



5-23-2016

Secession: The Contradicting Provisions of the United Nations Charter - A Direct Threat to the Current World Order

N. Micheli Quadros M.P.A.

Follow this and additional works at: <https://digitalcommons.law.scu.edu/scujil>



Part of the [International Law Commons](#)

Recommended Citation

N. Micheli Quadros M.P.A., *Secession: The Contradicting Provisions of the United Nations Charter - A Direct Threat to the Current World Order*, 14 SANTA CLARA J. INT'L L. 461 (2016).

Available at: <https://digitalcommons.law.scu.edu/scujil/vol14/iss2/4>

This Article is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Journal of International Law by an authorized editor of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com, pamjadi@scu.edu.

Secession: The Contradicting Provisions of the United Nations Charter – A Direct Threat to the Current World Order

N. Micheli Quadros, *M.P.A.*

I. Introduction

Secession movements continue to treat the current world order and world peace. Secession represents a historical instance of political dissolution where political actors withdraw their expectations, involvement in political activities, and abandon their loyalty from a jurisdictional center in favor of a center of their own.¹ Secession is itself a confrontational act that inevitably seeks a response from an established nation.² Secessionist movements are internal threats to a nation's territorial integrity that inevitably require the international community's involvement due to the potential impact it could cause to the world as a whole.

The preamble of the United Nations' Charter (UN Charter) declares that justice and respect for international law and international community is to be maintained.³ The core principle of international law delineated in the UN Charter is that a state's territorial integrity is inviolable.⁴ However, the UN also enforces nation states' obligations to their citizens by granting individuals the right of self-determination. The right of self-determination refers to a group of individuals' ability to make "choices free from the force of the institutional framework within which they live."⁵

The UN Charter was developed for the purpose of creating a more peaceful world where nation-states respect each other's sovereignty and territory. Unfortunately, the Charter fails to reconcile its contradicting provisions of territorial integrity and right of self-determination. It also fails to address threats to a nation's sovereignty that arise from within a nation's territorial borders as individuals exercise their right of self-determination. These outdated, and vague provisions are at their best inefficient when powerful nations continue to infringe upon other nations' territorial integrity, and manipulate individuals to exercise their right of self-determination.⁶

-
1. ALEKSANDAR PAVKOVIC & PETER RADAN, *CREATING NEW STATES: THEORY AND PRACTICE OF SECESSION* 175 (2007).
 2. Linda A. Malone, *Seeking Reconciliation of Self-Determination, Territorial Integrity, and Humanitarian Intervention (Introduction to Special Project: Humanitarian Intervention and Kosovo)*, 41 WM. & MARY L. REV. 1677 (2000), <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1535&context=wmlr>.
 3. Henrique S. C. de Souza, *The Principle of Self-determination and the Right of Territorial Integrity: A Legal and a Political Issue*, BOLETIM MUNDORAMA (Feb. 22, 2011), <http://mundorama.net/2011/02/22/the-principle-of-self-determination-and-the-right-of-territorial-integrity-a-legal-and-a-political-issue-por-henrique-santos-costa-de-souza/>.
 4. Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. Rep. 403, ¶ 122 (July 22), available at <http://www.icj-cij.org/docket/files/141/15987.pdf>.
 5. Robert Trisotto, *Seceding in the Twenty-First Century: A Paradigm for the Ages*, 35 BROOK. J. INT'L L. 419, 425 (2010).
 6. Brett D. Schaefer, *United Nations: Urgent Problems that Need Congressional Action*, THE HERITAGE FOUND, (2011), <http://www.heritage.org/research/lecture/2011/02/united-nations-urgent-problems-that-need-congressional-action>.

In sum, the absence of international law addressing the tension between individuals' right of self-determination and territorial integrity represent a direct threat to the current world order. This note will address (1) how the language of the UN Charter conflicts with the underlying purpose of the Charter; and (2) how this is evidenced in international involvement in secession movements, and the International Court of Justice's mixed messages in addressing those international conflicts.

This note will proceed as follows: Part II will discuss how secessionist movements represent a direct threat to the current world order. This direct threat is caused by the lack of a legal framework to reconcile territorial integrity and individuals' right of self-determination. As a consequence, powerful nations are able to manipulate and influence secession movement to advance their self-interest. The comparison of Kosovo's secession and Crimea's attempt to secede will show how external forces influence internal affairs. Part III will compare and contrast Kosovo and Crimea secessionist movement and the role played by other nations and international organizations. Part IV will briefly discuss the creation of the UN, its purpose, and the failure in its Charter to address the increasingly alarming issue of secession. Part V will explore the contradictions presented in Articles 1, 2 and 55 of the UN Charter. It will also address how the vague provisions in the UN Charter provide opportunities for secessionist movements to emerge. Part VI will discuss how the right of self-determination confronts nations' preservation of territorial integrity. Part VII will bring to light events that occurred during Kosovo's independence. It will show how NATO's involvement was a direct infringement of the UN Charter. It will also present the disguised motives behind Kosovo's secession. Part VIII will discuss possible ways that the tension between territorial integrity and individuals' right of self-determination can be reconciled. Lastly, part IX provides a conclusion that the UN Charter must be reformed to include a legal framework with detailed guidelines for secession movements and corresponding accountability measures.

II. Secession: A Threat to the Current World Order

The term secession relates to a region's unilateral withdrawal from a state with the intent to create a new and independent State.⁷ Scholars define secession as both a process and an outcome because it does not present an instant effect.⁸ Its impact

7. Theodore Christakis, *Secession*, OXFORD BIBLIOGRAPHIES, <http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0044.xml> (last updated Mar. 23, 2012).

8. Glen Anderson, *Secession in International Law and Relations: What Are We Talking About?*, 35 *LOY. L.A. INT'L & COMP. L. REV.* 343, 349 (2013).

is felt over time as new nation states seek to establish their power and influence beyond their borders. Currently, secession involves a series of complex negotiations, conflicts, and struggles that may or may not result in the creation of a new state.⁹

Secession movements jeopardize both a state's territorial integrity and the current world order. International legal experts analogize a successful breakaway of a region from a state the way friends see a separating couple: "as two new unlinked individuals."¹⁰ This analogy is nonetheless an over simplified notion of a region's pursuit of independence, as well as a complete disregard to a direct threat to world peace.

The UN framework and provisions were not built on a solid foundation. Instead, it was built off the faulty and failed substratum the League of Nations created. Through international agreements, nations have attempted to find ways to maintain diplomatic relations and tackle disagreements. The UN brought powerful nations together that seemed to share the common goal of protecting territorial integrity and territorial preservation. Unfortunately, over the years powerful nations' intentions have proven to be questionable. Throughout the years, powerful nations have and continue to use their political power to infringe upon other nations' territorial integrity.

Several instances brought to light the danger of nations' greed and self-interest in territorial control and expansion. Russia's aggression in Crimea and eastern Ukraine directly violated the principles of territorial integrity and individuals' right of self-determination.¹¹ Russia's actions also directly confronted the guarantees the West extended to Ukraine back in 1994, through the Budapest Memorandum.¹² China revisionism is also evident in the South China Sea.¹³ The People's Liberation Army continuous transgression into the Indian side has become a norm.¹⁴ Iran, Russia, and Saudi Arabia amongst other Gulf States, continue to contribute to the crisis in Syria by funneling money into the conflict.¹⁵

In addition to external forces threatening nations' borders, currently internal conflicts also present a significant threat to world peace. Extremist groups are rising

9. *Id.*

10. *Whether Secession in Crimea Would Be Legal*, THE ECONOMIST (Mar. 12, 2014), <http://www.economist.com/blogs/economist-explains/2014/03/economist-explains-10?zid=309&ah=80dcf288b8561b012f603b9fd9577f0e>.

11. King's College London, *What Is The Biggest Threat Facing The World Today?* THE TELEGRAPH (April 17, 2015), <http://www.telegraph.co.uk/news/worldnews/big-question-kcl/11544853/What-is-the-biggest-threat-facing-the-world-today.html>.

12. *Id.*

13. *Id.*

14. *Id.*

15. John Bew, *The Syrian Tragedy And The Crumbling Of World Order*, NEWS STATESMAN (Sep. 15, 2015), <http://www.newstatesman.com/world/middle-east/2015/09/syrian-tragedy-and-crumbling-world-order>.

within nations' borders to either seek independence for a region within a nation or to overthrow the government. The Islamic State of Iraq and Syria (ISIS) is a terrorist organization that is strong enough to rout several divisions of a national army.¹⁶ ISIS is also rich enough to sustain their operation at an impressive pace. The Boko Haram is a Jihadist group in northeastern Nigeria that became known worldwide when its leader launched an insurgency against the Nigerian government.¹⁷ The Islamic Revolutionary Guard Corps-Quds Force is a highly secretive branch of the Islamic Republic that connects, maintains and supports terrorist groups to enhance Iran's regional posture.¹⁸ The Haqqani Network is an organization created to strike fear into the hearts of Afghans and Pakistanis by utilizing its deep tribal relationships in eastern Afghanistan to terrorize the population.¹⁹

Secessionist movements are once again becoming a bitter reality that is threatening world peace and potentially creating a new world order. All those events and extremist groups present a direct threat to the current world order as they directly violate the principle of territorial integrity delineated in the UN Charter.

A. The Vulnerability of the Current World Order Due to the Lack of a Legal Framework to Reconcile Territorial Integrity and Individuals' Right of Self-Determination

In the absence of a detailed legal framework to protect less powerful nations' territory, those who possess a greater deal of political and economic influence determine people's fate. This is what happened recently in the case of Kosovo and Crimea. It is also common for a sub-state to seek its independence from its motherland when citizens' interests and positive rights are overlooked; or when the existence of precarious living conditions is predominant in the region. When these factors are present, there is a greater degree of vulnerability that further threatens a territory's integrity. This increased vulnerability is intensified by powerful nations' ability to use people's needs as a means to manipulate the populace and obtain control over a territory.

Kosovo is a prime example of the impact a weak legal framework for secession

16. Daniel R. DePetris, *The 5 Deadliest Terrorist Groups On The Planet*, *The National Interest* (Nov. 16, 2014), <http://nationalinterest.org/feature/washington-watching-the-5-deadliest-terrorist-groups-the-11687>.

17. *Id.*

18. *Id.*

19. *Id.*

movements has on a nation's territorial integrity. During Kosovo's unilateral declaration for independence, the International Court of Justice (ICJ) implicitly decided to frame the issue as one of domestic law.²⁰ It is undisputed that domestic laws do play an important role in secession movements. However, at times, internal conflicts develop and evolve to such magnitude capable of changing domestic and international borders, international relations, and the world order. Kosovo's territorial integrity was disregarded due to the lack of international law to reconcile a nation's territorial integrity and individuals' right of self-determination.

To preserve the current world order and to maintain world peace, international laws addressing independence pursuits must be developed immediately. Sometimes, individuals have legitimate reasons to mobilize. Other times, powerful international forces capable of changing the course of people's reality manipulate individuals into conflicts and secession movements. This is particularly true when international organizations initiate internal conflicts that evolve to cause disturbances and threaten the integrity of a nation's territory.²¹

B. Kosovo and Crimea, a Direct Display of the Confusion Created by the Contradicting Provisions in the UN Charter and ICJ's Failure to Develop Guidelines for Secession

Secession movements, such as that of Kosovo and Crimea, are no longer simply a matter of domestic laws or domestic affairs as the ICJ stated. This is true especially when the UN and the ICJ have presented contradicting opinions regarding whether secession is governed by international law, and whether sub-states have the right to secede. The ICJ delivered an opinion during Kosovo's independence movement stating that Kosovo's secession from Serbia did not violate international law.²² Its position created great confusion as to whether sub-states or nations have a vested right to secede. The ICJ's attempt to remain impartial to the issue of secession gave rise to a threatening trend that could jeopardize states' territorial integrity. During Kosovo's secession, the danger the lack of a legal framework presents when balancing territorial integrity and right to self-determination became apparent.²³ Kosovo's independence is a prime example that the UN Charter's ambiguities have allowed for

20. *Id. supra* note 15.

21. See Brendan Stone, *The U.S. – NATO Military Intervention in Kosovo: Triggering Ethnic Conflict as a Pretext for Intervention*, GLOBAL RESEARCH (Dec. 29, 2005), <http://www.globalresearch.ca/the-u-s-nato-military-intervention-in-kosovo/1666>.

22. Theodore Christakis, *The ICJ Advisory Opinion on Kosovo: Has International Law Something to Say about Secession?* 24 LEIDEN J. INT'L L. 73, 73-86 (2011).

23. See Stone, *supra* note 21.

manipulation and obscure actions. The disturbing reality is that international organizations and nations that should set an example of respect to a nation's territorial integrity supported those actions.

Even though, the UN Charter promotes the protection of individuals' rights of self-determination and the preservation of territorial integrity, there is no guideline for a nation or sub-state to exercise its right to secede. Nor does existing international law reconcile the conflicting articles of the UN Charter. The reality today is that international law does not recognize the right of a nation or sub-state to secede *per se*, nor does international law prohibit secession.²⁴

In the case of Kosovo, the ICJ failed to address the issue of Kosovo's statehood as well as its secession rights.²⁵ The ICJ ignored secession's direct effect on international relations and world order. Ironically, or perhaps purposefully, Kosovo's unilateral Declaration of Independence was the first in which all permanent members of the Security Council participated; one of the most tumultuous independence movements of modern age.²⁶ The reality portrayed was that the armed conflict involved in Kosovo's secession was so fierce and the humanitarian crisis was so severe that NATO had to militarily intervene in 1999.²⁷ The UN Security Council resolution 1244, reaffirmed the commitment of all UN members to uphold sovereignty and territorial integrity pursuant to Article 2 of the UN Charter.²⁸ Despite Serbia's opposition to Kosovo's secession, on February 17, 2008, Kosovo declared its independence.²⁹

More recently, on March 16, 2014, the Crimean Parliament followed Kosovo's footsteps and unilaterally declared its independence from Ukraine and accession to the Russian Federation.³⁰ Russian President Vladimir Putin told United States' President Barack Obama the referendum in Crimea was legal and the rights of the

24. *Whether Secession in Crimea Would Be Legal*, THE ECONOMIST (Mar. 12, 2014), <http://www.economist.com/blogs/economist-explains/2014/03/economist-explains-10?zid=309&ah=80dcf288b8561b012f603b9fd9577f0e>.

25. Gezim Krasniqi, *What It Did Not Say: Secession after the ICJ's Opinion on Kosovo*, CITIZENSHIP IN SOUTHEAST EUROPE, <http://www.citsee.eu/citsee-story/what-it-did-not-say-secession-after-icjs-opinion-kosovo> (last updated May 10, 2011).

26. Sienho Yee, *Notes on the International Court of Justice (Part 4): The Kosovo Advisory Opinion*, 9 CHINESE J. INT'L L. (2015), available at <http://chinesejil.oxfordjournals.org/content/9/4/763.full>.

27. *Id.*

28. *Id.*

29. *Id.*

30. Steven Blockmans, *Crimea's Secession from Ukraine: Illegal but Legitimate?*, CENTRE FOR EUROPEAN POL'Y STUDIES (March 17, 2014), <https://www.ceps.eu/blog-posts/crimea%E2%80%99s-secession-ukraine-illegal-legitimate>.

Crimean people to determine their own destiny should be respected.³¹ Putin correctly cited the independence of Kosovo from Serbia to support his argument. Like in Kosovo, where UN and NATO persuaded the Kosovar people to pursue independence, Putin assisted in the Crimean Parliament takeover.³²

Throughout Russian and American diplomatic interactions, President Obama emphasized that the Crimean Referendum was a violation of Ukraine's Constitution and of International law.³³ President Obama failed to cite what international law he based his statement on since there is no clearly defined international law that delineates specific guidelines for a country to secede. President Obama also has no power to enforce a foreign nation's constitution against that state's citizens. To do so, would be an infringement on a nation's sovereignty and territorial integrity in direct violation of the UN Charter.³⁴

C. Lack of Consensus on How to Deal with Secession Movements Amongst International Bodies

The notion of secession continues to be a blurred concept that international bodies have not come to a consensus on how to treat this alarming issue. Regardless of the Crimean referendum and vote on its independence from Ukraine, the UN General Assembly declared the March referendum invalid and urged the parties to pursue a peaceful resolution.³⁵ The UN General Assembly reminded the international community that the UN Charter calls for the preservation of the unity and territorial integrity of member states.³⁶ The Assembly's position does not simply show an opposing stand to the ICJ's opinion in Kosovo's secession. Instead, it displays a great disconnect between international organizations' perception to a nation's right of its territorial integrity.

Secession movements are devastating to the world order. Changes to a nation's borders and territorial boundaries cannot be reversed unless further conflicts occur. Scotland's independence movement illustrates the precariousness of secession for international peace and prosperity. Scotland has been part of the United Kingdom

31. *Id.*

32. *Id.*; see also Stone, *supra* note 21.

33. Blockmans, *supra* note 30.

34. Carol Matlack, *Now Joined to Russia, Crimea's Economy is Sliding Downhill*, BLOOMBERG BUS. WEEK (June 2, 2014), <http://www.businessweek.com/articles/2014-06-02/now-joined-to-russia-crimea-economy-is-sliding-downhill>.

35. Backing Ukraine's Territorial Integrity, *UN Assembly Declares Crimea Referendum Invalid*, U.N. NEWS CENTRE (March 27, 2014), <http://www.un.org/apps/news/story.asp?NewsID=47443#.VBpLUFafds>.

36. *Id.*

(UK) for over 300 years.³⁷ If Scotland had gained its independence from the UK in September 2014, Britain and Scotland would have had to carve up the North Sea oil and decide what to do about their European Union (EU) membership.³⁸ Both nations would also have to determine a possible split of Britain's main nuclear submarine base located in Scotland.³⁹ Furthermore, the UK would have lost its seat as a permanent member of the UN Security Council.⁴⁰ Scotland's secession would have greatly impacted the UK's power in every international body it is a member of.⁴¹ The UK's loss of its seat in the UN Security Council would also have impacted the UN's power across the globe. Yet, the UN displayed no concrete opposition to Scotland's push for independence as the UN did when Crimea held its independence referendum. The UN's behavior not only sends mixed messages to the international community but also set an example that is inconsistent with its Charter's provisions.

The ICJ's opinion in Kosovo's secession failed to unequivocally state its position on the essential issue of the right to self-determination through secession balanced against a state's right to the preservation of its territory.⁴² Instead, the ICJ's advisory opinion in Kosovo articulated that unilateral secession of sub-states would not be allowed or prohibited.⁴³ In tandem with the UN Charter, this left many nations with nothing more than a blurred line between idealized expectations and potential threats to the territorial unity of nation states. The UN and ICJ's lack of action contribute to the deterioration of its members and their territorial influence. Moreover, the UN and ICJ's inconsistent conduct and failure to address this matter create a concerning pattern as more nations and sub-states seek to secede.

A legal framework is desperately needed to preserve the reality in which nation states learned to co-exist. The UN needs to develop a workable legal framework that delineates clear and specific guidelines for when the infringement upon a state's sovereignty is permissible and individuals' exercise of the right of self-determination is allowed. The UN has been successful in maintaining world order for decades but

37. *Scotland's Independence Vote Spurs Hope in Catalonia, And Worry in Rest of Spain*, FOX NEWS LATINO (September 17, 2014), <http://latino.foxnews.com/latino/politics/2014/09/17/scotland-independence-vote-spurs-hope-in-catalonia-and-worry-in-rest-spain/>.

38. Guy Faulconbridge & Alistair Smout, *Divided, Scots Prepare to Vote on Fate of the United Kingdom*, REUTERS (September 17, 2014), <http://www.reuters.com/article/2014/09/17/us-scotland-independence-idUSKBN0HB00920140917>.

39. *Id.*

40. Elaine Teng, *Will Britain Lose its Seat on the U.N. Security Council Seat if Scotland Becomes Independent?*, NEW REPUBLIC (September 16, 2014), <http://www.newrepublic.com/article/119464/uk-security-council-seat-under-threat-scotland-independence>.

41. *Id.*

42. Krasniqi, *supra* note 25.

43. *International Law and Legality of Secession in Crimea*, CAMBRIDGE J. COMP. & INT'L L. (April 20, 2014), <http://ejicl.org.uk/2014/04/20/international-law-legality-secession-crimea/>.

unfortunately its Charter leaves a lot to be desired regarding the issue of sub-state's secession. The unfortunate reality is that modern society is experiencing a direct threat to world peace and the ideals that led to the UN creation.

III. Kosovo's Independence: A Snapshot of What Occurred Behind the Curtains

Kosovo declared its independence from Serbia on February 17, 2008, after many years of violence and tension between different ethnic groups.⁴⁴ The Albanians living in Kosovo were deprived of the right to acquire property, to access healthcare services, to education, and many other basic rights and necessities.⁴⁵ The exclusion of Albanians from Kosovo's society, coupled with Western military support, gave Albanians in Kosovo an upper hand in organizing parallel political institutions and systems of education and healthcare.⁴⁶

NATO's involvement in Kosovo's independence was crucial. NATO's eleven-week bombing campaign was undertaken with the purpose of implementing UN Security Council resolutions through a large-scale use of force against a sovereign nation and its armed forces.⁴⁷ NATO massive killings were colloquially called a 'humanitarian war.'⁴⁸ In the foreshadow of the Western strategic plan, the Interim Agreement for Peace in Kosovo established NATO's responsibility to oversee peacemaking, and the withdrawal of the Serbian military from Kosovo.⁴⁹ The Agreement also sought to establish a meaningful self-government based on democratic principles.⁵⁰

NATO's intervention in Kosovo's independence was portrayed as an alternative rationale to international law that focused on the right of humanitarian intervention that span from individuals' right of self-determination.⁵¹ NATO's military intervention was welcomed in Kosovo and fueled the Albanians' desire for independence. However, the intervention was also widely criticized because it directly infringed upon Article 2, § 4 of the UN Charter, which forbids the threat or use of force against

44. Jure Vidmar, *International Legal Responses to Kosovo's Declaration of Independence*, 42 VAND. J. TRANSNATIONAL L. 779, 781 (2009).

45. *Id.* at 790; Michel Chossudovsky, *The Criminalization of the State: "Independent Kosovo", a Territory under US-Nato Military Rule*, GLOBAL RESEARCH (Feb. 4, 2008), <http://www.globalresearch.ca/the-criminalization-of-the-state-independent-kosovo-a-territory-under-us-nato-military-rule/7996>.

46. Vidmar, *supra* note 44 at 790.

47. Adams Roberts, *NATO's 'Humanitarian War' Over Kosovo*, 41 INT'L INST. FOR STRATEGIC STUD. 102, 102-23 (1999), <http://www.columbia.edu/itc/sipa/S6800/courseworks/NATOhumanitarian.pdf>.

48. *Id.*

49. Vidmar, *supra* note 44 at 792-73.

50. *Id.* at 792.

51. *Id.* at 794.

territorial integrity.⁵² Ironically, the UN blessed NATO's military intervention when NATO ruthlessly bombed Belgrade and Pristina.⁵³

A. UN Security Council Resolution 1244 of 1999 and the ICJ's Opinion Regarding Kosovo's Secession

The UN Security Council Resolution 1244 of 1999 set forth the expectations for Kosovo.⁵⁴ It reaffirmed the commitment of all UN members to protect the sovereignty and territorial integrity of nations.⁵⁵ The UN Security Council ordered that the Federal Republic of Yugoslavia put an "immediate and verifiable end to violence and repression in Kosovo."⁵⁶ The Security Council also characterized the situation in Kosovo as a "threat to international peace and security" and it urged a final settlement leading to the autonomy and self-representation of Kosovo.⁵⁷

In the meantime, Serbia rightfully opposed to Kosovo's autonomy based on the principle of territorial integrity as well as domestic jurisdiction.⁵⁸ The Serbian government pointed out that "Kosovo was an integral part of Serbia . . . and that [its] territorial integrity [could not] be altered without [Serbia's] free consent."⁵⁹ Serbia regrettably urged the General Assembly to persuade the ICJ to deliver an opinion about Kosovo's secession movements.⁶⁰

The ICJ took a position that allowed for the direct infringement upon Serbia's right to territorial integrity. In its opinion, the ICJ endorsed a modern, human rights-based vision of the international legal right to secession. It appears that the ICJ intentionally failed to establish a precedent and to implement specific guidelines for protecting/enforcing the right of self-determination in a manner that does not conflict with a state's right to territorial integrity.⁶¹ The Court also failed to acknowledge that the body that passed Kosovo's independence resolution was a body of elected leaders.⁶² It was not the official provisional institution of self-government

52. Louis Henkin, *Kosovo and the Law of "Humanitarian Intervention,"* 93 AM. J. INT'L L. 824 (1999).

53. *Id.*; Chossudovsky, *supra* note 45.

54. S.C. Res. 1244, ¶5, U.N. Doc. S/Res/1244 (Jun.10, 1999).

55. *Id.*

56. *Id.* at ¶ 3.

57. *Id.*; Vidmar, *supra* note 44 at 836-37.

58. Fred L. Morrison, *Kosovo After the ICJ Opinion,* 74 U. PITT. L. REV. 591, 598 (2013).

59. *Id.*

60. *Id.* at 601.

61. Thomas Burri, *The Kosovo Opinion and Secession: The Sounds of Silence and Missing Links,* 11 GERMAN L.J. 881, 882 (2010).

62. Morrison, *supra* note 58 at 602.

nor the Assembly of Kosovo. In other words, while Slobodan Milosevic was “portrayed as a remorseless dictator, the Kosovo Liberation Army (KLA) became a respected nationalist movement that sought the rights of Albanians living in the region.”⁶³

Even though the ICJ’s opinion was non-binding, it was highly persuasive and presented a perception that there is a vested right to unilateral secession when international organizations support and promote such conduct. The ICJ’s opinion served as an example of the elucidation of a legal rule being developed by international legal bodies.⁶⁴ The ICJ - perhaps purposely - failed to address whether a unilateral act of secession is a vested right and to whom such right may or may not belong.⁶⁵

The ICJ noted that throughout the eighteenth, nineteenth, and early twentieth centuries there were numerous instances where sub-states and nation states declared their independence.⁶⁶ There was no international law prohibiting sub-states or nations from declaring their independence.⁶⁷ According to the ICJ “the illegality attached to [nations’ secession movements leading to declarations of independence] stemmed not from the unilateral character of these declarations, but from the fact that they were [] connected with the unlawful use of force.”⁶⁸ The Court’s ruling in Kosovo opens the logical argument that since international law did not *explicitly* prohibit a sub-state from pursuing independence, international law *implicitly* allows for such pursuits.⁶⁹

On July 22, 2010, the ICJ released its opinion holding that Kosovo’s Declaration of Independence did not violate international law.⁷⁰ The ICJ’s opinion gave rise to an unsettling feeling in the international community because the Court seemed to favor a sub-state or a nation’s secession from its motherland. However, “[a] ruling by the [ICJ] is like a statement issued by the UN[.] [I]t doesn’t have enforceability unless a consensus of world powers chooses to back it.”⁷¹ Serbia was not the only

63. Chossudovsky, *supra* at note 45 (Chossudovsky presents a very blunt outlook regarding Kosovo’s independence as he brings to light arguments not uncovered previously).

64. Christopher J. Borgen, *Is Kosovo a Precedent? Secession, Self-Determination and Conflict Resolution*, WILSON CENTER (Jul. 7, 2011), <http://www.wilsoncenter.org/publication/350-kosovo-precedent-secession-self-determination-and-conflict-resolution>.

65. Robert Howse & Ruti Teitel, *Delphic Dictum: How Has the ICJ Contributed to the Global Rule of Law by its Ruling on Kosovo?*, 11 GERMAN L.J. 841 (2010).

66. *Id.* at 7.

67. *Id.*

68. *Id.*

69. Burri, *supra* note 61.

70. Accordance with international law of the unilateral declaration of independence in respect of Kosovo, Summary of the Advisory Opinion, 2010 I.C.J. 2, *available at* <http://www.icj-cij.org/docket/files/141/16010.pdf> [hereinafter Kosovo Summary].

71. Patrick Worsnip, *Court’s Kosovo Ruling Could Resonate Around Globe*, REUTERS (July 22, 2010), <http://www.reuters.com/article/2010/07/22/us-serbia-kosovo-precedent-idustre66159120100722>.

state to express dissatisfaction with the ICJ ruling.⁷² Russia and China, for example, refused to recognize Kosovo's independence.

Kosovo's independence left several unanswered questions about the Court's position in declaring Kosovo's independence lawful under international law. The Court willfully decided not to address the legal consequences of its opinion and how it would impact such reoccurring pursuits.⁷³ It failed to seize a chance to move beyond an anachronistic and consensualist vision of international law where nothing is expressly prohibited.⁷⁴ The Court's failure to at least enquire into whether secession might be permitted or tolerated considerably reduces the advisory quality of the opinion.⁷⁵ The Court took away from the international community a unique opportunity to clarify the scope and normative content of territorial integrity in contrast with the right of self-determination.

B. Disguised Motives Behind Kosovo's Secession

In the case of Kosovo, political forces determined to alter the region's fate, used the region's diversity as a channel for manipulation and justification to the infringement upon Serbia's right of territorial integrity. The world was led to believe that NATO, the UN, and the ICJ's sole concern was with human rights, when there were other underlying motives for the region's secession.

For many years Kosovo's secession was encouraged.⁷⁶ NATO sought to dismantle the socialist economic system in Yugoslavia to reintegrate the countries of Eastern Europe into a market-oriented economy.⁷⁷ During Kosovo's independence movement, UN diplomats presented the armed conflict in Kosovo as fierce and the humanitarian crisis so severe that NATO had to intervene militarily in 1999.⁷⁸ However, there was no mention of NATO's support for the Albanian paramilitary organization, which exacerbated ethnic tensions in Kosovo.

NATO had three basic economic objectives in supporting Kosovo's independence: (1) to dismantle Yugoslavia's socialist economic system, (2) to gain control of valuable mineral resources, and (3) to command the site of a future energy distribution

72. Hanna Jamar & Mary Katherine Vigness, *Applying Kosovo: Looking to Russia, China, Spain and Beyond After the International Court of Justice Opinion on Unilateral Declarations of Independence*, 11 GERMAN L.J. 913 (2010).

73. Kosovo Summary, *supra* note 70.

74. Krasniqi, *supra* note 25.

75. *Id.*

76. Stone, *supra* note 21.

77. *Id.*

78. *Id.*

network.⁷⁹ Coincidentally, the Trepca Mines, “a derelict complex . . . [and] rich mineral wealth that belonged to the Kosovar community,” were occupied in 2000 by UN Peacekeepers.⁸⁰ The Trepca Mines were later turned over to the Washington Group, a large U.S. defense contractor with French and Swedish partners.⁸¹ Hence, Kosovo was not stripped away from Serbia solely based on humanitarian concerns when NATO itself started the bombing in the region, the UN shortly thereafter occupied and handed over Kosovo’s mineral wealth.⁸² Instead, it was a strategic move to gain control over Kosovo’s natural resources.

The independence of Kosovo is particularly disarranged because the media and international legal bodies used the lack of international law to influence a situation that was portrayed to the world in a totally different light. Humanitarian needs were used as an opportunity to manipulate masses into exercising their right of self-determination for powerful nations to advance their economic interest. Kosovo’s secession shows how easy it is for powerful nations and international legal bodies to advance their interest with complete disregard for nations’ territorial integrity.

IV. The Creation of the United Nations, its Purpose, and the Failure in its Charter to Address the Issue of Secession

The League of Nations, predecessor to the UN, developed the basic framework for an international body committed to fostering and maintaining cooperation amongst nation states to ensure global peace and security.⁸³ The League of Nations had remarkable community power for two reasons. One, it was part of the peace treaty that ended World War I.⁸⁴ Two, it promoted disarmament, and advocated partnership amongst nations.⁸⁵ However, the beginning of World War II marked the official failure of the League of Nations and highlighted the need for a stronger post-war international body. This sequence of events gave rise to the United Nations.⁸⁶

The UN was created in the wake of World War II to reestablish and maintain

79. *Id.* at 2.

80. Ian Lynch, *Trepca and Kosovo’s Uncertain Future*, UNIV. VT. ENVTL. PROGRAM (2012), http://www.uvm.edu/~shali/Trepca_Kosovo_Serbia_Mining.pdf; Stone, *supra* note 21.

81. *Id.*

82. *Id.*

83. *League of Nations (1919 – 1946)*, U.N. OFFICE AT GENEVA, [http://www.unog.ch/80256EDD006AC19C/\(httpPages\)/17C8E6BCE10E3F4F80256EF30037D733?OpenDocument](http://www.unog.ch/80256EDD006AC19C/(httpPages)/17C8E6BCE10E3F4F80256EF30037D733?OpenDocument) (last visited Feb. 17, 2016).

84. C. Howard Ellis, at *THE ORIGIN, STRUCTURE & WORKING OF THE LEAGUE OF NATIONS* 111 (2003).

85. *Id.* In the context of an international organization, community power refers to an organization’s ability to make decisions on behalf of all members of the community that will affect all or at least a large portion of the community’s population. *POWER: CRITICAL CONCEPTS* (John Scott ed., 1994).

86. Ruth Hening, *The League of Nations* 180 (2010).

global peace through international order preservation.⁸⁷ The UN sought to expand upon the framework of the League of Nations.⁸⁸ On June 26, 1945, China, the Soviet Union, the United Kingdom, France and the United States signed the UN Charter establishing idealistic guidelines of behavior for nations to follow.⁸⁹ Like the League of Nations, the UN was “determined to save succeeding generations from the scourge of war [that] twice . . . has brought untold sorrow to mankind.”⁹⁰ Not until recently have sub-states’ secession attempts brought to light the flaws in the UN Charter and issues resulting from its contradicting provisions.

In the UN Charter, there is the alarming conflict between people’s rights of self-determination and the preservation of territorial integrity delineated in Articles 1, 2, and 55, respectively.⁹¹ Similar to the League of Nations, the UN presented an idealistic expectation for nation states’ behavior by its assumption that broad and vague provisions could provide the necessary foundation for two conflicting principles to successfully co-exist.

The UN Charter provides nothing more than vague provisions that allow for the misinterpretation of its purpose. It is impossible for an international political body as the UN, to foster and enforce principles of territorial integrity and the right of self-determination when its provisions are not well developed. It is unrealistic for an international body to successfully achieve its objectives without developing a detailed guideline unmarred by contradicting provision that specifically addresses secession movements.

The UN Charter is plagued by idealistic expectations that will not be universally adopted because the needs of the people at times conflict with nation states’ interests. The UN Charter failure to provide clear and unambiguous provisions presents a threat to the UN as an organization and to the current world order. Its Charter also allows powerful nation states to take advantage of the absent detailed legal framework to infringe upon a nation’s territorial integrity and manipulate its people to exercise their right of self-determination. The creation of specific guidelines for individuals and nations to follow is the most sensible way to prevent misinterpretation and manipulation of international law.

87. *History of the United Nations*, U.N., <http://www.un.org/en/aboutun/history/> (last visited Feb. 25, 2016).

88. *The End of the League of Nations*, U.N. OFFICE AT GENEVA, [http://www.unog.ch/80256EDD006AC19C/\(httpPages\)/BA9387B56BF4AFB4C1256F3100418C75?OpenDocument](http://www.unog.ch/80256EDD006AC19C/(httpPages)/BA9387B56BF4AFB4C1256F3100418C75?OpenDocument) (last visited Feb. 25, 2016).

89. *Id.* See generally Charter of the United Nations and Statutes of International Court of Justice, available at <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> (last visited Feb. 25, 2016) [hereinafter U.N. Charter] (The U.N. Charter came into effect on October 24, 1945).

90. *Id.*

91. U.N. Charter art. 1, ¶ 4, art. 2, art. 55, ¶ 1.

V. The Contradictions Presented in the UN Charter

The UN was the pioneer of the principles of territorial integrity and the right of self-determination.⁹² The world peace stability and security fell under the UN's responsibilities since its inception.⁹³ As the Cold War ended, "armed conflicts more often emerged at the intra-state level."⁹⁴ In its Charter, the UN established the basic framework to maintain the status quo that emerged after both World Wars.⁹⁵ For many years, the UN was successful in fulfilling its obligations and promise to maintain territorial integrity. However, as capitalist and globalized views spread, nations' desire for power and individual's notions of equality shifted. The results of ambiguous policies and procedures are now more prevalent than ever.

The UN Charter's concepts of territorial integrity and the right of self-determination remain stagnate as they have not evolved with the *zeitgeist* of times.⁹⁶ The provisions delineated in the UN Charter have been preserved over the years but modern society practices present a direct menace to the UN's long lasting principles. Chapter I, art. 1, § 2 of the UN Charter states that one of its main objectives is "to develop friendly relations among nations based on respect for the principle of equal rights and [individuals'] self-determination."⁹⁷ The purpose and principle delineated in Chapter I, art. 1 assumes that to maintain international peace and security, nations will take effective collective measures to preserve and remove threats to global peace.⁹⁸ Art. 2 states that "all members shall settle their international disputes by peaceful means in a manner that international peace, security and justice are not endangered."⁹⁹ These statements display an idealistic view for a world moved by greed and political influence in the absence of international laws to control human behavior.

A. *Vague Provisions Provide Opportunities for Secession Movements to Emerge Without Violating International Law*

92. JUDGE ROSALYN HIGGINS, SECESSION AND INTERNATIONAL LAW: CONFLICT AVOIDANCE – REGIONAL APPRAISALS 111 (Julie Dahlitz, eds. 2003)

93. Emel Osmançavuşoğlu, *Challenges to United Nations Peacekeeping Operations in the Post-Cold War Era*, 4 J. INT'L AFF. (2000), available at <http://sam.gov.tr/wp-content/uploads/2012/02/EmelOsman-Cavusoglu.pdf>.

94. *Id.*

95. *Id.*

96. Michele Capeleto, *Does Self-Determination Entail an Automatic Right to Secession?*, E-INT'L. REL. (May 2, 2014), <http://www.e-ir.info/2014/05/02/does-self-determination-entail-an-automatic-right-to-secession/>.

97. U.N. Charter art. 1, ¶ 2.

98. U.N. Charter, *supra* note 89.

99. *Id.*

The current state of affairs and history show it is nearly impossible for a region to peacefully secede from another when political views and individuals' interest are at stake. In his 2014 address to the UN General Assembly, Lithuania's President stated that "[t]he security of all countries are indivisible" and countries must act together to stop armed conflicts.¹⁰⁰ President Grybauskaite called the attention of world leaders to security challenges taking place in many different parts of the world.¹⁰¹ The Supreme Court of Canada, when faced for the second time with Quebec's referendum stated the following: "The international law right of self-determination only generates [] a right to external self-determination in situations of former colonies; where [] people [are] oppressed; or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development."¹⁰²

Some have argued that secession is only legitimate if it reflects the will of the people and their exercise of the right of self-determination.¹⁰³

The unfortunate reality in modern day society is that nations' greed is still a prevalent factor in secession movements. In many parts of the world, nations and organized groups view secession as a remedy for their problems, not realizing that a change in the world order can generate very harmful consequences.¹⁰⁴ Pro-secession arguments focus on economic benefits and prosperity of the region seeking to secede. However, scholars argue that the benefits are offset by transition costs that will burden new nations for decades.¹⁰⁵ Nations driven by their desire to secede are blinded by a narrow view of homogeneous economies with policies tailored to local conditions that overlook the importance of economic integration and national territorial security.¹⁰⁶

At first glance, the provisions delineated in UN Charter seem to guard nations

100. President Dalia Grybauskaite, *President at UN: 'Maintaining World Peace is Collective Responsibility'*, THE BALTIC TIMES, Sept. 26, 2014, <http://www.baltictimes.com/news/articles/35590/>.

101. *Id.*

102. Stephen J. Toope, *Self-Determination – Canada – Quebec – Right to Secede Under Constitutional Law and Public International Law – Role of International Law in Canadian Courts*, 93 AM. J. INT'L L. 519, 524 (1999).

103. Robert Trisotto, *Seceding in the Twenty-First Century: A Paradigm for the Ages*, 35 BROOK. J. INT'L L. 419, 437 (2010).

104. *The Effects of Secession*, N.Y. TIMES, Jan. 9, 1861, <http://www.nytimes.com/1861/01/09/news/the-effects-of-secession.html>.

105. Robert Young, *The Road to Secession: Estimating the Costs of Independence in Advanced Industrial States*, THE LONDON SCH. ECON. & POL. SCI., <http://blogs.lse.ac.uk/europpblog/2013/12/05/the-road-to-secession-estimating-the-costs-of-independence-in-advanced-industrial-states/>.

106. *Id.*

from harm and protect rights of self-determination. Instead, vague and contradicting provisions asserting individuals' right of self-determination and territorial integrity are nothing more than a mere misconception. Like the League of Nations, the UN also fails to provide a trustworthy safeguard to establish an international guarantee to territorial integrity and individuals' right of self-determination. Today, international law leaves to the people to ascertain their right of self-determination, and to nations to protect their territorial integrity.¹⁰⁷

B. Vague and Ambiguous Provisions Allowed for Increased Disorder Within Nation's Borders

The lack of specific international law guiding rights of self-determination and protecting nations' territorial integrity has contributed to a paradigm shift. Prior to the end of the Cold War, nations concerns revolved around the fear of outside invasion. The hostility and dispute for world dominance and influence represented a colossal external threat to nations' territorial integrity. Today, nations are not only threatened by outside forces but also by forces emerging within their borders. The current paradigm has shifted from conflicts between nation states to internal conflicts within a nation.¹⁰⁸

In 2014 and 2015, the international community witnessed a complete failure of old mechanisms of global governance.¹⁰⁹ In 2014, Russia stepped out of the shadows of the post-Cold War order by declaring its national interests and taking decisive action to protect them.¹¹⁰ In 2015, ISIS marked the evolution of extremism.¹¹¹ The promises of peacemaking and territorial integrity are plagued with "conceptual and structural problems" directly influenced by our international political system's ambiguous legal framework.¹¹² Currently, nations' territorial integrity is not only threatened by neighboring states, but also by the people within their borders who were given the right of self-determination without a framework to be followed.

Despite member-states' combined efforts to prevent and remove threats to peace, the UN Charter failed to address an issue that has threatened the stability of nation states' territorial integrity for centuries. The constant tension between the right of

107. Abdelhamid El Quali, TERRITORIAL INTEGRITY IN A GLOBALIZING WORLD: INTERNATIONAL LAW AND STATES 141 (2012).

108. Capeleto, *supra* note 96.

109. Anastasia Borik, RUSSIAN EXPERTS SEE PARADIGM SHIFT FOR THE WORLD ORDER IN 2015 (Jan. 2, 2015), <http://www.russia-direct.org/analysis/russian-experts-see-paradigm-shift-world-order-2015>.

110. *Id.*

111.. *Id.*

112.. Capeleto, *supra* note 96.

territorial integrity and right of self-determination allows not only for misinterpretations but also for the manipulation of a nation's population into secession movements for purposes other than advancing human rights.

VI. Preservation of Territorial Integrity: An International Principle Confronted by the Right of Self-Determination

The UN Charter calls for the preservation of unity and territorial integrity.¹¹³ The principles of self-determination recognized in a number of fundamental international instruments allow people to choose their own political statuses.¹¹⁴ At the same time, those same international instruments also recognize the principle of territorial integrity, unity, and preservation.¹¹⁵ The UN and the ICJ's failure to directly and consistently address the issue of secession created an inevitable void in the international legal system. If people are to embrace the notion that territorial integrity and the right of self-determination are vested rights, there must be a way to prevent one right from encroaching on the other.

Territorial integrity is "the material expression of State sovereignty and jurisdiction (land, water, subsoil, airspace and population)."¹¹⁶ It encompasses the loss of control and appropriation of sovereignty by another State including assistance by third states to rebels within a country to gain possession and control of a nation's territory.¹¹⁷ Territorial integrity embraces the notion of non-intervention in the internal and external affairs of other States.¹¹⁸

Chapter 1, art. 2, § 4 of the UN Charter, states that "[a]ll members shall refrain in their international relations from the threat or use of force against the territorial integrity . . . of any state."¹¹⁹ A sub-state or nation state's independence is usually preceded by secession movements that bring to light a set of grievances the population is exposed to in the parent state.¹²⁰ The intent of secession movements is to persuade individuals to abandon their "allegiance to the parent state and the obedience [to] its [] laws."¹²¹ Secession movements are the first step in which secessionist leaders display their ability to control a population and therefore the territory of a

113. Blockmans, *supra* note 30.

114. *Id.*

115. *Id.*

116. HIGGINS, *supra* note 92.

117. *Id.*

118. *Id.*

119. U.N. Charter, *supra* note 18.

120. David Raic, *Violent and Non-Violent Secessions in the Contemporary World: Their Causes, Justifications and Legality*, 10 MELB. J. INT'L L. 365, 367 (2009).

121. *Id.*

sub-state, posing a direct threat to the parent state's territorial integrity.¹²² In modern society, there is a re-emergence of secession movements leading nation states to be more concerned with internal security and upholding their territorial integrity than they are with external threats.¹²³ Secessionist movements represent a direct threat to the world order and symbolize a complete disregard to the territorial status quo of internationally recognized nation states.

Conversely, the principle of self-determination continues to be widely defined by the UN Charter, art. 55.¹²⁴ Article 55 broadly defines the right of self-determination as people's right to higher standards of living including full employment, conditions of economic and social progress, universal respect for human rights and fundamental freedoms.¹²⁵ The right of self-determination was predominantly shaped in the period of decolonization following World War II.¹²⁶ It started as a political concept that addressed discrimination and massive human rights violations.¹²⁷ Then, it evolved into a vested right to individuals' pursuit of happiness and better living conditions.¹²⁸ Article 55 fails to recognize that different nations and cultures have different prospective regarding human rights, fundamental freedoms, and standards of living. There is no way for a nation to know whose standards it should follow when there is no legal guideline and clear framework delineated in the UN Charter.

In consequence, independence movements emerge menacing nations' territorial integrity. Contemporary independence movements typically resort to violence precisely because of the uncertainty and confusion surrounding secessionist movements.¹²⁹ As a result of history writing itself, and individuals moving through a process of self-discovery; nations experience a growing international awareness that individuals' reality can be changed. Ergo, self-determination is framed as a model that embraces human rights advocacy and the advocacy for the rights of certain ethnical groups.

Scholars argue the international community favors territory integrity over the right of self-determination.¹³⁰ That claim has proved to be inaccurate based on recent trends and international legal bodies' stances in modern secession

122. *Id.*

123. Peter Radan, *Post-Secession International Borders: A Critical Analysis of the Opinions of the Badinter Arbitration Commission*, 24 MELB. U. L. REV. 50, 51 (2000).

124. Patricia Carley, *Self-Determination: Sovereignty, Territorial Integrity, and the Right to Secession*, U.S. INST. PEACE 7 (1997), <http://www.usip.org/sites/default/files/pwks7.pdf>.

125. U.N. Charter art. 55.

126. SELF-DETERMINATION AND SECESSION IN INTERNATIONAL LAW (Christian Walter et al. eds., 2014).

127. *Id.*

128. *Id.*

129. *Id.* at 5.

130. See Trisotto, *supra* note 103, at 430.

movements. Instead, a blurred line is created between these two concepts that allows groups of people to take advantage of the ambiguities in the UN.¹³¹

The principle of territorial integrity is directly “interwoven with the fundamental principle of the prohibition of the threat or use of force.”¹³² The unsettling reality in the modern world order is that the principle of territorial preservation is being overcome by the guaranteed principle of self-determination and humanitarian responses to the issue. The UN Charter is obsolete and incapable of addressing the evolution of modern society. Human rights activists have shifted the plausibility of territorial integrity arguments along with the respect for national borders.

Secession is not only a legal problem but also a political issue, as evidenced by Kosovo’s independence movement. The situation experienced in Kosovo questioned the notion that borders of a sovereign state should be changed only by the agreement of the parties involved.¹³³ In Kosovo, the U.S. and other Western countries supported its unilateral secession and faced no opposition from other UN members, except Russia.¹³⁴ That shows that there is no consistency across the board as to the application of the provisions delineated in the UN Charter. Accordingly, international organizations and nations entrusted to enforce and respect the UN Charter’s provisions were in fact the parties responsible for the initiation of Kosovo’s secessionist movement.

VII. Kosovo & Crimea: An Equal Infringement of the UN Charter’s Provisions

Crimea’s independence movement is similar to Kosovo’s because in both circumstances there were underlying interests to Russia and NATO’s involvement. Yet, Crimea’s secession efforts allegedly violated international law and principles. NATO and the UN supported Kosovo’s secession before the rest of the world knew about internal conflicts in the region. Russia added to its already existing troops in Crimea and assisted on the takeover of the Crimean parliament. In Kosovo, NATO initiated

131. Lea Brilmayer, *Secession and Self-Determination: A Territorial Interpretation*, 16 YALE J. INT’L L. 177, 181-84 (1991), available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3429&context=fss_papers.

132. Iñigo Urrutia Libarona, *Territorial Integrity and Self-Determination: The Approach of The International Court of Justice in the Advisory Opinion on Kosovo*, 16 REVISTA DE ESTUDIOS AUTONÓMICOS Y FEDERALES 107 (2012), <http://www.raco.cat/index.php/REAF/article/viewFile/262496/349668>.

133. Henrique Santos Costa de Souza, *The Principle of Self-determination and the Right of Territorial Integrity: A Legal and a Political Issue*, MUNDORAMA (Feb. 22, 2011), <http://www.mundorama.net/2011/02/22/the-principle-of-self-determination-and-the-right-of-territorial-integrity-a-legal-and-a-political-issue-por-henrique-santos-costa-de-souza/>.

134. *Id.*

the bombing in the region creating a devastating crisis and fueling the existent internal disputes. NATO's actual involvement in the internal war in Kosovo was just as much a violation of the provision in the UN Charter as Russia's conduct towards Ukraine was.

Crimea is the center of geopolitical crises and a "hub for pro-Russians sentiment;" it remains a very important region strategically and ideologically for Russia.¹³⁵ In late January 2014, the Republic of Crimea's Prime Minister, Sergei Aksyonov, began mobilizing protesters and seized several government buildings in Kiev, Ukraine.¹³⁶ On February 22, 2014, the Ukrainian Parliament voted President Viktor Yanukovich out of office and shortly thereafter, Russian troops took over the Parliament at Aksyonov's request.¹³⁷

In Kosovo, NATO military forces were present for the sole purpose of leading the region into its independence. Russian troops were present in Crimea for over a decade due to an agreement between Russia and Ukraine over the Black Sea Fleet.¹³⁸ That agreement allowed Russia to station up to 25,000 troops in Ukraine.¹³⁹ As the Russian Foreign Minister Sergey Lavrov explained, Russia was strictly executing "the agreement which stipulates the Russian fleet's presence in Ukraine."¹⁴⁰ When additional Russian troops were sent to Crimea, Putin claimed that they were necessary to protect Russian citizens living in the area.¹⁴¹ In the meantime, NATO spokesperson Oana Lungescu warned the international community that Russian military buildup would further escalate the situation.

In Crimea, political and economic unrest were already present from former President Yanukovich's refusal to sign an agreement to restore lost trade with Russia.¹⁴² Current President Aksyonov used his political power and already existing momentum to mobilize masses.¹⁴³ Aksyonov is Russian from Moldova; his views ap-

135. Alan Yuhas & Raya Jalabi, *Ukraine's Revolution and Russia's Occupation of Crimea: How We got Here*, THE GUARDIAN, Mar. 5, 2014, <http://www.theguardian.com/world/2014/mar/05/ukraine-russia-explainer>.

136. Simon Shuster, *Putin's Man in Crimea Is Ukraine's Worst Nightmare*, TIME (2014), <http://time.com/19097/putin-crimea-russia-ukraine-aksyonov/>.

137. Yuhas & Jalabi, *supra* note 135.

138. *Russia's 25,000-Troops Allowance and Other Facts You Might not Know about Crimea*, THE CANADIAN TIMES (2014), <http://www.canadiantimes.ca/ct2/index.php/canadian-times/880-russia-s-25-000-troop-allowance-other-facts-you-may-not-know-about-crimea>.

139. *Id.*

140. *Id.*

141. *Ukraine Crisis: Does Russia Have a Case?*, BBC NEWS EUR. (Mar. 5, 2014), <http://www.bbc.com/news/world-europe-26415508>.

142. *Ukraine Pulls out of EU Agreement*, RADIO POLAND (Nov. 22, 2013), <http://www.the-news.pl/1/10/Artykul/153722,Ukraine-pulls-out-of-EU-agreement>.

143. *Id.*

pealed to neighboring Ukrainian oblasts and Transnistria to join Crimea in returning to Russia.¹⁴⁴ Russian television reported that armed Ukrainian nationalists would descend from the capital.¹⁴⁵ Thousands of pro-Russian demonstrators clashed outside Crimea's parliament with protesters supporting unit with Kiev.¹⁴⁶ The following day, armed men seized the building.¹⁴⁷ Unlike in Kosovo, where NATO used human rights intervention as its sole purpose, Aksyonov did not hide his intent to use political power to mobilize Crimea's independence pursuits. The difference between Crimea and Kosovo's referendum is that Kosovo had NATO and the UN's support.

Although scholars argue that Crimea had a right to secede from Ukraine, the reality is that Crimean citizens' right to secede was less permissible than it was for other sub-states or nations.¹⁴⁸ The Crimean Referendum was held in March 16, 2014 and over 96 percent of the electorate voted in favor of reunification with Russia.¹⁴⁹ The Referendum provided Crimean citizens the opportunity to both break away from Ukraine and rejoin Russia, or to readopt the Crimean Constitution of 1992 that gave Crimea "power to decide how much freedom it had from Kiev."¹⁵⁰

There seems to be a double standard when we look at Kosovo and Crimea's situation side by side. Both, NATO and Russia's conduct were against the UN Charter. Aksyonov's actions were also not in accordance with diplomatic agreements. However, the irony is that NATO's use of force in Kosovo was considered acceptable while Russia's military support to the independence movement in Crimea was not. Similarly, NATO's conduct was portrayed as a humanitarian intervention by Western media sources while Russia's conduct was portrayed as military intervention.

Former U.S. Ambassador to Russia Michael McFaul explained, "We should not compare Crimea and Ukraine with Kosovo and Serbia. Serbia threatened the Kosovars, and Ukraine does not threaten anyone."¹⁵¹ While McFaul's differentiation may

144. Vladimir Socor, *Russia Retakes Crimea: Political Implications*, 11 *Eurasia Daily Monitor* 55, 1-2 (Mar. 21, 2014), http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=42130&no_cache=1#.VwA-26uUA7c.

145. Alissa Carbonnel, *How The Separatists Delivered Crimea To Moscow*, Reuters (Mar. 12, 2014), <http://www.reuters.com/article/us-ukraine-crisis-russia-aksyonov-insight/USBREA2B13M20140312>.

146. *Id.*

147. *Id.*

148. Yoram Dinstein, *Is There a Right to Secede*, 90 *AM. SOC'Y INT'L L. PROC.* 299, 303 (1996).

149. Alexander Smith & Alastair Jamieson, *Crimea Referendum Followed All Democratic Norms, Putin Says*, NBC NEWS (Mar. 18, 2014), <http://www.nbcnews.com/storyline/ukraine-crisis/crimea-referendum-followed-all-democratic-norms-putin-says-n55346>.

150. *Id.*

151. Hajrudin Somun, *Five Reasons Why Crimea Cannot be Compared with Kosovo*, TODAY'S ZAMAN (Apr. 13, 2014), http://www.todayszaman.com/op-ed_five-reasons-why-crimea-cannot-be-compared-with-kosovo-by-hajrudin-somun-_344554.html.

be true, absent a clear legal framework for secession movement, a state's territorial integrity can be (1) overcome by the right of self-determination and (2) infringed upon by powerful nations with self-interest in a region.

It cannot be denied that Russia violated Article 2, § 4 of the UN Charter when additional Russian troops entered Ukraine to assist Aksyonov in his endeavors. However, similar to Kosovo where the region's diversity was portrayed as the underlying reason for disparate treatment, ethnic diversity and conflicts were used as a pretext to evoke Russia's intervention. In Kosovo as in Crimea, intervention was based on external driving forces. The Kosovo region is wealthy in minerals while Crimea is a powerful and strategic geographic location. Russia's control of Crimea would give Moscow continuing access to the naval base at Sevastopol, home to Russia's Black Sea Fleet.¹⁵² Sevastopol's natural harbor and extensive infrastructure makes it one of the best naval bases in the Black Sea.¹⁵³ Crimea's return to Russia would preserve Putin's control over Sevastopol while maintaining his ability to influence events inside Ukraine.¹⁵⁴ Similar to Kosovo's Albanians wanting their independence from Serbia, Crimea's ethnic Russians yearn to reunite with Russia.

When facing circumstances like Kosovo and Crimea, where the parties involved have completely different political ideologies, there will often be several equally persuasive and compelling arguments. Regardless of nations' political ideologies, nations should not be allowed to infringe upon a state's territorial integrity for purpose other than humanitarian reasons.

VIII. Possible Options to Reconcile the Conflicts Between Territorial Integrity and Right of Self-Determination Preservation of Territorial Integrity: An International Principle Confronted by the Right of Self-Determination

The paramount issue is the lack of a legal framework for nations to follow that provides accountability provisions for the violation of international law. Until a legal framework is developed, there will continue to be a tension between the principles of territorial integrity and right of self-determination. Nations will continue to infringe upon other nation's territory and manipulating individuals to exercise the right of self-determination. Today, nation states and organizations expected to protect territorial integrity and individuals' right of self-determination are the first to

152. Paul N. Schwartz, *Crimea's Strategic Value to Russia*, CSIS (Mar. 18, 2014), <http://csis.org/print/48939>.

153. *Id.*

154. *Id.*

engage in actions that directly violate the UN Charter. A legal framework will diminish or eliminate the current blurred line between those two provisions that allows for continues infringement of the UN Charter.

First, the ICJ must take a more active role in the issue of secession by delivering opinions that would set precedent for future situations. The ICJ and the UN Security Council should work together to establish, enforce, and maintain international law and world order. Today, the ICJ's role in a region's independence pursuits is simply advisory. Its opinion in Kosovo shows the ICJ's avoidance in setting a precedent. In Kosovo, the ICJ should have distinguished secession due to repression and denial of fundamental rights from other weaker separatist claims.¹⁵⁵ Additionally, it should have addressed when and how other nations or international bodies may get involved in internal secessionist movements. The ICJ needs to directly address the issue of secession to prevent secessionist movements from continuing to escalate creating a vivid threat to world order and peace.

Second, a nation's right to territorial integrity and its use of force to protect its borders should be elevated to the status of *jus cogens*.¹⁵⁶ The use of force by a nation or international body against an established nation must not be allowed. Otherwise, international law would be encouraging provocation or use of force under the principle of self-determination.¹⁵⁷ A nation who fails to abide by such a principle should be sanctioned and/or excluded from international agreement and trading until it comes to compliance.

Third, secession should only be allowed in cases of serious human rights violations such as genocide, hate crimes, and torture. However, the ICJ has not yet distinguished serious from ordinary human rights violations.¹⁵⁸ To achieve success and avoid misinterpretation and manipulation, the ICJ must draw the differences be-

155. *International Law — Unilateral Secession — International Court Of Justice Concludes That Kosovo's Unilateral Declaration Of Independence Did Not Violate International Law.* — Accordance with International Law of Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion (July 22, 2010), 124 Harv. L. Rev. 1098, 1998-99, http://harvardlawreview.org/wp-content/uploads/pdfs/vol124_kosovo_declaration_of_independence.pdf.

156. Linda A. Malone, *Seeking Reconciliation of Self-Determination, Territorial Integrity, and Humanitarian Intervention (Introduction to Special Project: Humanitarian Intervention and Kosovo)*, 41 WM. & MARY L. REV. 1677 (2000), <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1535&context=wmlr>.

157. *Id.*

158. Geneva Academy, *What Amounts to 'A Serious Violation of International Human Rights Law'?* (2013), http://www.geneva-academy.ch/docs/publications/Briefings%20and%20In%20breifs/Briefing%206%20What%20is%20a%20serious%20violation%20of%20human%20rights%20law_Academy%20Briefing%20No%206.pdf.

tween serious and ordinary human rights violations. Political ideology, political influence, and external support should not be considered for a region to be allowed to exercise the right of self-determination to secede.

It is unequivocally stated in the UN Charter that the use of force is available only as a last resort.¹⁵⁹ That proposition must be equally applied to secessionist movements. Otherwise, international law will inevitably favor violation of the UN Charter in the absence of conciliation and clear guidelines to reconcile the principles of territorial integrity and right of self-determination.

IX. Conclusion

The issues secession movements represent does not stop with Kosovo's independence, or with the invalidation of the Crimean Referendum. Secession presents a much larger concern that affects the territorial integrity of several nations across the globe. The lack of transparency regarding nation states' conduct and obscure strategies create a tremendous potential for increased conflicts. Secession movements are taking place in the shadows of the vagueness and clashing provisions presented in the UN Charter.

Kosovo and Crimea's independence pursuit revealed the manipulation and intent of powerful nations to expand their access to natural resources, political influence, and power. NATO and the UN supported Kosovo's independence before the rest of the world knew about the internal armed conflict. NATO's alternate motive was disguised by its representation and media coverage that its involvement was solely driven by humanitarian reasons. Instead, NATO used Kosovo's internal chaos to gain control of valuable mineral resources, command the site of future energy distribution network, and dismantle Yugoslavia's socialist economic system. Russia's forceful takeover of the Crimean parliament was propelled by Crimea's geographic location. Crimea would give Moscow continuing access to the naval base at Sevastopol, home to Russia's Black Sea Fleet. Crimea's re-annexation to Russia would ensure Putin's control over Sevastopol while shaping events inside Ukraine.

Currently, the contradicting provisions in the UN Charter under Articles 1, 2 and 55 provide opportunities for political manipulation for secessionist movements to emerge. It is impossible for a nation's territorial integrity to be preserved when individuals' are encouraged to exercise the right of self-determination. Today, individuals' greed are fueled by political, social, cultural, and religious differences leading to up rises and secessionist movements that change established nation states' borders.

159. See U.N. Charter art. 2, ¶4.

The UN Charter must be reformed to include a legal framework with detailed guidelines for secession movements and corresponding accountability measures. The ICJ must step out of the shadows of neutrality and avoidance by delivering a forward opinion regarding sub-states' secession rights. It must act with the intent to create a precedent for nations and internal groups to follow. The ICJ and the UN Security Council must work closely together to enforce and maintain international law and world order with the support of member States. Also, the UN Charter must elevate a nation's right to territorial integrity to *jus cogens* status. The rise of extremist groups within nation's borders, and the uninvited involvement of other nations in secession movements must not be allowed. Finally, a clear line defining what constitutes serious human rights violation must be drawn. In cases involving serious human rights violation, the UN Charter must specify who, how, and when external influence would be allowed.

As mentioned, secession is an issued that inevitably threatens world peace and the current world order. A body of law setting out specific guidelines that will protect both a nation's territorial integrity and individuals' right of self-determination is imperative. The UN, as the entrusted international body to keep international peace, must wholeheartedly adjust and enforce its provisions according to the *zeitgeist* of times. The UN must reform its Charter to prevent its foreseeable failure and the potential rise of a worldwide conflict that would change the existing world order.