no involvement of the Ukrainian Government whatsoever. The very fact that the United Nations did not assent to Eritrean desire for such a plebiscite during the passage of the 30-year civil war would indicate, at the very least a tacit support for this particular interpretation.[47]

It would further indicate that the right to self-determination is a right that is exercised by the entire population of a State rather than by ethnic, linguistic or religious groups within them. Thus even though the present referendum was held by an autonomous government, it ignores the fact that it remains a part of Ukraine and hence absence of any consent on part of the Ukrainian government on this part alone invalidates the referendum if one is to follow the existing international legal regime.

D. TERRITORIAL INTEGRITY OF UKRAINE

An essential issue here is violation of the territorial integrity of Ukraine, as secession would grossly alter the scope and gamut of its territory. The Canadian Supreme Court in the Quebec case[48] stated, categorically that 'international law requires and subsequently would expect that the right to self-determination is a right that must only be exercised by peoples within the framework of existing sovereign states and subsequently must be balance with the territorial integrity of the concerned states.[49] This proposition can be ascertained in catena of documents that support the survival of a people's right to self-determination while concomitantly containing parallel statements supporting the fact that any exercise of such a right cannot constitute a threat to a state's territorial integrity or the stability of relations between sovereign states. Thus any state whose government characterizes the entire group of people and respects the principles of self-determination in its own core framework, is clearly permitted to the protection under international law of its territorial integrity.[50]

E. IS A UNILATERAL DECLARATION BY CRIMEAN PEOPLE LEGAL

[47] *Id.*
[48](1998) 2 SCR 217.
[49]MALCOLM N. SHAW, INTERNATIONAL LAW 256 (Cambridge University Press 6th ed. 2011).
[50]Quebec Case, (1998) 2 SCR 217, ¶30.

A right to external self-determination (which in this case possibly takes the system of the avowal of a right to unilateral secession) rises in only the most extreme of cases and, eventhen, there are several criteria and specifically defined circumstances that are required to be taken into account.[51] External self-determination i.e., right to secession- is usually seen asa dormant right and as per the history of secession in international law is only considered as a remedial right which only applies in some exceptional circumstances.[52] One of the first criteria for the same is the question of denial of internal self-determination in the first place.[53] While international law has not explicitly stated that unilateral declarations of independence are illegal it can be imputed that the same has been tacitly acknowledged.

As a matter of study we may look at previous attempts at secession made in Katanga and Biafra. In the Katanga case, the regime of the province Katanga had declared its independence from the newly established Republic of Congo in 1960, however this declaration failed as its validity was neither accepted nor acknowledged.[54] Similarly in the case of Biafra, the Ibo population of Biafra had endeavored to secede from Nigeria and establish their own State. Based on the same metric, in the present case, the declaration of independence and secession fails. The reason for the failure of most of these secessionist movements effectively come down to the role of endorsement by the international community. In the case of Kosovo, for example it had reached the stage where all forms of peaceful remedies including the prospects of un-administration had been exhausted that the question Kosovo's status was to be determined.[55]The same cannot be said of Crimea and further it has not been proven or established conclusively that the right to internal self-determination has been denied for the same.

F. VIOLATION OF THE PRINCIPLE OF NON-INTERVENTION BY RUSSIA

[51]THOMAS BURRI, *SECESSION*, THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 53-64 (Rudigered., 2012).
[52]*Id*.
[53]*Id*.
[54]*Id*.
[55]ANTONIO CASSESE SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL (Cambridge University Press, 1995)*;* DAVID RAIČ, STATEHOOD AND THE LAW OF SELF-DETERMINATION 289 (Kluwer Law International, 2002).

Any instance of the application of pressure, coercion or substantial influence on or to a state can be referred to as an intervention.[56] UN General Assembly Declaration on Non-intervention 1981, states that intervention includes "promotion, encouragement or support, direct or indirect, of rebellious or secessionist activities within other States, under any pretext whatsoever, or any action which seeks to disrupt the unity or to undermine or subvert the political order of other States." [57] The Friendly Relations Declaration (UN General Assembly Res No 2625, 1970), the Charter of Economic Rights and Duties (UN General Assembly Res No 3281, 1974) and the United Nations General Assembly Declaration on Non-intervention 1981,100 in accordance with the Charter of the United Nations identifies any acts of intervention, direct or indirect, "for any reason whatever, in the internal or external affairs of any other State" as a violation of international law.[58]

The Principle of Non-intervention can be implicitly drawn from the UN Charter. Without the prohibition of intervention, the principle of sovereignty could not be fully realized. Article 2(4) UN Charter forbids the usage of force by the State in the matters of another State. It was first used in the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Charter of Economic rights and Duties of States.[59] Thus, Russian intervention is more likely to vitiate the process of secession as it would indicate that the referendum, which was anyway conducted without the consent of the Ukrainian Government, was a result of intervention and less a result of self-determination.

G. INTERVENTION BY RUSSIA VIOLATE ARTICLE 2(4) OF THE CHARTER

Non-intervention as a principle is commonly acknowledged as a part of customary international law, as the International Court of Justice has reiterated on multiple instances.[60] The Russian

[56]International Commission on Intervention and State Sovereignty, The Responsibility to Protect (International Development Research Center), http://responsibilitytoprotect.org/ICISS%20Report.pdf (last visited September10, 2015).

[57]Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, December 9, 1981, A/RES/36/103.

[58]*Id.*

[59]UN General Assembly Resolution 2625 (XXV) October 24, 1970, A/RES/25/2625; UN General Assembly Resolution 3281 (XXIX) December 12, 1974, A/RES/29/3281.

[60]Military and Paramilitary Activities (Nicaragua v. U.S.), 1986 ICJ 14 (June 27); UN General Assembly Resolution Containing the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, March 17, 1988, GA Resolution 42/22; UN General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, October 24, 1970 GA Resolution 2625; UN General Assembly

government through its political pressure, through the financing of several rebel groups in Crimea as well as ground support provided to the pro-Moscow Separatists by its troops in Ukraine[61]is violating Article 2(4) of the UN which requires UN members to "refrain 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 UN". [62] The PCIJ in the SS lotus case [63] very clearly stated that states had a duty to abstain from infringing into the independence, territory and personal authority of other states.

This included committing any violation of International law that would adversely affect the independence or territorial integrity or authority of another state. As a matter of principle, the concept of non-intervention in such matters has been upheld on numerous occasions like the Corfu Channel Case or the case of Democratic Republic of Congo v Uganda.[64] Further in Nicaragua v. United States, the ICJ upheld the principle of non-intervention[65] whilst stating that an intervention is only forbidden with respect to issues in which every State is permitted, based on the principle of state sovereignty, to decide freely. One of these is the option of a political, economic, social and cultural system. The component of coercion, compulsion or intimidation in the unforeseen form of support for insurrectionary or terrorist armed activities within another State violates the principle of non-intervention.[66] Similarly in the *Essentials of Peace*,[67] the UNGA called upon "every State to refrain from any threats or acts, direct or indirect, aimed at impairing the freedom, independence, or integrity of any State, or at fomenting civil strife and subverting the will of the people in any State."[68]Thus the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty in which the UNGA declared that no State has the right to interpose, directly or

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Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, December 21, 1965 GA Resolution 2131; Charter of the Organization of American States, Article 8, December 13, 1951 119 UNTS 3.

[61]Russian soldiers in Ukraine supporting rebels, http://www.reuters.com/article/us-ukraine-russia-soldiers-idUSKBN0LZ2FV20150303 (last accessed December 17, 2015) .

[62]PHILIP KUNIG, *THE PRINCIPLE OF NON-INTERVENTION,* THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW *345-354* (RudigerWolfrum ed., 2012).

[63]SS Lotus (France v. Turkey), 1927 PCIJ 5(Ser. A) No.10, 25.

[64]Armed Activities on the Territory of Congo (Democratic Republic of the Congo v. Uganda), 2005 ICJ (December 19).

[65]Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America), 1986 ICJ 14 (June 27).

[66]James R Crawford, Military and Paramilitary Activities in and against Nicaragua, THE MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 572-574 (RudigerWolfrum ed. 2012).

[67]UN General Assembly Resolution, 290 (IV), December 1949, A/RES/4/290.

[68]*Id.*

indirectly, for any reason whatever, in the internal or external dealings of any other State. The Friendly Relations Declaration repeated that armed intervention and all other forms of interference violate international law[69], and the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations provides that each and every state has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other method that is erratic in nature with respect to UN object and purposes.[70]Support or aid can be given in the form of financial aid, arms stock, private training, and logistic help, which are forbidden interventions, if they are given to rebellious groups.

OCCUPTATION BY RUSSIA & OBLIGATION UNDER INTERNATIONAL HUMANITARIAN LAW

A. THE LAW OF OCCUPATION IN INTERNATIONAL HUMANITARIAN LAW

While the law of occupation law is a matter of customary humanitarian law its treaty based re-enforcement. The principal treaty foundations of the contemporary law of occupation are the Hague Regulations of 1907 as well as the Geneva Convention of 1949 (Geneva IV), and certain provisions of the Additional Protocol I of 1977 to which Russia and Ukraine are party.[71]The International Committee of the Red Cross in its *Commentary to the Fourth Geneva Convention* noted that obligations under IHL apply to all civilians living in territories that come to be occupied by enemy forces.[72] In fact these obligations are immediate and being immediately when there is any contact between the civilians of a territory and troops progressing into that territory; that is, at the soonest possible moment. Protected persons under the Geneva

[69]United Nations General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, October 24, 1970, GA Resolution 2625.
[70]United Nations General Assembly Resolution Containing the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, March 17, 1988, GA Resolution 42/22.
[71]https://www.hrw.org/news/2014/03/21/questions-and-answers-russia-ukraine-and-international-humanitarian-and-human-rights (last accessed December 15, 2015); JEAN-MARIE HENCKAERTS, LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN 536 (CUP 2005).
[72]JEAN S. PICTET (EDS), COMMENTARY ON THE GENEVA CONVENTION 50 (ICRC 1960 Vol. 4).

Convention are those individual who find themselves in the hands of a party to the conflict or an occupying power of which they are not nationals. [73]

Under international humanitarian law, individuals are accorded a range of "protections" from the effects of hostilities. Individuals who are accorded such "protections" are called "protected persons" within the specified limits of protection given them by international humanitarian law.[74] The ICTY in the Tadic case even held that legal citizenship or nationality is not even a factor when determining whether someone is entitled to protection under the Geneva law.[75] The ICTY stated in its decision that occupying forces could not rely on shared nationality to avoid their obligations under international humanitarian law.[76]In fact Additional Protocol I of 1977 supplements article 51 of the Fourth Geneva Convention which ensures that civilians and therefore protected persons enjoy general protection against dangers arising from any kind of military operations.[77] Additional Protocol I also forbids direct or indiscriminate attacks on civilians furthering the central principle of distinction.[78]

B. STATUS OF CIVILIANS IN CRIMEA

The period between April and October 2014, saw an enormous escalation in the conflict in eastern Ukraine involving Pro-Russian rebels and the Ukrainian forces as well as the Russian forces has claimed the almost 4000 lives, with 9000 wounded. Of these 1000 casualties have been civilians. At some points it tends even to obscure an equally relevant fact, that almost 500,000 people have been displaced in Ukraine due to this o going conflict. "Civilians in Ukraine have borne the brunt of this conflict, with thousands of casualties and hundreds of thousands displaced in a matter of months," said YuliaGorbunova, Europe and Central Asia researcher at Human Rights Watch.[79]Against the backdrop of massive displacement there are

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[73]Prosecutor v. Dusko Tadic, International Criminal Tribunal for the former Yugoslavia (ICTY), Appeal Chamber Decision, October 2, 1995.
[74]*Id.*
[75] Prosecutor v. Mucic, , International Criminal Tribunal for the former Yugoslavia (ICTY), Trial Chamber Judgment, November 16, 1998.
[76]*Id.*
[77]Andreas Wenger and Simon JA, Mason, *'The Civilization of Armed Conflict: Trends and Implications'* 872 (International review of the Red Cross 2008).
[78]Additional Protocol I, Art 48; Additional Protocol I, art 51; Additional Protocol II, art 13(2).
[79]https://www.hrw.org/news/2015/01/29/ukraine-war-east-crimea-occupation (last accessed, December 16, 2015); World Report 2015, https://www.hrw.org/world-report/2015(last accessed, December 16, 2015).

twomajor issues that come into question from the perspective of international humanitarian law and both pertain to the rights of civilians. International humanitarian law has always held the principle of distinction to be one of its cornerstones, an issue which makes this more complicated in the present scenario is the fact that the territory in which these civilians are present, is occupied by the forces of another state. At the offset it must be noted that International Humanitarian Law and International Human Rights Law both are applicable to situations amounting to occupation by another state.[80]

In such scenarios the occupying state is and can be held to be responsible not only is ultimately responsible for violations of international humanitarian and human rights law committed by the occupying party.[81] An ICRC report in 2012 further verified this view, whilst raising several issues and highlighting debates on the issue of occupation in its contemporary forms. The report highlights the importance of the "protected persons" regime and in the process identifies that civilians who find themselves in enemy territory or are in the hands of enemy powers are and must be accorded certain fundamental Guarantees.[82] This view was in some ways reiterated with respect to Crimea by Human Rights Watch, which opined that the international law of occupation in consonance with the law of armed conflict applies to Russian forces in Crimea. It is a settled principle in international humanitarian law a state occupying another state's territory is under clear obligations under laws laid down by the Geneva Convention. Part III of Geneva Convention IV lays down very clearly and categorically that states have duty not only to protect the rights of civilians in these areas as well as ensuring public order and safety. [83]

C. APPLICATION OF THE LAW OF OCCUPIED TO CRIMEA

One must keep in mind that International Humanitarian law as well as the Human Rights law applies universally and therefore the referendum vote, in Crimea or its endorsement by Russia does not in any way lower the scope of application of these laws to the region since the law of armed conflict at its core is based on the principle of neutrality. Another major question here is

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[80] *Id.*

[81] JONATHAN CROW, KYLIE SCHEUBER, PRINCIPLES OF INTERNATIONAL HUMANITARIAN LAW, 80 Edward (Elgar Publishing Ltd 2012).

[82] TRISTAN FERRARO (ED),OCCUPATION AND OTHER FORMS OF ADMINISTRATION IN FOREIGN TERRITORY (ICRC 2012).

[83] Geneva Convention IV, 1949, art. 31-34.

issue of when effectively do the provisions of the 4th Geneva Convention begin to apply. This includes the following criteria evolved by both judicial decision as well as provisions of various international legislations[84]:-

1. Presence of foreign forces;
2. Exercise of effective control over the territory occupied
3. Nonconsensual nature of occupation
4. Indirect control over local authorities, proxy groups or other controls group.

It must be noted that nowhere is it stipulated that a conflict between two groups is required for the application the law of occupation.[85] Thus based on this premise, despite there being no skirmish when the Russian forces entered Crimea, all the above mentioned criteria are still met on a factual basis in Crimea since February 2015 and the law of occupation can and should, clearly apply.[86] The Crimean self-defense forces along with several other well-equipped safety force personnel without insignia have taken over and measured organizational buildings and military bases across Crimea.[87] It has been denied at each stage that any of the authorities in the present scenario are Russian; by the Russian government however most Human Rights organizations as well as journalists on the grounds have identified these forces to be Russian based on the vehicles and equipment used by these forces.[88] Further there is no requirement of motive to ascertain liability of a state in such a scenario and despite the reasons given by the Russian government be it self-defense or protection of Russians in Crimea mere physical existence of troops and exertion of control by them in the region would make them liable for any purported violation of international humanitarian law.[89] At this stage it is important to understand that both the law of secession and the law of occupation are both mutually exclusive and the existence of Russia as an occupying power, for the purposes of IHL, does not in any way therefore, affect the sovereignty of the territory.

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[84]Prosecutor v. Dusko Tadic, International Criminal Tribunal for the former Yugoslavia (ICTY), Appeal Chamber Decision, 2 October 1999, pp. 166 -168.
[85]*Id.*
[86]http://www.crimesofwar.org/a-z-guide/protected-persons/#sthash.RqesZDDJ.dpuf (last accessed, December 15, 2015).
[87]Amnesty International: Ukraine Report 2015, https://www.amnesty.org/en/countries/europe-and-central-asia/ukraine/report-ukraine/(last accessed December 18, 2015); https://freedomhouse.org/report/special-reports/human-rights-abuses-russian-occupied-crimea#.VnXRb9Kqqko (last accessed December 18, 2015).
[88]*Id.*
[89]*Id.*

CONCLUSION

In Summary, we can conclude the following in light of the developments in International law. First and foremost, the people of Crimea do not have the right to secession under international law as they are not "peoples" to whom the right can be accorded. This proposition must be considered in light of other factors as well, the fact that threshold or criteria required for the right of secession as a matter of remedial right to be accorded to peoples as it was in the Kosovo case, has not been met. Secondly, Russian involvement in the form intervention does not in any way help the case for secession but rather the opposite, further the support of pro-secessionist rebels by the government is in clear violation of the UN Charter and settled principles of international law. The third conclusion that one can arrive at is the fact that the law of occupation applies to Russia in the present case and therefore any violations of Human Rights and International Humanitarian Law in the present scenario would levy liability on Russia. In evaluating these legal conclusions it is clear that notwithstanding any major change in the paradigm of international law it is unlikely that there is anything the people of Crimea or the Russian Government can gain out of the present circumstance. The fact is that the current instance is objectively that of annexation of the Crimean Region by Russia and secession is the legal and more palatable basis on which it seems that an attempt to justify the same has been made. The truth of the matter is that from the perspective of international law Crimean secession is a highly improbable and Russian involvement in the matter makes only makes it a more distant dream than it already is.