The Russian Intervention and Use of Force in Crimea – “Did the annexation of Crimea constitute an act of aggression by Russia?”

Student Name: Darina Gerdzhikova
Supervisor: W.J.M. van Genugten
ANR: 195304

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Table of Contents

Introduction .......................................................................................................................................... 4

1. Background of the Crimean annexation to Russia ........................................................................ 6

2. The Legality of Russia’s Use of Force against Ukraine under the UN Charter ...................... 10
   2.2 Russia’s justifications to the use of force and intervention in Crimea .................................. 18
      2.2.3 Exceptions to the Prohibition of the Use of Force under the UN Charter ..................... 18
      2.2.4 Humanitarian Intervention ............................................................................................... 21
      2.2.5 Protection of nationals abroad ......................................................................................... 23
      2.2.6 Self-Determination ........................................................................................................ 26
      2.2.7 Use of force with the consent of the territorial state ...................................................... 30

3. Did the annexation of Crimea violate key agreements concluded between Russia and Ukraine? ....... 34
   3.1 Treaty on Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation ..................................................................................................................................... 34
   3.2 Budapest Memorandum on Security Assurances ..................................................................... 35
   3.3 Helsinki Final Act .................................................................................................................. 36
   3.4 Constitution of Ukraine ......................................................................................................... 37

4. Did Russia commit an act of aggression? ..................................................................................... 38

5. Conclusion .................................................................................................................................... 47
Abstract

The thesis highlights the significance of the international legal system for smaller states which rely on it to protect their national interests and to prevent acts of aggression by Great Power states like Russia. The aim of this case study is to analyse the Russian conduct in the Autonomous Republic of Crimea and to assess whether it amounts to an act of aggression. Through a critical analysis the thesis argues that the Russia’s legal defences are unconvincing, thus the force used in Crimea was unlawful. Deriving from the established illegal acts committed in the territory of Crimea by Russia, the thesis applies the UNGA Resolution 3314 Definition of Aggression to the case and examines whether the requirements needed to determine an act of aggression exist in the case of Russia. Despite Russia’s attempts to annex Crimea without a single gunshot and to bridge its actions with one of the existing legal defences, there are many reports which witness the opposite. The thesis persists that some of the acts of the Russian regular forces or the self-defence groups which carried acts on the behalf of Russia constitute an act of direct or indirect aggression.

Introduction

After the collapse of the Soviet Union in 1991 Ukraine’s borders were established and Crimea became an Autonomous Republic within Ukraine. In 2014 the world witnessed how Russia redrew the borders of Ukraine by annexing Crimea.

The outbreak of violence in Ukraine began when President Yanukovych refused to sign an agreement with the EU for closer trade and political relations. The ousting of President Yanukovych and the formation of the new interim government generated ethnic tension, mass protest and political instability in the country. The situation deteriorated when Russia’s Council approved the request of President Putin to use force in Ukraine. The Russian military intervention led to de facto occupation of the Crimean Peninsula and subsequent annexation to Russia.

The international community expressed grave concern about the situation in Crimea and strongly condemned the Russian actions in the region as an act of aggression against Ukraine. Aggression is the most serious form of the use of force and it poses a threat to international peace and security. Due to the lack of a great scale of violence, it remains debatable whether Russia committed an act of aggression in Crimea. Given that Russia invoked a few legal grounds to justify its actions in Crimea, a closer analysis
is needed in order to assess the Russian annexation of Crimea as an act of aggression. The research question is "Did the annexation of Crimea constitute an act of aggression by Russia?" After the Second World War the international community came together to renounce the illegal use of force in interstate relations and to promote the peaceful settlement of disputes. The UN Charter emerged as an expression of the will of the states to prohibit the use of force and to prevent aggression as the most serious form of illegal use of force. Aggression is a threat against international peace and security and it has legal, political and economic consequences. If Russia has committed an act of aggression, then the illegal annexation of Crimea will not be recognized by the international community and Crimea will remain part of the sovereign territory of Ukraine under Russian occupation. Furthermore, the international law provides a variety of instruments to respond to an act of aggression. By committing an act of aggression, Russia would undermine the core principles of international law, endanger international peace and security and neglect the long-standing efforts of the international community to establish peaceful community and prevent aggression.

Using a case study approach will allow me to explore the complex nature of the Russian intervention in Crimea. The focus of the thesis will be on the assessment of whether Russia’s actions in Crimea amount to the act of aggression. Critical analysis is required to determine first whether Russia’s use of force is illegal and to examine in depth the validity of Russia’s justifications. The case study will rely on primary and secondary sources. International and national law frameworks are applied to evaluate the legality of Russia’s conduct in the territory of Ukraine. The thesis uses sources like the UN Charter, relevant treaties, statutes, state practice, general principles of law, judicial decisions, web journals and articles, media reports and statements of leading national politicians and other.

For outlining the key events of the Russian intervention in Crimea, media analysis and reports, statements of officials and articles reporting findings on the case will be used media in the first chapter. The second chapter examines how the international legal framework applies to Russia’s use of force in Crimea. It analyses the following principles of the UN Charter: the principles of sovereign equality of states and the principle of non-intervention and the prohibition of the use of force. Deriving from a legal exploration, the chapter will determine if Russia has violated peremptory norms of international law. Moreover, chapter two discusses the legal grounds of the Russian argumentations and evaluate their validity by using the UN Charter, customary law state practice and other sources. Chapter three gives significance to agreements which would have been violated if established unlawful use of force against
territorial integrity of Ukraine. In order to reach plausible answer of the research question, chapter four of the thesis is devoted to the analysis of the act of aggression based on the legal definition of aggression embodied in the UNGA resolution 3314, accepted as a customary law. A few actions by Russian military forces in Crimea are examined which possibly amount to act of aggression. The conclusion will present the final assessment of the Russian conduct in Crimea and will summarize the results of the study.

1. Background of the Crimean annexation to Russia

Ukraine is a multi-ethnic country. The Ukraine’s population is approximately 45,500,000 and the ethnic minorities are 22 per cent of the whole population. The Russian ethnic group is the biggest, approximately 17 per cent. Ukraine was part of the Soviet Union since the Russian Revolution of February 1917 until 1991 when the country gained its autonomy with a referendum 92.3% of Ukrainians voting in favor of the independence. Simultaneously Crimea became an Autonomous Republic of Ukraine having its own administrative governance and Parliament. Since the independence, Ukraine has been struggling to integrate the ethnic minorities, to reduce the tension amongst the different nationalities, and to build a national identity. The ethnic tension in Ukraine remains a significant problem nowadays, throughout the years many protests have taken place as a result of socioeconomic

2 ibid
3 Sherzod Gulamov, Understanding National Identity: Ukraine’s Ethnic Diversity
4 Salad Sh Yusuf Addow, Understanding Russian intervention in Crimea (Firstly published by Hariciye Kalemi, June 4, 2014) available at: <https://www.academia.edu/8490738/Understanding_Russian_intervention_in_Crimea> accessed on: 20.05.2015
6 Sherzod Gulamov, Understanding National Identity: Ukraine’s Ethnic Diversity
problems. These have led to political chaos in the country and the tension between pro Russians and pro Europeans which reached its peak at the end of 2013. The Ukrainian crisis was triggered by the decision of then President Viktor Yanukovych not to sign a Deep and Comprehensive Free Trade Agreement (DDCTFA) with the European Union for closer trade relations with Western Europe. President Yanukovych and his cabinet chose a closer cooperation with Russia (and moved the country towards Eurasian (Economic) Union with Kazakhstan, Belarus and Russia.) Furthermore, Russia offered to buy $15 billion in Ukrainian Bonds and to reduce gas prices by one third.Yanukovych’s decision to stop the negotiations with the EU on 21st of November 2013 sparked protests in Kiev’s independence square “Maidan Nezalezhnosti” in support of closer ties with the EU. The protests escalated dramatically after the violent clashes between the police forces and the demonstrators. During the protests in December 2013 the demonstrators in Kiev amounted to more than 800,000. The clashes became more violent and escalated on 20th of February 2014 when within 48 hours more than a hundred people were shot by snipers on Yanukovych’s order. Two days later on 22nd of February, President Viktor Yanukovych fled Ukraine. The Parliament announced new elections to be held on 25 of

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7Sherzod Gulamov, Understanding National Identity: Ukraine’s Ethnic Diversity
8Ibid
9Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 3 available at: http://www.academia.edu/10068890/RUSSIA_S_ANNEXATION_OF_CRIMEA_AND_INTERNATIONAL_LAW_GOVERNING_THE_USE_OF_FORCE accessed on: 20.05.2015
10Sherzod Gulamov, Understanding National Identity: Ukraine’s Ethnic Diversity
12Sherzod Gulamov, Understanding National Identity: Ukraine’s Ethnic Diversity
16Bernadette Sangmeister, The (In-) Effectiveness Of International Law A Critical Analysis Of The Rational Choice Theory In The Light Of The Ukrainian Crisis 2014 (Research Paper LAWS 540: History and Theory of International Law, Victoria University of Wellington, 2014) 10 available
May 2014 and appointed a new interim government and President.\textsuperscript{17} The appointed interim government took decision to withdraw the Language Law (dating back to 2012) which sparked protests in Easter Ukraine by pro-Russian supporters.\textsuperscript{18} Although, the appointed interim president Turchynov revoked the decision, the protests in Eastern and Southern Ukraine escalated in direct clashes between the pro Russia supporters and the “Euromaidan” protestors.\textsuperscript{19} On 26\textsuperscript{th} of February 2014, considerable number of armed groups wearing Russian military uniforms and using Russian military plates appeared throughout Crimea and started to take control over governmental and key buildings (like “Supreme Council of Crimea and Council of Ministers in Simferopol,\textsuperscript{20} strategic infrastructures like Kerch ferry and the airport”).\textsuperscript{21} Although President Putin primary refused to recognize these "local self-defence forces" as Russians military forces\textsuperscript{22} it was reported by a Ukraine official that “2,000 Russian troops had arrived in Crimea during the course of the day, in 13 Russian aircraft.”\textsuperscript{23} Based on analysis of the photographs of these “self-defense groups” “Finnish military experts stated the following:

“With a very high probability we argue that these troops are the 45th Guards Separate Reconnaissance Regiment of VDV (Russian: 45-й гвардейский отдельный разведывательный ордена Александра Невского полк ВДВ), Kubinka, Moscow.”\textsuperscript{24}

Moreover, on 17\textsuperscript{th} of March 2014 President Putin admitted that the “self-defense groups” were formed from Russian regular forces.\textsuperscript{25}

\textsuperscript{17} Bernadette Sangmeister, The (In-) Effectiveness Of International Law A Critical Analysis Of The Rational Choice Theory In The Light Of The Ukrainian Crisis 2014
\textsuperscript{18} Niklas Granholm, Johannes Malminen, Gudrun Persson, A Rude Awakening Ramifications of Russian Aggression Towards Ukraine
\textsuperscript{19} Bernadette Sangmeister, The (In-) Effectiveness Of International Law A Critical Analysis Of The Rational Choice Theory In The Light Of The Ukrainian Crisis 2014, 11
\textsuperscript{20} Nikolas Granholm, Johannes Malminen, Gudrun Persson, A Rude Awakening Ramifications of Russian Aggression Towards Ukraine, 21
\textsuperscript{24} Ibid
\textsuperscript{25} The Opinion by Legal Advisory Committee to the Ministry of Foreign Affairs of the Republic of Poland on the annexation of the Crimean Peninsula to the Russian Federation in light of international law (Warsaw, 22 June 2014)
On 1st of March 2014, Sergey Aksyonov, who had become the Prime Minister of Crimea, invited Russia “for help in ensuring peace and calm on the territory of Crimea”. On the same day Russian President Putin requested and received an approval from the Upper House of the Russian Parliament to use force in Ukraine as Kremlin justified its decision as: “in connection of the extraordinary situation in Ukraine and the threat of the lives of Russian citizens”. Following this, “a convoy of hundreds of Russian troops headed towards the regional capital of Crimea,” and took it over. The situation in Crimea culminated in a referendum held on 16th of March 2014 in which 97% of the population of Crimea voted to secede Ukraine and become part of Russia. On March 18th of 2014, Russian President Putin and the Crimean Prime Minister Sergey Aksyonov signed a treaty to annex Crimea to Russia as an independent federal state of the Russian Federation. Strong evidence exist to support that Russian regular forces were involved in the occupation of Crimea which resulted in its annexation to Russia. The international community condemned Russia’s acts and as a result the US and Europe imposed immediately sanctions against the individuals involved in the annexation of Crimea to Russia. The referendum was considered by many States as illegal because it took place while the Russian troops were present in the Crimean Peninsula and the Crimean Tatars did not participate in voting. The referendum was declared as invalid by the General Assembly 68/262 resolution and criticized by the UN High Commissioner of Human Rights.

4 available at: <http://www.msz.gov.pl/resource/d93bc452-c276-4f5a-8551-a04464c6b202:JCR> accessed on 25.06.2015


28 Bernadette Sangmeister, The (In-) Effectiveness Of International Law A Critical Analysis Of The Rational Choice Theory In The Light Of The Ukrainian Crisis 2014, 11


30 Bernadette Sangmeister, The (In-) Effectiveness Of International Law A Critical Analysis Of The Rational Choice Theory In The Light Of The Ukrainian Crisis 2014, 12

31 Peter M. Olson, The Lawfulness of Russian Use of Force in Crimea (53 Mil. L. &L. War Rev. 17 2014) 22 available at Heinonline


33 Bernadette Sangmeister, The (In-) Effectiveness Of International Law A Critical Analysis Of The Rational Choice Theory In The Light Of The Ukrainian Crisis 2014, 12

Rights Report on the human rights situation in Ukraine on 15th of April 2014.\textsuperscript{35} The report of the UN High Commissioner stated “Preliminary findings, based on publicly available information as well as reports from civil society representatives in Crimea, suggest that the referendum of 16 March raised a number of concerns in terms of respect for human rights standards”\textsuperscript{36} and that “There have also been credible allegations of harassment, arbitrary arrest, and torture targeting activists and journalists who did not support the referendum….seven persons were reported as missing;”\textsuperscript{37}

The background of the case is essential for the purpose of this thesis. The key events established above will allow the legal analysis required to build plausible argumentation when determining the legality of the use of force by the Russian Federation in the Autonomous Republic of Crimea.

2. The Legality of Russia’s Use of Force against Ukraine under the UN Charter

This chapter will interpret the principle of non-intervention and the prohibition of the threat and use of force under the UN Charter.\textsuperscript{38} It will then apply the legal framework of these principles to the Russian military intervention in Crimea and assess the legality of the Russia’s actions in Crimea under the UN Charter.

Principle of Equal Sovereignty

International law is based on the concept of equal sovereignty of the states.\textsuperscript{39} The concept of sovereignty became a central principle of the international legal system after the Peace of Westphalia in 1648 when the central European states agreed to respect the principle of territorial integrity.\textsuperscript{40} Later on, in 1758

\textsuperscript{36}Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine, paragraph 83
\textsuperscript{37}Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine, paragraph 6
\textsuperscript{40} Eric Brahms, Sovereignty (September 2004) available at: <http://www.beyondintractability.org/essay/sovereignty> accessed on: 10.07.2015
Emerich de Vattel also weighted the equality of nations and he stated: “A dwarf is as much a man as a giant; a small republic is not less a sovereign state than the most powerful kingdom.”

**Principle of Non-Intervention**

The principle of equal sovereignty of states together with the principle of non-intervention forms the backbone of the interstate relations. The principle of non-intervention protects the territorial integrity, sovereignty and political independence of a state. States have the legal duty not to interfere with the internal affairs of other states.

Article 2(7) of the UN Charter 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.

Although many authors argue that the provision enshrined in Article 2(7) of the UN Charter is directed to the United Nations as a whole rather than to member States, the norm reflects customary law as confirmed in international treaties, International Court of Justice’s (ICJ) decisions and the General Assembly’s Declarations.

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44 United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 2(7)  
45 Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 7  
The ICJ’s judgment of the *North Sea Shelf* case indicates that customary law is a combination of *opinion juris* and state practice.\(^{47}\) This was further confirmed by the ICJ in the *Nicaragua case*.\(^{48}\) The principle of non-intervention is also embodied in the General Assembly Declaration on Friendly Relations,\(^{49}\) the Declaration on the Inadmissibility of Intervention\(^{50}\) and the principles of the Helsinki Final Act\(^{51}\)

The principle does not entail only the use of armed force but also economic pressure and coercion.\(^{52}\) This was defined in the *Nicaragua case* when the ICJ held that not only direct but also indirect forms of interference in the internal affairs of another state, like political and economic pressure, constitute a violation of the principle of non-intervention.\(^{53}\) The ICJ restated the interpretation of the principle of non-intervention in 2005 in its judgment *Democratic Republic of the Congo v. Uganda*, for supporting rebels in Democratic Republic of Congo by stating: “the principle of non-intervention prohibits a State to intervene, directly or indirectly, with or without armed force, in support of an internal opposition in another State.”\(^{54}\) This said, it is important to note that not every form of economic measure can be regarded as illegal or violation of the principle of non-intervention. As clarified in the UNGA resolution 25/2625:

> Only those economic measures designed “to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and

\(^{47}\)North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands)[Judgments] [1969] I.C.J Rep 3 para.77  
\(^{48}\)Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America)[Merits] [1986] I.C.J Rep 14 para.188  
\(^{50}\)UNGA, Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (21 December 1965) UN Doc A/RES/20/2131 available at: http://www.un-documents.net/a20r2131.htm accessed on: 26.06.2015  
\(^{53}\)Carolyn A. Dubay , *A Refresher on the Principle of Non-Intervention; Nicaragua v United States of America*[Merits] [1986]  
to secure from it advantages of any kind.” may be regarded as running counter to the principle of non-interference in internal affairs”

The Prohibition of the Use of Force

The UN Charter became the formal codification of law governing the use of force in order to prevent wars. At the end of the Second World War, in the spring of 1945, delegates from 51 states came together to establish a normative order to restrict the resort to war. One of the main goals of the UN is to maintain international peace and security which is embodied in Article 1(1) of the UN Charter:

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

To achieve its goal to maintain international peace and security, Article 2(3) of the UN Charter contains obligation to member states to resolve their disputes peacefully: “All Members shall settle their

57 Anthony Clark Arend, International Law and the Preemptive Use of Military Force,91
58 United Nations, Charter of the United Nations, Article 1(1)
international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”

The prohibition of the use of force is embodies in Article 2(4) of the UN Charter and it states:

“All Members 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 prohibition of the use of force is a principle of customary international law. This was confirmed by the ICJ in its first judgment in the Corfu Channel case. In Nicaragua case the ICJ restated the customary status of the prohibition of use of force. The ICJ highlighted in its judgment the importance of the prohibition of use of force as it stated:

“A further confirmation of the validity as customary international law of the principle of the prohibition of the use of force expressed in Article 2, paragraph 4, of the Charter of the United Nations may be found in the fact that it is frequently referred to in statements by State representatives as being not only a principle of customary international law but also a fundamental or cardinal principle of such law”

The prohibition of the use of force embodied in Article 2(4) is recognized also as a *jus cogens* norm by the ICJ and the International Law Commission. The International Law Commission has noted that: *the*
law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of *jus cogens*.\(^6\)

As a core principle, the prohibition to use force is elaborated in the UN General Assembly resolution 2625- the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.\(^6\) The UNGA Declaration on Friendly Relations and Co-operation defines the war of aggression as a crime against peace and address states to solve their disputes peacefully and to refrain from using force.\(^6\) In addition, The UNGA’s Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations emphases that: “The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force’ and that the international community should not recognize territories which are acquired through illegal threat or use of force.\(^7\)

The prohibition of the use of force embodied in Article 2(4) of the UN Charter is absolute and is valid in all circumstances except in two cases: authorization by the UN Security Council and in self-defense.\(^7\)

The restriction of threat or use of force is only banned in interstate relations.\(^7\) States are restricted to resort to use of force against another states or people falling under one of the three categories of the self-determination namely colonial people, peoples under foreign occupation or under racist regime.\(^7\) States cannot use force against presumed imminent attack (anticipate self-defense) or to repel an indirect armed aggression.\(^7\)

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\(^6\) UNGA, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

\(^7\) UNGA, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

\(^7\) Antonio Cassese, International Law, 56

\(^7\) Ibid

\(^7\) Ibid 57

\(^7\) Ibid 57
The restriction to resort to use of force does not comprise only war but also measures short of war.\textsuperscript{75} This has been confirmed in a number of international treaties and documents. For example, the UNGA Declaration of Principles of International Law of 1970 states that: “duty of States to refrain... from... coercion aimed against the political independence or territorial integrity of any states”.\textsuperscript{76} The International Covenants on Human Rights (1966) confirms the freedom of people to develop economically, socially and culturally\textsuperscript{77} and the Charter of Economic Rights and Duties indicates that: “no state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights.”\textsuperscript{78} The ICJ in its judgment in the \textit{Nicaragua} case also distinguishes between “the most grave forms of use of force from other less grave forms”.\textsuperscript{79} According to the ICJ, “assistance to rebels in the form of the provision of weapons and logistical or other support” may amount to the prohibition of threat or use of force (or prohibited intervention in the internal or external affairs of a State), but it does not amount to “an armed attack”.\textsuperscript{80} Thus, states that are victims of the threat or use of force without an armed attack are not granted with the right of collective or individual self–defense.\textsuperscript{81}

Mapping concrete actions which amount to the use of force and applying the law governing the prohibition of threat or use of force to these actions will allow qualification, at the end of the chapter, whether the use of force exercised by Russia in Crimea is legal.

There is sufficient information and various media reports which testify that Russia supported the opposition groups in Crimea.\textsuperscript{82} As already discussed above, deriving from the ICJ’s judgment in the \textit{Nicaragua} case,\textsuperscript{83} if Russia supplied the governmental opposition group with arms and military training,

\textsuperscript{76}UNGA, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Preamble
\textsuperscript{80}ibid
\textsuperscript{81}Ibid
\textsuperscript{82}Euan Murray, \textit{Russia’s Annexation Of Crimea And International Law Governing the Use Of Force}, page 9
\textsuperscript{83}See, chapter 2
it may be considered as a use of force only if the assistance results in coercion, but it does not amount to armed attack. If the support is “less than lethal”, then it would breach only the principle of non-intervention. From the established case study findings in the background of the conflict (chapter one) it follows that Russia has not only supported the “self-defense groups” in Crimea with weapons and training, but also that these groups were in fact formed by Russian militants. Therefore, the actions of the “self-defense groups” which used force in Crimea violated the prohibition of the threat or use of force and pursuant to Article 8 of the International Law Commission’s Draft articles on Responsibility of States for Internationally Wrongful Acts 2001, these acts are to be attributed to Russia as the “self-defense groups” carried acts on behalf of Russia.

Besides, Russian regular troops used force against Ukrainian military forces which is by all means a violation of Article 2(4) of the UN Charter. Although the scale of violence was not that grave, the purpose of the prohibition of threat or use of force, as stated at the United Nations Conference on International Organization 1945, that the interpretation of Article 2(4) should be in accordance with the intention of the authors which was to impose an absolute prohibition of the right of the states to resort to the use of force. Moreover, Article 31 of the Vienna Convention stipulates that: “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.

Deriving from the case findings and their application to the law governing the use of force, it appears that Russia has violated not only the principle of non-intervention but also the prohibition of threat or use of force. The thesis will discuss next the legal grounds presented by Russia to justify its violation of the fundamental principles enshrined in Article 2(7) and Article 2(4) of the UN Charter.

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84Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 11
85Ibid 11
86The Opinion by Legal Advisory Committee to the Ministry of Foreign Affairs of the Republic of Poland on the annexation of the Crimean Peninsula to the Russian Federation in light of international law, page 4
87International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, Article 8
2.2 Russia’s justifications to the use of force and intervention in Crimea

2.2.3 Exceptions to the Prohibition of the Use of Force under the UN Charter

Interstate use of force is prohibited except in two circumstances: in self-defense or with the approval of the Security Council if finds a “threat to the peace, breach of the peace, or act of aggression.”\(^{90}\) Under Article 51 of the UN Charter, every state has the inherent right to self-defense and under Article 42 of the UN Charter, the UN Security Council may authorize member states to use force as a collective measure.\(^{91}\) The only exceptions of the prohibition of the use of force under the UN Charter are embodied in Articles 39-51.\(^{92}\) The UN Charter provides mechanisms under Articles 39, 40 and 41 to impose sanctions against states which resort to threat or use of force against another state in a way that “amounts to a threat to or breach of peace or an act of aggression”.\(^{93}\) Article 41 of the UN Charter authorizes the UN Security Council to impose different kind of sanctions such as economic, trade or arms embargoes.\(^{94}\) Article 42 of the UN Charter allows the UN Security Council to authorize member states to use necessary force in order to maintain international peace and security.\(^{95}\) Article 42 states that: “The Security Council may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”\(^{96}\)

The second exception to the prohibition of the use of force is the right to self-defense.\(^{97}\) The right to self-defense emanates from customary international law and as such is an inherent right of every state.\(^{98}\) The traditional definition of self-defense occurs in the Carolina Case.\(^{99}\) The requirements to use


\(^{92}\)Lesson 5.1 Prohibition On The Use Of Force

\(^{93}\)United Nations, Charter of the United Nations, Article 39

\(^{94}\)Lesson 5.1 Prohibition On The Use Of Force

\(^{95}\)United Nations, Charter of the United Nations, Article 41

\(^{96}\)Ibid

\(^{97}\)United Nations, Charter of the United Nations, Article 42

\(^{98}\)United Nations, Charter of the United Nations, Article 51


\(^{99}\)Malcolm Shaw, International Law, 1131
force in self-defense were established as followed: a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation “and the act “must be limited by that necessity, and kept clearly within it”. These criteria became customary international law and are elaborated in Article 51 of the UN Charter which states that:

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…

The right to self-defense enshrined in the UN Charter only applies in specific circumstances. It may be exercised in situations where “an armed attack “occurred. If a state exercises its right to self-defense, it is obligated to report to the UN Security Council. According to the UN Charter, the right to self-defense will be suspended as soon as the UN Security Council has taken measures under Article 42 of the UN Charter. If a state resorts to the use force in self-defense, there must be necessity and the force used in self-defense has to be proportional to the previous armed attack.

Many commentators argue that the provision of Article 51 of the UN Charter is in contradiction with the inherent state’s rights to self-defense under customary international law. The ICJ has established in Nicaragua case that:

Article 51 of the Charter is only meaningful on the basis that there is a 'natural' or 'inherent' right of self-defense, and it is hard to see how this can be other than of a customary nature, even if its present content has been confirmed and influenced by the Charter.....It cannot therefore be held that Article 51 is a provision

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100 Ibid 1131
101 Ibid 1131
102 Ibid1131- 1132
103 Ibid
104 United Nations, Charter of the United Nations, Article 51
105 Nico Schrijver, The Use of Force under the UN Charter: Restrictions and Loopholes, page 4-5
106 Ibid 5
107 Ibid 5
108 Malcolm Shaw, International Law, 1132
109 Ibid
which 'subsumes and supervenes' customary international law.\textsuperscript{110}

The Court also established that the requirement of "an armed attack" concerns not only the actions by regular armed forces but also:

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 of such gravity as to amount to (inter alia) an actual armed attack conducted by regular forces, 'or its substantial involvement therein'. This description, contained in Article 3, paragraph (g), of the Definition of Aggression annexed to General Assembly resolution 3314 (XXIX), may be taken to reflect customary international law.\textsuperscript{111}

Applying the two exceptions of the use of force stipulated in the UN Charter to the Russian military conduct in Crimea, it follows that Russia did not have a right to use force for self-defense. The first exception under Article 42 of the UN Charter which allows the UN Security Council to authorize a member state to use of force is absolutely inapplicable as no resolution approving the use of force against Ukraine\textsuperscript{112} was passed.\textsuperscript{113} The second exception embodied in Article 51 of the UN Charter, the right of self-defense, also cannot be used to justify Russian use of force in Crimea due the lack of the required element of "armed attack" of Ukraine against Russia.\textsuperscript{114}

Apart from the explicit exceptions to the use of force under the UN Charter, some scholars have argued that there are extra-Charter exceptions which Russia used to defend its actions in Crimea.\textsuperscript{115} These are humanitarian intervention, protection of nationals abroad, assisting people in self-determination and use of force with the consent of the territorial State.\textsuperscript{116} Although there is a broad doctrinal disagreement

\textsuperscript{110}Case Concerning Military and Paramilitary Activities In and Against Nicaragua, paragraph 176
\textsuperscript{111}Case Concerning Military and Paramilitary Activities In and Against Nicaragua, paragraph 195
\textsuperscript{112}Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 13
\textsuperscript{113}Ibid
\textsuperscript{114}Ibid 14
\textsuperscript{115}Nico Schrijver , The Use of Force under the UN Charter: Restrictions and Loopholes
\textsuperscript{116}Ademola Abass, Regional Organisations and the Development of Collective Security: Beyond Chapter VII of the Collective Security (Hart Publishing, 2004)184, accessed on: <https://books.google.nl/books?id=WuuMTUNoDGsC&pg=PA184&lpg=PA184&dq=there+are+other+exceptions+of+article+2(4)+apart+of+the+self+defense+and+collective+measures&source=bl&ots=a1tS1FeLnf&sig=GBsYgTHG
about these exceptions for the purpose of the thesis, they will be analyzed and applied to the case of the Russia’s use of force in Crimea in order to determine whether the Russia’s use of force is justifiable.

To obtain reasonable conclusions, the case study requires critical examination of the various legal defences put forward by Russia to justify its authorization to use force in the territory of Ukraine.

**2.2.4 Humanitarian Intervention**

One of the potential exceptions of Article 2(4) of the UN Charter can be considered the doctrine of humanitarian intervention. The right of the use of force under the concept of the humanitarian intervention may be exercised only in cases of a great humanitarian need.\(^{117}\) The doctrine is debatable because it does not have basis neither in the UN Charter nor in customary law.\(^{118}\) Furthermore, recently the concept of “responsibility to protect” has evolved.\(^{119}\) Under the concept of Responsibility to Protect, the international community has the responsibility to prevent catastrophic situations, to react immediately to situations where serious human rights violations occur (genocide, crimes against humanity) and to rebuild subsequently.\(^{120}\) This may be seen as an effort to redefine the principle of humanitarian intervention in a way of clarifying the occasions in which it may be used.\(^{121}\) However, states cannot easily justify their armed intervention by using the concept of humanitarian intervention because the concept is applicable as noted above only in situations of extreme humanitarian need.\(^{122}\)

Russia has evoked different legal concepts in order to justify its operations in Crimea. For instance, President Putin has provided in public a strong argument justifying the Russian intervention in Crimea:

“...if I do decide to use the Armed Forces, this will be a legitimate decision in full compliance with both general norms of international law, since we have the appeal of the legitimate President, and with our commitments, which in this case coincide with our interests to protect the people with whom we have close historical, cultural

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\(^{117}\) Malcolm Shaw, International Law, 1156

\(^{118}\) Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 15

\(^{119}\) Malcolm Shaw, International Law, 1158

\(^{120}\) Ibid

\(^{121}\) Ibid

\(^{122}\) Ibid 1156
and economic ties. Protecting these people is in our national interests. This is a humanitarian mission. We do not intend to subjugate anyone or to dictate to anyone. However, we cannot remain indifferent if we see that they are being persecuted, destroyed and humiliated.”

Although President Putin described the intervention in Crimea as “humanitarian mission”, it is highly doubtful that Russia used the doctrine of humanitarian intervention in order to justify its actions in Crimea.\textsuperscript{124} It seems that Russia used the humanitarian arguments in order to support its actions under the doctrine of protection of nationals abroad.\textsuperscript{125} It should also be noted that Russia has opposed the validity of humanitarian intervention in some previous occasions.\textsuperscript{126} For instance, President Putin has criticized the humanitarian action in Syria and has made the following public statement:

“The law is still the law, and we must follow it whether we like it or not. Under current international law, force is permitted only in self-defense or by the decision of the Security Council. Anything else is unacceptable under the United Nations Charter and would constitute an act of aggression.”\textsuperscript{127}

Even if Russia evoked this doctrine as justification, it is not applicable to the situation in Crimea because there is no evidence or report to establish that such acts of gross human rights violations have been carried out in the territory of Ukraine against the Russian nationals.\textsuperscript{128}

\textsuperscript{124} Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 15
\textsuperscript{125} Ibid
\textsuperscript{128} Daniel Wisehart, The Crisis in Ukraine and the Prohibition of the Use of Force: A Legal Basis for Russia’s Intervention?
2.2.5 Protection of nationals abroad

Another exception to the general prohibition of the use of force of the UN Charter is the protection of nationals abroad. This justification has been used by President Putin when he requested the Russia’s Upper House of Parliament to use regular armed forces in the territory of Ukraine to protect Russian nationals within the country. The Parliament gave its authorization to President Putin to use armed forces in Ukraine by providing the following argumentation: “having at heart the interests of protection of lives of citizens of the Russian Federation, our compatriots and military personnel of the armed forces of the Russian Federation stationed in the territory of Ukraine”. Furthermore, Foreign Minister of Russia Sergey Lavrov restated the Russian position at the opening of the UN Human Rights Council session in 2014 by saying that: country’s troops are protecting Russian national in Crimea.

The doctrine of protection of nationals abroad started to emerge after the First World War. According to Wingfield, the doctrine reached the level of international customary law prior to the adoption of the UN Charter in 1945. Nowadays the doctrine of protection nationals abroad is highly debatable and many authors argue whether the concept is still valid due to the prohibition of the use of force under Article 2(4) of the UN Charter. There is a twofold approach to the doctrine of protection nationals abroad within the context of Article 51 on the right to self-defense. At one point, there are scholars who support the customary right to self-defense prior to the entry into force of the UN Charter which includes the protection of nationals abroad. On the other hand, some scholars argue that the right of protection of nationals residing abroad is in contradiction with the prohibition of the use of force under Articles 2(4) and 51 of the UN Charter. If one accepts that the customary right to protect nationals

129Antonello Tancred, The Russian annexation of the Crimea: questions relating to the use of force
130Robert J. Delahunty, The Crimean Crisis (University of St. Thomas School of Law Legal Studies Research Paper No. 14-39) This paper can be downloaded without charge from The Social Science Research Network electronic library at: http://papers.ssrn.com/abstract=2528340
134Vasyl Lazumirskyy, Perversion of a doctrine: the protection of nationals abroad and Russia’s invasion of Crimea, page 19
135Ibid
136Ibid
137Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 23
138Ibid
abroad is currently valid, then Russia’s use of force must be a response to an armed attack against Russian nationals.\(^{139}\) As already demonstrated in the background, Ukraine has not attacked Russian nationals. Russia’s actions in Crimea do not either correspond to the requirement of necessity: “self-defense is instant, overwhelming and leaving no choice of means, and no moment for deliberation.”\(^{140}\)

Therefore the military intervention and the use of force did not fulfill the criteria on necessity. There are criteria set by Sir Waldock and further elaborated by the UN Special Rapporteur J.R. Dugard on his report on Diplomatic Protection.\(^{141}\) Sir Waldock defined that the use of force for the protection of nationals abroad has to satisfy three criteria which are as follows:

“(1) an imminent threat of injury to nationals, (2) a failure or inability on the part of the territorial sovereign to protect them and (3) measures of protection shall be strictly confined to the object of protecting them against injury.”\(^{142}\)

The doctrine of forcible protection of nationals abroad could justify the use of force only if these three criteria were fulfilled. The post-Charter practice has shown that there are only few cases in which states have resorted to the use of force in order to protect nationals abroad.\(^{143}\) An example of this is the Belgian intervention in the Democratic Republic of the Congo in 1960.\(^{144}\) When Congo became independent in 1960, there was an immediate breakdown of law and order.\(^{145}\) Many Congolese and foreigner civilian, mostly Belgian women and children, were killed.\(^{146}\) As soon as the Congolese government was unable to restore peace in the country, Belgian battalions entered Congo and took

\(^{139}\) Ibid 24  
\(^{140}\) Letter, Dated 6th August 1842, from Mr Webster to Lord Ashburton, Department of State, Washington (Caroline Incident) available at: http://avalon.law.yale.edu/19th_century/br-1842d.asp accessed on: 06.07.2015  
\(^{141}\) Vasyl Lazumirskyy, Perversion of a doctrine: the protection of nationals abroad and Russia’s invasion of Crimea, page 23  
\(^{142}\) Ibid  
\(^{143}\) Ibid 25  
\(^{144}\) Ibid 26  
\(^{146}\) Ibid
control over a number of cities to restore order and to protect its nationals.\textsuperscript{147} There were numerous evidences of atrocities by the Congolese army.\textsuperscript{148} The foreign minister of Belgium stated at the UN Security Council that: “we had a right to intervene when it was a question of protecting our compatriots, our women, against such excesses”\textsuperscript{149} and that: “Belgium would withdraw its intervening troops as soon as and to the extent that the United Nations ensures the maintenance of order and the safety of persons.”\textsuperscript{150}

Although the Belgian intervention in Congo fulfilled the criteria required for the legality of use of force under the doctrine of protection of nationals abroad, many states including Russia condemned and defined the military intervention in Congo as “illegal”.\textsuperscript{151}

The Russian intervention in Crimea cannot be justified under the doctrine of protection of nationals abroad because Russia could not provide evidence that its nationals were injured. Russia’s ambassador to the United Nation Mr. Vitaly Churkin stated on a meeting of the UN Security Council that there are:

“ongoing threats of violence by ultranationalists against the security, lives and legitimate interests of Russians and all Russian-speaking peoples”

“In this extraordinary situation (...) and in which the lives and security of the inhabitants of Crimea and south-eastern Ukraine are under genuine threat from the irresponsible and provocative acts of gangs and ultranationalist elements, we emphasize once again that Russia’s actions are entirely appropriate and legitimate.”\textsuperscript{152}

These claims were rejected by the UN Commissioner of Human Rights in the Report on the Human Rights Situation in Ukraine who confirmed that “there is no threat to ethnic Russians or Russian

\textsuperscript{147} ibid
\textsuperscript{148} Vasyl Lazumirskyy, Perversion of a doctrine: the protection of nationals abroad and Russia’s invasion of Crimea, page 25
\textsuperscript{149} ibid
\textsuperscript{150} ibid
\textsuperscript{151} ibid
nationals abroad”. Moreover, the Council of Europe Parliamentary Assembly in its Report on Recent Development of Ukraine stated:

´[N]one of the arguments used by the Russian Federation to justify its actions hold true to facts and evidence. There was no (...) imminent threat to the rights of the ethnic Russian minority in the country, including, or especially, in Crimea.´

Regarding to the second criteria, even if there was an imminent threat against Russian minorities Russia could not provide evidence that the Ukrainian government was unable or unwilling to protect its citizens. Russia did not satisfy the last criterion of the Sir Waldock’s test. The involvement of the Russian regular forces in the blockades of buildings and taking control over the capital of Crimea was beyond the scope of the doctrine of protection of nationals abroad.

To conclude, Russia cannot evoke the doctrine of protection of nationals abroad within Article 51 of the UN Charter. The doctrine remains debatable and Russia cannot meet the three criteria by Waldock to justify its actions as protection of its nationals abroad.

2.2.6 Self-Determination

Russia has put forward another legal justification, namely, assisting people in Crimea to achieve self-determination.

The concept of self-determination became firstly implied in the Declaration of Independence of the United States of America in 1776. Later the right of self-determination was embodied in the UN Charter.

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155 Vasyl Lazumirsky, Perversion of a doctrine: the protection of nationals abroad and Russia’s invasion of Crimea, page 29
156 Ibid
Charter and various UNGA resolutions and core international instruments such as the, Covenants, the UNGA Declaration on Friendly Relations and in the Declaration of Granting Independence to the Colonial Countries and People.  

As stated in Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR): “All peoples have the right of self-determination.” By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Self-determination is a freedom given to all people to decide their political status and independence. The ICJ held in the East Timor case the right of self-determination is a part of customary law and determined that the principle has an erga omnes character:

“In the Court’s view, Portugal’s assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an erga omnes character is irreproachable. (...) it is one of the essential principles of contemporary international law.”

The right to self-determination is one of the fundamental principles of the UN Charter as embodied in Article 1(2) of the UN Charter: “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.” With the growing acceptance of the right of self-determination, legal issues have emerged regarding the conditions in which the concept may be applied. In the contemporary international law the principle of self-determination has internal and external aspects. The internal aspect is defined in the General Recommendation of the Committee on the Elimination of

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159 ibid 192
160 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, article 1(1)
161 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Article 1(1)
162 Digvijay Rewatker, Rithika Vidyut Shenoy, Crimea: A Tug Of War Between Ukraine And Russia, page 4
164 United Nations, Charter of the United Nations, Article 1(2)
165 Hassan Kouzehgar, Mohsen Vaseqi, Annexation Of Crimea To Russia: Contrast Between Right To Self-Determination And Territorial Integrity Preservation In International Law, 193
Racial Discrimination: “the right to self-determination of peoples has an internal aspect, i.e. the rights of all peoples to pursue freely their economic, social and cultural development without outside interference.” Article 5 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination adds that all the people have a right to take part in the conduct of public affairs at any level. The governments must represent the whole population without distinction as to race, color, decent, national, or ethnic origins. The internal self-determination is recognized as a right given to all the people and states are bound to promote and fulfill the political, economic, social and cultural rights of all their residents. In contrast, the external dimension of the right to self-determination is problematic. External self-determination is associated with unilateral succession and it is not widely accepted. The state practice shows that some states do not endorse the right of external self-determination while others assume that it can be exercised only in certain situations as a last resort, against massive violations of human rights and expressed denial for the right of internal self-determination. Due to the lack of clarity, the Supreme Court in the case of the succession of Quebec from Canada expressed the view of: “A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances.” The Supreme Court also determined that if a parent State refuses the right of internal self-determination, then people may seek for external self-determination. In the 2010 Kosovo case, many states expressed their view about the

167 Ibid, Article 5
169 Vasyl Lazumirskyy, Perversion of a doctrine: the protection of nationals abroad and Russia’s invasion of Crimea, page 41
170 Ibid 43
171 Vasyl Lazumirskyy, Perversion of a doctrine: the protection of nationals abroad and Russia’s invasion of Crimea, page 48
172 Reference re Secession of Quebec, [1998] 2 SCR 217
173 Ibid
legality of unilateral succession. For instance, Ireland, Switzerland and Germany took similar positions advocating in their statements the criterion of “last resort” required for the right of unilateral succession. Germany has stated:

[A]n exceptionally severe and long lasting refusal of internal self-determination by the State in which a group is living. This is not identical, but will often coincide with severe violations human rights, such as the right to life and freedom, but also the rights of association and assembly.

The arguments provided by Russia to defend its conduct in Crimea under the doctrine of self-determination are invalid because the people of Crimea have exercised their right of internal self-determination. Crimea has a status of Autonomous Republic within Ukraine under Article 137 of the Ukrainian Constitution. The main language is Russian and most of the schools in the Crimean Peninsula are Russian. Furthermore, the Russian population is represented in the Parliament and the government. Finally, succession of Crimea was not an act of last resort.

Some international instruments such as the Definition of Aggression in the Declaration on Friendly Relations and 1972 Implementation of the Declaration Granting Independence to Colonial Countries and People provide indeed that people struggling for their freedom or independence may seek and receive

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174 Vasyl Lazumirskyy, Perversion of a doctrine: the protection of nationals abroad and Russia's invasion of Crimea, page 43
177 Джеєміле: ФСБ пропонує оїмприхильникам у Криму триваріанти (2014) available at: <http://news.liga.net/ua/articles/politics/1534367-dzhem_i_v_fsb_proponu_mo_m_prikhilnikam_u_krimu_tri_var_anti.htm> accessed on: 06.07.2015
178 Ibid
179 Vasyl Lazumirskyy, Perversion of a doctrine: the protection of nationals abroad and Russia's invasion of Crimea, page 50
support from other States. The people trying to exercise their right of self-determination may seek assistance from other states but they must be under “colonial and racist regime or other forms of alien domination” and the support provided by the third State has to be in “accordance with the Charter”. The ICJ in the case of Kosovo stated that if the declarations of independence: “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)”. Consequently, the annexation of Crimea cannot be legal under the doctrine of the right of self-determination because Crimea was never a colony of Ukraine and Russian actions were in contradiction to Articles 2(4) and 2(7) of the UN Charter.

2.2.7 Use of force with the consent of the territorial state

Russia further invoked as a legal ground to used force in Ukraine a double request for assistance. Russia’s ambassador to the United Nation Mr. Vitaly Churkin stated at the UN Security Council’s meeting that the ousted President of Ukraine Viktor Yanukovych have sent a letter on 1st of March 2014 to Russian President Putin with the following request: “I appeal to the President of Russia Vladimir V. Putin to use the armed forces of the Russian Federation to re-establish the rule of law, peace, order, stability and to protect the people of Ukraine.” The second request came from newly chosen Prime Minister of Crimea Sergey Aksyonov as who stated: “Taking into account my responsibility for the life and security of citizens, I ask Russian President Vladimir Putin to help in ensuring peace and calm on the territory of Crimea”.

Intervention upon invitation is another unwritten exception to the prohibition of the use of force under Article 2(4) of the UN Charter. The use of force upon request within the territory of another State is

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180Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 21
181Ibid
182Accordance with international law of the unilateral declaration of independence in respect of Kosovo, 2010 I.C.J.(Advisory Opinion), (Jul.22), at paras. 79-84
183Digvijay Rewatker, Rithika Vidhyut Shenoy, Crimea: A Tug Of War Between Ukraine And Russia, page 10

lawful and recognized by the ICJ and the International Law Commission. The ICJ held in the *Nicaragua* case that the intervention upon request of a state is permissible and emphasis the importance of the governmental consent:

“As the Court has stated, the principle of non-intervention derives from customary international law. It would certainly lose its effectiveness as a principle of law if intervention were to be justified by a mere request for assistance made by an opposition group in another State – supposing such a request to have actually been made by an opposition to the régime in Nicaragua in this instance”

The United Nations Report of the Special Committee on the Problem of Hungary provides that: “The act of calling in the forces of a foreign State for the repression of internal disturbances is an act of so serious a character as to justify the expectation that no uncertainty should be allowed to exist regarding the actual presentation of such a request by a duly constituted Government.” Furthermore, Article 20 of the Draft Articles on Responsibility of States of Internationally Wrongful Acts stipulates that:

“Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.”

The Law Commission's commentary on Article 20 defines that if the consent is valid and a state acts within the scope of the consent, then this “precludes the wrongfulness of that act in relation to the consenting State”.

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186 Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 16
187 ICJ Nicaragua, op.cit., para. 246
189 International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001 , article 20
190 International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001 , commentary 1
The UN Security Council also reiterated the existence of the doctrine of intervention by consent by approving the actions of the French forces in Mali in 2012.\textsuperscript{191} The government of Mali sought assistance from France to defeat the Islamist insurgency.\textsuperscript{192}

Deriving from the established broad recognition of the concept, it appears that Russia certainly may legalize its, otherwise illegal, use of force in Crimea.

The thesis requires in-depth analysis on the validity of the requests and did Russia act in the limit of the requests or exceeded its actions.

As already established, only a legitimate government may issue a request to another state to use force in its territory. In other words, a legitimate government is entitled to request a military intervention.\textsuperscript{193} It is questionable whether Mr. Yanukovych was entitled to request assistance from Russia considering that on 22\textsuperscript{nd} of February the Ukrainian Parliament voted to remove him from his post and appointed a new interim President Oleksandr Turchinov until the new presidential elections were held on 25\textsuperscript{th} of May 2014. Mr. Yanukovych requested assistance from Russia on 1\textsuperscript{st} of March 2014 after he was removed by the Parliament.\textsuperscript{194}

Russia refused to accept the ouster of Mr. Yanukovych and considered the new Ukrainian authorities as illegitimate under the Ukraine Constitution.\textsuperscript{195} Russia’s arguments were based on Article 108 of the Ukraine Constitution which specifies that the president may lose office in the cases of:

"1) resignation; 2) inability to exercise presidential authority for health reasons; 3) removal from office by the procedure of impeachment; 4) death."\textsuperscript{196}

The Ukrainian constitution also requires three fourth of the majority vote which was not obtained, and a review of the case before the Ukraine’s Constitutional Court which did not take place.\textsuperscript{197} Although Russia

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\textsuperscript{192}Ibid
\textsuperscript{194}Security Council, Ukraine, in Emergency Meeting, Calls on Security Council to Stop Military Intervention by Russian Federation (7124th Meeting, MARCH 2014)
\end{flushleft}
has questioned the legality of the removal of President Yanukovych, theories of effective control and popular sovereignty must be applied to test whether Mr. Yanukovych still had political power to issue an invitation for foreign assistance.  

Effective control theory requires permanent de facto control over a territory and population. Louise Doswald-Beck questions the effectiveness of a government’s control in a time of “widespread rebellion, which is aimed at overthrow of the government.” Because Mr. Yanukovych fled to Russia, he lost the effective control over Ukraine which prevented him to issue a valid request for military intervention.

According to popular sovereignty theory, the loss of effective control does not affect the legitimacy of the government. However, the application of the popular sovereignty test is debatable because as stated by Vaypan, the state practice shows: “this theory has been recently applied only to cases of military coups d’etat and not to widespread social protests against the (once) popular government.” Therefore, the capacity of Mr. Yanukovych to issue an invitation is highly debatable because this theory has not been applied to other cases than to military coup d’etat. The invitation issued by the Prime Minister of Crimea Mr. Aksyonov is not either valid. The ICJ held in the Nicaragua case that a non-state actor cannot request the use of force. Crimea had been granted with the status of Autonomous Republic within Ukraine. The Prime Minister of Crimea, who is a representative of the federal entity of Ukraine, does not have powers to issue an invitation.

The use of force upon a valid consent of the territorial State could have been persuasive justification for Russia, if the requests were made by a legitimate organ and if the Russia did not act beyond the scope of

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197 Daisy Sindelar, Was Yanukovych’s Ouster Constitutional? (Monday, July 13, 2015) available at: http://www.rferl.org/content/was-yanukovychs-ouster-constitutional/25274346.html accessed on: 12.07.2015
199 Ibid
200 Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 18
201 Varun Baliga, Blind Spot in the Use of Force Framework – Notes on Crimea
202 Ibid
204 Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 18
206 Constitution Of Ukraine As amended by the Law of Ukraine of 8 December 2004 № 2222-IV available, Article 137
207 Daniel Wisehart, The Crisis in Ukraine and the Prohibition of the Use of Force: A Legal Basis for Russia’s Intervention?
the request. The case study proved that neither Mr. Yanukovich, nor the Prime Minister of Crimea, were in legal position to request assistance from Russia and that the Russian troops acted beyond the scope of the requests.

Deriving from the above legal analysis, it follows that Russia’s use of force in Crimea is not justifiable. None of the provided justifications by Russia are legally grounded. Therefore, Russia used force in Autonomous Republic of Crimea unlawfully and there is sufficient reasoning to assume that Russia’s use of force may amount to an act of aggression pursuant to the UNGA’s Resolution 3314. In order to achieve credible response to the research question it is necessary to examine the agreements concluded between Russia and Ukraine which are relative to the Russian possible act of aggression.

3. Did the annexation of Crimea violate key agreements concluded between Russia and Ukraine?

The illegal use of force by Russia did not only violate the core principles of international law but also breached international, regional and bilateral agreements. These agreements were concluded to protect the national interests of the parties to the agreements and the principles violated by Russia are embodied in the above mentioned agreements in order to give them more explicit content. Russia and Ukraine have maintained their relationship during the years and since the collapse of the Soviet Union, they have concluded 377 bilateral agreements based on the principles of sovereignty, territorial integrity, partnership and friendship in different areas.

3.1 Treaty on Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation

Ukraine became independent in 1991 however throughout the following years the Russian political elite maintained territorial claims on some parts of Ukraine, more precisely the city of Sevastopol and Odessa. Long negotiations resulted in a treaty ensuring the sovereignty of the states and respect of their borders, trust, friendship and cooperation was signed in Kiev in 1997 between Russia and Ukraine.

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208 Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 20
209 Ibid 24
210 Договорно-правовабазаміж Україноюта Росією, Посольство України в Російській Федерації
211 Vasyl Lazumirsky, Perversion of a doctrine: the protection of nationals abroad and Russia's invasion of Crimea (RIGA, 2014) page 10
Ever since, Russia has periodically violated this bilateral agreement, for instance during the “Tuzla crisis” in 2003\textsuperscript{212} and the so called “Cheese War”\textsuperscript{213} and “Chocolate War”\textsuperscript{214}. The gravest violation of the provisions of the 1997 Treaty took place in February and March\textsuperscript{215} when Russia breached Articles 1, 2, 3, 4, 6 and 13 of the Treaty on Friendship Cooperation and Partnership as for instance Russia acted contrary to the provisions of Article 2 of the Treaty which provides that:

“The High Contracting Parties in accordance with the provisions of the Charter of the United Nations and obligations under the Final Act of the Conference on Security and Cooperation in Europe respect the territory integrity of each other and confirm inviolability of borders existing between them”\textsuperscript{216}

\subsection*{3.2 Budapest Memorandum on Security Assurances}

Russia has violated the Budapest Memorandum concluded between Russia, the USA, the UK and Ukraine to denuclearize Ukraine as a third largest nuclear power in the world.\textsuperscript{217} In 1994, Ukraine agreed to transfer its nuclear weapons to Russia as an exchange:

The Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of

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212Sophie Lambroschini, Russia/Ukraine: Prime Ministers Meet Today over Tuzla Dam Dispute (October 24, 2003) available at: <http://www.rferl.org/content/article/1104782.html> accessed on: 24.05.2015
214В Європарламенті домовились, як захистити Україну від Росії (BBC Ukraine, 2013) available at: <http://www.bbc.co.uk/ukrainian/politics/2013/08/130828_euparliament_special_committee_results_vc.shtml> accessed on: 23.05.2015
215Vasyl Lazumirskyy, Perversion of a doctrine: the protection of nationals abroad and Russia's invasion of Crimea, page 12
216UNGA, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Article 2
\end{flushright}
their weapons will ever be used against Ukraine except in self-defence or otherwise in accordance with the Charter of the United Nations 218

Furthermore they agreed to:

Reaffirm their commitment to seek immediate United Nations Security Council action to provide assistance to Ukraine, as a non-nuclear-weapon State party to the Treaty on the Non-Proliferation of Nuclear Weapons, if Ukraine should become a victim of an act of aggression219

3.3 Helsinki Final Act

Russia’s conduct in Crimea has breached fundamental principles of the Organization for Security and Co-operation in Europe (OSCE) set forth in the Helsinki Final Act.220 The Helsinki Final act established respect of the borders in Europe.221 The intervention in Autonomous Republic of Ukraine is a clear violation of all the principles of the Final Act of 1975:

Sovereign equality, respect for the rights inherent in sovereignty, II. Refraining from the threat or use of force, III. Inviolability of frontiers, IV. Territorial integrity of States, V. Peaceful settlement of disputes, VI. Non-intervention in internal affairs, VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, VIII.


219 Ibid


Equal rights and self-determination of peoples, IX.
Cooperation among States, X. Fulfillment in good faith of obligations under international law

In 2014, the OSCE Parliamentary Assembly stated that:

“Condemns the clear, gross and uncorrected violation of the Helsinki principles by the Russian Federation with respect to Ukraine, including the particularly egregious violation of that country's sovereignty and territorial integrity”

3.4 Constitution of Ukraine

The referendum held on 16th of March 2014 in Crimea violated articles 73 and 132 of the Constitution of Ukraine and articles 2 and 6 of the Constitution of the Autonomous Republic of Crimea which provides that the borders of Ukraine can be changed and defined by the whole Ukrainian population. As stated in article 73 of the Ukraine constitution: “Issues of altering the territory of Ukraine are resolved exclusively by an All-Ukrainian referendum” and article 2(1) of the Constitution of the Autonomous Republic of Crimea defines that:


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224 CONSTITUTION OF UKRAINE, Articles 73 and 132
225 З А К О Н У К Р А І Н И П р о з а т в е р д ж е н н я К о н с т и т у ц і ї А в т о н о м н о ї Р е п у б л і к і К р і м( Відомості Верховної Ради України (ВВР), 1999, N 5-6, str.43 ) available at:<http://zakon4.rada.gov.ua/laws/show/350-14> accessed on: 12.07.2015 Articles 2 and 6
225 З А К О Н У К Р А І Н И П р о з а т в е р д ж е н н я К о н с т и т у ц і ї А в т о н о м н о ї Р е п у б л і к і К р і м, Article 2(1)
Russia’s aircrafts have violated the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on the Use of Airspace of Ukraine and of Airspace over the Black Sea, more specifically Article 2, when they crossed the borders of Ukraine illegally, landed or crossed the airspace without border control.226

The most significant breach for the purpose of the thesis is the infringement of the Agreement on the Status and Conditions of the Presence of the Russian Black Sea Fleet on the Territory of Ukraine. This agreement will be discussed in the following chapter as a possible act of aggression under Article 3(e) of the UNGA’s Definition of Aggression.

The agreements noted above have a fundamental role in the Ukraine-Russia relations. They establish legally binding obligations for the parties to the agreement.227 Russia’s illegal use of force in Ukraine violated not only the UN Charter but also the Helsinki Declaration’s Final Act, the Treaty on Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation known as the Great Treaty, the Black Sea Fleet Agreement and the Budapest Memorandum which reaffirmed the core principles violated by Russia.228

4. Did Russia commit an act of aggression?

The claims by Russia to justify the annexation of Crimea do not have legal basis under international law. Russian military intervention in Crimea and the subsequent annexation of Crimea to Russia constitutes an unlawful use of force under article 2(4) of the UN Charter.229 This chapter will interpret the definition of the act of aggression embodied in the UNGA resolution 3314 “Definition of Aggression” and apply the

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227 Peter M. Olson, The Lawfulness of Russian Use of Force in Crimea (53 Mil. L. & L. War Rev. 17 2014) 24 available at: HEINONLINE
228 Ibid 25
relevant provisions to Russia’s actions in Crimea in order to assess whether the annexation of Crimea amounted to an act of aggression.

The first international trial for aggression was after the Second World II at the Nuremberg International Military Criminal. The crime of aggression was described as “the supreme international crime”. Aggression was codified in Article 6 (a) of the Nuremberg Charter as crime against peace and defined as:

“namely, planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;”.

Nowadays, the most widely accepted definition of aggression is stipulated in UNGA resolution 3314 which reflects international consensus.

Although the UNGA is not a legislative organ, the ICJ stated in the Nuclear Weapons Case (1996) that:

“General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an opinion juris.” The abstract of the UNGA resolution3314 defines that resolution provides “basic principles as guidance” and “whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case”.}

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231 ibid
234 Peter M. Olson, The Lawfulness of Russian Use of Force in Crimea, page 5
235 Robert J. Delahunty, The Crimean Crisis
236 Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX), abstract
Although there is no crime of aggression without an act of aggression, the two concepts are different.\textsuperscript{236} The act of aggression is defined in Article 1 of the UNGA Resolution 3314 as:

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“Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations”,
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and additionally Article 3 of the same resolution, elaborates variety of acts which are qualified as “act of aggression”.\textsuperscript{237}

According to Article 4 of the UNGA resolution 3314, the enumerated acts in Article 3 are not exhaustive and “the Security Council may determine that other acts constitute aggression under the provisions of the Charter.”\textsuperscript{238}

It is important to note that not all acts violating Article 2(4) of the UN Charter constitute an act of aggression under the definition of aggression in the UNGA resolution 3314. UNGA’s Resolution 3314 (Article 3) distinguishes aggression from other forms of unlawful force.\textsuperscript{239} It defines aggression in the preamble as “the most serious and dangerous form of the illegal use of force”.\textsuperscript{240} Armed force is the core element of the act of aggression.\textsuperscript{241} The definition of aggression requires use of “armed force” not merely the “use of force”.\textsuperscript{242} According to O’Connell “it is well established in the jus ad bellum that “not all unlawful uses of force amount to aggression”.\textsuperscript{243}

Some authors support the view that an act of aggression may be determined through the gravity and the scale of the used force even if an actual armed force has not occurred.\textsuperscript{244} The most serious forms of violation of the prohibition of the use of force amount to an act of aggression.\textsuperscript{245} Others even find similarity between the armed attack under Article 51 of the UN Charter and the required element

\textsuperscript{237}Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX), Article 3
\textsuperscript{238}Ibid, Article 1
\textsuperscript{239}Antonello Tancred, The Russian annexation of the Crimea: questions relating to the use of force
\textsuperscript{240}Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX), Annex
\textsuperscript{241}Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 36
\textsuperscript{242}Ibid 38
\textsuperscript{243}Ibid
\textsuperscript{244}Ibid
\textsuperscript{245}Ibid
“armed force” in the definition of the aggression. They assert that the required armed force may be interpreted in the light of the ICJ statement in Nicaragua case that “to distinguish the most grave forms of the use of force (those constituting an armed attack) from other less grave forms”. Many commentators and international bodies have condemned the actions of Russia not only as a violation of the sovereignty and territorial integrity of Ukraine, but also as an act of aggression. The Council of European Union stated on 3rd of March 2014 that: “The European Union strongly condemns the clear violation of Ukrainian sovereignty and territorial integrity by acts of aggression by the Russian armed forces as well as the authorization given by the Federation Council of Russia on 1 March for the use of the armed forces on the territory of Ukraine”. Many States also denounced Russia in committing an act of aggression. For instance, the legal advisory committee to the Minister of Foreign Affairs of Poland expressed an opinion that: “Actions by the Russian Federation taken at the end of February and in the first half of March 2014 using armed forces deployed in the territory of Ukraine qualify as acts of direct aggression against Ukraine”. Ukraine has also claimed that it is a victim of aggression. Some may argue that the lack of deadly use of force Russia in Crimea cannot amount to an act of aggression. This thesis finds that violence not of a grave scale amount to acts of aggression as enumerated in Article 3 of the UNGA resolution 3314. Analyzing and applying the provisions of Article 3 of the GA’s Definition to the Russian undertakings in the Peninsula allows establishing whether Russia committed an act of aggression in Crimea. The acts enumerated in Article 3 have to be committed in accordance with Article 2, therefore the “armed force”

246 ibid
247 Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America), para. 191
251 Antonello Tancred, The Russian annexation of the Crimea: questions relating to the use of force
252 Ibid
is indispensable premise for determine the commission of an act of aggression. In this regard, Article 8 of the UNGA resolution 3314 reaffirms that all the provisions are interrelated and “each provision should be construed in the context of the other provisions”.253

It may be asserted that Russia has committed a direct and indirect act of aggression.254 The annexation of Crimea may constitute an act of aggression pursuant to Article 3(a) of the UNGA resolution 3314.255 Article 3a requires that:

“(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof,”256

Although the act of annexation is enumerated as act of aggression in Article 3(a) of the UNGA resolution 3314, it is difficult to establish that Russia committed an act of aggression because of the requirement of use of “armed force”.257 Russia’s operations in the Crimean Peninsula would amount to an act of aggression if there existed clear proof that the Russian regular forces used “armed force”.258 In this regard, Russian President Putin has stated: “I cannot recall a single case in history of an intervention without a single shot being fired and with no human casualties”.259 However, media have reported that there was an open confrontation between the Russian military and the Ukraine regular forces.260 UN agencies also have reported on the situation in Crimea and have found that human rights violations have occurred in the territory of Crimea.261 There is a lot of information about how the Russian forces together with the “self-defense groups” took control over key buildings in Crimea, military facilities and naval vessels.262 As a result of the confrontations, the Ukrainian military had to leave Crimea.263

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253 Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX), Article 8
254 The Opinion by Legal Advisory Committee to the Ministry of Foreign Affairs of the Republic of Poland on the annexation of the Crimean Peninsula to the Russian Federation in light of international law, page 3-4
255 Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX) Article 3(a)
256 Ibid
257 Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 37
258 Ibid
260 Peter M. Olson, The Lawfulness of Russian Use of Force in Crimea, page 27
262 Ibid
reports are accepted as reliable then it can be construed that Russian military actions in the Crimean Peninsula constitute an act of aggression. The requirement of an armed attack is satisfied by the evidence showing the use of armed force resulting in the annexation of Crimea to Russia.  

Pursuant to Article 3(c) which states that: “The blockade of the ports or coasts of a State by the armed forces of another State”, it follows that Russia has committed an act of aggression. The Russian regular forces have taken place in the blockades of key governmental buildings as already noted in Chapter I. The use of armed force by Russia in Crimea exceeds the level of “less grave forms of the use of force”.

Pursuant to Article 3(g) of the UNGA resolution 3314, Russia has committed an act of aggression if established that the information circulated in the media is reliable. Article 3(g) stipulates that:

"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 of such gravity as to 
amount to the acts listed above, or its substantial 
involvement therein."  

Under this clause Russia has committed an indirect act of aggression. Evidence show that in a telephone conference held in March 2014 Russian President Putin admitted that the Crimea’s self-defense groups are actually formed by Russian regular forces. In addition, as already established, these self-defense groups have used armed force which fulfilled the criteria of an armed attack.

Within the context of Article 3(g) of the UNGA resolution 3314 and the clarification of “armed attack” the ICJ defines in the Nicaragua case “an armed attack must be understood as including not merely actions by regular armed forces across an international border, but also “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 of such gravity as to amount to” (inter alia) an actual armed attack conducted by regular

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263Ibid
264Ibid
265Aurel Sari, Ukraine Insta-Symposium: When does the Breach of a Status of Forces Agreement amount to an Act of Aggression? The Case of Ukraine and the Black Sea Fleet SOFA
266Nicaragua v United States of America, para.191
267Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX) Article 3(g)
268The Opinion by Legal Advisory Committee to the Ministry of Foreign Affairs of the Republic of Poland on the annexation of the Crimean Peninsula to the Russian Federation in light of international law, page 4
269Ibid
forces, "or its substantial involvement therein". 270 Following this and the findings of the thesis Russia had sent armed bands to fight against the Ukrainian military forces. This act amounts to an indirect act of aggression even if there was no evidence that the Russian “self-defense groups” have not used armed force some authors, like O’Connell, argue that there is a link between armed attack and an act of aggression because “any armed attack in the sense of Article 51 would normally also constitute an act of aggression”. 271 The concept of an armed attack under article 51 considers “scale and effect “of the force utilized.272 Even if the use of force by Russia did not amount to the use of armed force, given that Crimea was annexed to Russia, this can be said to have grave effects allowing Ukraine to use force as self-defense. Consequently, Russia has committed an act of aggression and thereby, an armed attack.

As already noted above, Russia has breached many International instruments which contain the central principles of international law. The most significant amongst them is the violation of the Agreement between Ukraine and Russia on the Status and Conditions of Presence of the Black Sea Fleet of the Russian Federation in the Territory of Ukraine signed in 1997.273 This agreement was signed just before the Great Treaty as an exchange of the recognition of the territory of Ukraine.274 The term of the treaty was twenty years, however in 2010 the Ukraine then President Yanukovych extended it up to 2042.275

The Ukrainian Association of International Law has suggested that Russia has committed an act of aggression as a result of a material breach of the Agreement on the Status and Conditions of the Presence of the Russian Black Sea Fleet on the Territory of Ukraine concluded on 8th of August 1997.276 The Ukraine International Law Association pointed that the acts carried out by the deployed Russian troops in Crimea constitute a “material breach” .277 This is supported by Article 60(3)(b) of the Vienna Convention on the Law of Treaties which determine material breach as the violation of a provision essential to the accomplishment of the object or purpose of the treaty.278 Black Sea Fleet

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270 Nicaragua v United States of America, para. 195
271 Euan Murray, Russia’s Annexation Of Crimea And International Law Governing the Use Of Force, page 42
272 ibid 43
273 Aurel Sari, Ukraine Insta-Symposium: When does the Breach of a Status of Forces Agreement amount to an Act of Aggression? The Case of Ukraine and the Black Sea Fleet SOFA
275 Vasyl Lazumirskyy, Perversion of a doctrine: the protection of nationals abroad and Russia’s invasion of Crimea , page 14
276 Aurel Sari, Ukraine Insta-Symposium: When does the Breach of a Status of Forces Agreement amount to an Act of Aggression? The Case of Ukraine and the Black Sea Fleet SOFA
277 Ibid
278 Ibid
Agreement contains basic rules and operations as its purpose according to Article 1 is to define the status of the “Black Sea Fleet of the Russian Federation stationed on the territory of Ukraine”. Article 2 of the SOFA makes it clear that the Agreement applies to Russian military formations and units based in the Black Sea Fleet. Russian troops deployed in the military basis in the Crimean Peninsula have breached central provisions of SOFA. Russia’s assertion that its military forces were deployed in accordance with the Black Sea Fleet are invalid because operations like blockades of governmental buildings, the enforcement of public order in Crimea and other actions were inconsistent with the agreement. Thus, Russia has breached the follows articles:

**Article 6 (1):**

“Military units shall conduct their operations in the areas of disposition in accordance with the legislation of the Russian Federation, respect Ukraine’s sovereignty, obey its legislation and refrain from interference with Ukraine’s domestic affairs”  

**Article 8 (2):**

“Military units shall conduct exercise and other combat and operative training within the limits of training centres, training areas, positioning and dispersal areas, firing ranges, and, except forbidden zones, within the designated airspace as agreed with Ukraine’s competent authorities”  

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280 Aurel Sari, Ukraine Insta-Symposium: When does the Breach of a Status of Forces Agreement amount to an Act of Aggression? The Case of Ukraine and the Black Sea Fleet SOFA  
281 Robert J. Delahunt, The Crimean Crisis, page 29  
283 Ibid
These provisions were violated periodically by the Russian armed forces without the consent and permission of Ukraine. Moreover, it was reported that Russian combatants with a number of military equipment moved towards the cities which is a violation of Article 15(5): “Movements related to activities of military units outside of their areas of disposition shall take place following an approval by Ukraine’s competent authorities.”

The violation of the provisions established above contravenes the main purpose and the nature of the agreement. They violated the terms and conditions under which the Russian forces may operate in the territory of Ukraine. Hence, Russia is in material breach of the Agreement on the Status and Conditions of the Presence of the Russian Black Sea Fleet on the Territory of Ukraine and as such is responsible for committing an act of aggression upon Article 3(e) of the UNGA Definition of Aggression:

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 or any extension of their presence in such territory beyond the termination of the agreement;

As already determined Russia used illegal force against sovereignty and territorial integrity of Ukraine and the justifications by Russia are not valid. It has been demonstrated that Russia has committed a number of acts of aggression stipulated in Article 3 of the UNGA Resolution 3314. Russian military forces were involved in open confrontation with the Ukrainian forces and these actions led to the annexation of Crimea to Russia which is enumerated as an act of aggression under Article 3(a) of the UNGA resolution 3314. Russian also breached Article 3(c) and 3(g) of the UNGA resolution 3314 by using armed forces resulting in the blockades of key buildings and indirect aggression by sending groups to act on behalf of the State. Pursuant to Article 3(e) Russian’s violation of the Black Sea Fleet agreement also amount to an act of aggression. Consequently, Russia has committed an act of aggression in Crimea and these developments led to the annexation of Crimea to Russia. Pursuant to Article 5 of the UNGA resolution 3314, Russia bears the responsibility for committing an act of aggression and “No

284Ibid
285Ibid
286Aurel Sari, Ukraine Insta-Symposium: When does the Breach of a Status of Forces Agreement amount to an Act of Aggression? The Case of Ukraine and the Black Sea Fleet SOFA
287Ibid
288Antonello Tancred, The Russian annexation of the Crimea: questions relating to the use of force
consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression". These acts cannot be justified as legal neither under Article 1 nor by any other relevant circumstances under Article 2. There are varieties of means provided by the International law to respond to the act of aggression as the most serious crime.

5. Conclusion

This thesis analysed Russia’s actions in Crimea in 2014 and seeks to answer the research question of “Did the annexation of Crimea constitute an act of aggression by Russian?”

The first chapter disclosed key facts of Russia’s military operation in Crimea which provided the basis for the analysis. The second chapter gave brief definitions of the rules governing the respect of the equal sovereignty of states, non-intervention and non-use of force and applied these fundamental principles of international law to Russia’s use of force and intervention in Crimea. Deriving from the legal case study it follows that Russia’s actions in Crimea were inconsistent with international law governing the rules of non-intervention and prohibition of the use of force. Chapter two also considered the possible legal justifications invoked by Russia and concluded that none of the legal grounds are valid.

Humanitarian intervention can permit the use of force only if gross human right violations are committed and a state fails to protect its citizens. There are no such findings in the territory of Ukraine. Consequently, the doctrine of humanitarian intervention is inapplicable. Russia also used the pretext of the protection of Russian nationals living in the territory of Crimea. This doctrine has no legal basis because Russian nationals have not been threaten or injured and Ukraine has not failed to protect them. The annexation of Crimea to Russia was a result of the military intervention and the use of force, which is beyond the purpose of the protection of nationals abroad. Another justification put forward by Russia is the doctrine of self-determination. Russia claimed that they used force to assist people in Crimea to exercise their right of self-determination. The analysis shows that Russia cannot justify its use of force in

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280 Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX), Article 5
290 Ibid Article 1, 2
Crimea by adopting the doctrine of self-determination. This is because Ukraine has not restricted the rights of Russian nationals to internal self-determination. There were not any massive human rights violations against the Russian minorities. Furthermore, Russian nationals are not under colonial or racial regime and Russia’s assistance of the national minorities in Crimea is inconsistent with the UN Charter. The thesis also examines the doctrine of intervention upon a request. Although Russia has presented some reasonable arguments for the illegal removal of Ukrainian President Yanukovych from its post, still the invitations issued by Mr.Yanukovych and Sergei Aksyonov are not valid. Mr.Yanukovych fled to Russia and lost effective control over Ukraine. He was no longer in a legal position to issue a request for the use of force in Ukraine. Regarding the status of Crimean Prime Minister Aksyonov to issue invitation for intervention as a representative of federal state of Crimea he was not entitled to take this action. Chapter two evidently demonstrate that Russia’s use of force is illegal and is not in conformity with the rules governing the principle of non-intervention, prohibition of the use of force and the right of self-defence. The justifications provided by Russia are not legally upheld. Chapter three examines key agreements violated by Russia. First these agreements stipulate the core principles of international law. Second their purpose is to ensure the respect of the territorial integrity of the state parties and to encourage the peaceful settlement of the disputes. Russia violated not only fundamental legal norms of international law but also breached the Helsinki Final Act, the Treaty on Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation known as the Great Treaty, the Black Sea Fleet Agreement and the Budapest Memorandum. The material breach of the Black Sea Fleet Agreement is especially important as it may amount to an act of aggression. Chapter four was devoted to analyse the act of aggression, its elements and its application to the Russia’s use of force in Crimea in order to achieve credible answer to the research question. According to the UNGA resolution 3314 only the most serious forms of the use of force may constitute an act of aggression. It is established that armed force is required element for the constitution of an act of aggression. Based on available public information it can be argued that Russia’s use of force may amount to an act of aggression pursuant Articles 3(a), 3(c), (3) and 3 (g) of the UNGA resolution 3314. The fact gathering is based on secondary sources, so the thesis presumed that Russia’s use of force in Crimea amount to an act of aggression only if assumed that the established facts are reliable. The conflict in Ukraine was not of a great scale of violence, but the essential requirement of the use of armed force was satisfied. In addition, Russia has being in material breach of the Black Sea Fleet Agreement which constitutes to an act of aggression pursuant article 3(g) of the UNGA Definition of Aggression. By annexing Crimea, Russia has committed and an act or acts of aggression which posed a
threat to the European and international peace and security and led to tension and instability in the region.

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