“Whose Country Is It, Anyway? The Right To Self-Determination From The Perspective Of Constructivist International Relations”

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<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CSCE</td>
<td>Conference on Security and Co-operation in Europe</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>EU</td>
<td>European Union</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>IR</td>
<td>International Relations</td>
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<td>OAS</td>
<td>Organization of American States</td>
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<td>OAU</td>
<td>Organisation for African Unity</td>
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<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNDRIP</td>
<td>United Nations Declaration on the Rights of Indigenous Peoples</td>
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<tr>
<td>UNFICYP</td>
<td>United Nations Peacekeeping Force in Cyprus</td>
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<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
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<tr>
<td>UNHRC</td>
<td>United Nations Human Rights Committee</td>
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<tr>
<td>UNCHR</td>
<td>United Nations Commission on Human Rights</td>
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<tr>
<td>US(A)</td>
<td>United States (of America)</td>
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<tr>
<td>USSR</td>
<td>Union of Soviet Socialist Republics</td>
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1 Introduction: Implications of Collective Self-Determination in International Relations

A spectre is haunting the world – the spectre of self-determination. Disputes over self-determination are omnipresent in contemporary politics. In the second half of the 20th century alone, there have been approximately 150 cases, with many of them descending into violence (Beardsley, Cunningham & White 2015, 10). In fact, they are the most common kind of conflict nowadays (Cunningham 2014, 3).

On the one hand, the Right to Self-Determination is a promise of salvation. It enshrines the entitlement for all peoples to decide their fate. As a human right, it supersedes the legislation of individual states. According to the International Covenant on Civil and Political Rights (ICCPR), as well as its legal twin, the International Covenant on Economic, Social and Cultural Rights (ICESCR, where Article 1 is identical)

“[a]ll 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” (UNGA 1966, art. 1 para. 1).

As a liberal concept, collective self-determination has an exclusively positive connotation (Fisch 2010, 17). It is only in relation to allegedly contradicting principles of international law and politics that it becomes a contested issue. While the phrasing points to moral universalisms like sovereign equality, freedom and mutual respect, the inconclusive terminology opens the door to a variety of interpretations. Critics have argued that “the very doctrine of self-determination that purports to enfranchise people actually serves to disenfranchise them” (Weller 2005, 4) in the name of securing peace and stability, or the pursuit of vested interests. Consequently, the Right to Self-Determination can also be characterized as a double-edged sword, which can also work against the ones demanding freedom of choice. This circumstance has been referred to as the “self-determination trap” (e.g. Weller 2005 and 2008).

Controversies surrounding the Right to Self-Determination arise from conceptual ambiguities regarding its scope, applicability, and implementation. One central debate concerns the definition of ‘peoples’ that qualify as holders of the Right to Self-Determination (cf. Quane 1998, 537). From a demo-liberal perspective, the State does not exist out of self-purpose, but is an auxiliary means to implement the will of the People (cf. Summers 2007, 40-4). Hence, self-determination of the national population is the foundation of the legitimacy for the modern constitutional state (cf. Etzersdorfer & Janik 2016, 40). Inversely, legitimate statehood can be construed as a prerequisite for the exercise of internal self-determination: depriving a part of the population of internal self-determination makes the State’s legitimacy is deficient. From this
perspective, establishing a legitimate form of self-government is the ultimate agenda of secessionist claims that refer to the Right to Self-Determination. Consequently, in order to decide whether the Right to Self-Determination applies to a certain group, it is pivotal to determine whether a social entity qualifies as 'a people'.

Moreover, it has frequently been reiterated that the preparatory works and historical context indicate that the codifying of the principle of self-determination in international law was intended to provide a legal basis for decolonisation (cf. Cassese 1995, 65). However, due to the universalist language of the legal texts, the Right to Self-Determination has been invoked to corroborate separatist claims in a number of cases beyond the colonial context as well. At the present day, as virtually the entire surface of the globe is partitioned among independent states, exercising external self-determination usually means seceding from a sovereign country. Although the international community has largely disapproved unilateral secessions outside the context of decolonisation (cf. Crawford 2006, 388-402), complementary international legislation and decisions by juridical bodies have been reluctant to clarify the preferred reading of Article 1 of the ICCPR and the ICESCR (cf. Cavandoli 2016, 875-6). Fisch (2010, 285) has even gone so far to argue that the Right to Self-Determination would lack a legal cause nowadays, if its application is assumed to be restricted to colonial peoples. Even though this assessment overlooks settings short of state creation, it cannot be entirely repudiated. Admittedly, the internal and external dimension cannot be separated easily, as denying the one endangers the exercise of the other.

In theory, there is a wide range of settings in which collective political self-determination can be achieved. For instance, the free pursuit of the political development of ‘a people’ can be exercised by facilitating political participation, ensuring adequate representation, enabling self-government, and devolving authority. However, all of these mechanisms fall short of the formation of a new sovereign state. In this sense, self-determination is a domestic issue of self-government. In contrast, self-determination can also be understood as conveying an external dimension, which refers to the freedom of ‘a people’ to choose their polity, that is, to establish an independent state. Non-consensual secession is not only construed as violating the principle of territorial integrity, but is also said to pose a threat to international stability (cf. Quane 1998, 537). As a consequence, the international community has been eager to render the very few –more or less– successful cases of secession that do not fall in the category of decolonisation as cases of unique circumstances in order to evade the acknowledgement of the Right to Self-Determination’s dreaded "Siamese twin" (Klabbers 2006, 205), the right to secession. After all, the right is not designed to intentionally contradict with other universal principles and ultimately foster the fragmentation of the International System, or as Thornberry (1993, 118) puts it: “international law is not a suicide club for states”. However, while the option to secede bears the risk of disrupting regional and international stability, this does not imply that one dimension of the Right to Self-Determination is inherently more problematic than the other, as both internal and external
self-determination can be exercised peacefully and consensually (cf. Chapter 3.3). On the other hand, self-determination disputes that seek for the alteration of state borders, and also self-determination conflicts that seek for the reconfiguration of the power distribution in a state can culminate in all-out civil wars and interstate conflicts. Hence, violent self-determination disputes are of special interest from an International Relations perspective with respect to their impact on international security, universal peace, regional stability, and power relations among states.

1.1 Research Problem, Relevance, and Objective of the Thesis

Although the travaux préparatoires of the International Covenants, numerous complementary resolutions and declarations on self-determination, as well as state practice indicate certain tendencies, the equivocal phrasing of legal texts leave room for alternative interpretations. The lack of consent regarding the abovementioned issues suggests that corporate actors in international politics adopt different interpretations of the applicability, scope and modes of implementation of the Right to Self-Determination according to their particular national interests. As Higgins (1994, 128) puts it, “self-determination, having for years been denied as a legal right by vested interests in the West, Eastern Europe, and Third World alike, now faces a new danger: that of being all things to all men”.

This thesis sets out to investigate in which ways the Right to Self-Determination is used as a vehicle to pursue national and collective interests in the current International System. By examining state practice in regard to self-determination and the respective impact on the relations among states, this thesis aims for an assessment of the function of the Right to Self-Determination within the contemporary International System. The research question RQ thus is as follows:

<table>
<thead>
<tr>
<th>RQ</th>
<th>How do interests and identities of corporate actors affect the realisation of the Right to Self-Determination in contemporary international relations?</th>
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<tr>
<td>H</td>
<td>The Right to Self-Determination concerns both national interests and collective interests of corporate actors in international politics. While the international community seeks compliance with the Right to Self-Determination as a universal norm of the human rights canon, individual states and entities invoking self-determination instrumentalise the indeterminacy of the applicability, scope and mode of implementation of the Right to Self-Determination in international law in order to pursue their respective national interests.</td>
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Table 1: Research question and hypothesis

The corresponding hypothesis H asserts that the Right to Self-Determination fulfils multiple functions in contemporary international politics in regard to the pursuit of collective and national
interests. First and foremost, the Right to Self-Determination is an integral part of international treaties, such as the ICCPR and ICESCR, respectively, as well as the Charter of the United Nations and a number of other declarations. It conveys the notion of equality, freedom and mutual respect among ‘peoples’ and thereby constitutes a strong universal norm for the contemporary International System. Hence, universal compliance is a collective interest by the international community. However, the Right to Self-Determination continues to be a controversial subject in international politics. Disagreements primarily arise from the vagueness of the legal text of the Right, specifically in regard to the implications on its exercise as external self-determination. This makes it prone to be utilised as a tool to push through national interests. This also means that the respective national interests determine whether and how the Right to Self-Determination is seen to be applicable. The specific stance of a state towards self-determination might contradict with other universal norms, such as the principle of sovereign equality, territorial integrity and non-intervention, which can have serious repercussions on the relations among states.

Whether collective self-determination is perceived as a universal institution and a moral obligation, or a threat to international stability and security, is dependent on the particular interests and objectives of actors. For instance, within the United Nations discourse, self-determination is a collective human right of high symbolic value. Therefore, it is not in the interest of the United Nations to push for any specification of the Right to Self-Determination that falls short of its universalist essence. From the perspective of individual states that are interested in maintaining their political authority and territorial entirety, a clause on the prohibition of secession in the name of self-determination might look appealing. However, states that have ratified human rights treaties are legally bound to the content of the Right to Self-Determination as is. Then again, the United Nations are comprised of these very states. Consequently, the so-called international community faces the challenge of having to balance the normative impact of international law with conflicting national interests of its individual members.

Even after the era of decolonisation has virtually come to an end with the independence of East Timor in 2002 (the relatively small number of non-self-governing territories and territories under foreign occupation notwithstanding), the emergence of new sovereign states after the end of the Cold War indicates that self-determination remains a crucial point of reference in disputes about territory and governance. While the Kosovar case has revived and expanded the scholarly debate around the legality and feasibility of the so-called ‘remedial secession’ approach, recent events of the 2014 Ukraine crisis prove that the concept of self-determination continues to be highly relevant in contemporary international politics as well.

The study of collective self-determination, especially in its codified form, is revolving around its –occasionally paradoxical– interrelations with a number of grand concepts of political philosophy, such as statehood and nationhood, sovereignty, and legitimacy of political rule. The self-determination of peoples is frequently referred to as one of the most contested of the
international principles (e.g. Hilpold 2006, 39; Cavandoli 2016, 876) and has sparked the development of a great body of scholarly literature. Hence, the epistemological interest of the proposed Master’s thesis is to structure this academic discourse by embedding the central dilemmas arising from the codification of self-determination within International Relations theory. The objective is to provide a contextual analysis of how the balance of contradicting national and collective interests of states regarding the compliance with the Right to Self-Determination is addressed by individual states and the international community.

To date, the Right to Self-Determination has primarily been analysed from a legalistic perspective. In this paper, I identify the Right to Self-Determination as a political instrument and place it within contemporary international politics. Therefore, this thesis constitutes an attempt at generating a theory of self-determination in contemporary international politics from a Constructivist perspective. In the conclusive Chapter, implications for the future of the Right to Self-Determination are discussed. In so doing, I intend to contribute to the conceptual debate by providing an explanation for the persistence of the ambiguous nature of the Right to Self-Determination in regard to its function in international politics.

1.2 Literature Review

The literal meaning of self-determination, stripped from any further contextualisation, refers to a situation or process where a subject is in control of his or her own course of development. As such, self-determination is relevant to a variety of scientific disciplines. While Philosophy scholars are primarily concerned with human self-determination as being intertwined with the concepts of individual freedom and the Free Will (Fisch 2010; Tugendhat 1997), historical approaches investigate the development of the principle of self-determination, which has been attributed a collective dimension only in the modern age (Fisch 2010). In Political Philosophy however, self-determination is the core precept for the Will of the People in theories of sovereign statehood, nationalism and the legitimacy of the State. Hence, the philosophical underpinnings are traced back to theories of the State and the social contract of Hobbes, Locke, Rousseau, and Mill (Hilpold 2006, Kohler 2011).

Literature on the Right to Self-Determination commonly provides for a comprehensive historical context of its emergence (e.g. Fisch 2010, Rabl 1976, Cristescu 1981, Pomerance 1982). Seminal contributions to the scholarly debate assess the possibilities of the Right to Self-Determination as it exists in international law (Cassese 1995), reflect on self-determination in international law and in juridical decisions (Quane 1998, Summers 2007) and usually provide for a vast collection of –primarily descriptive– case studies that document the seemingly erratic and arbitrary implementation of the Right to Self-Determination. A notable aspect of the concept of self-determination is its entanglement with nationalism, especially in regard to the notion of ‘a people’, which has been addressed extensively by Summers (2007).
Naturally, the Right to Self-Determination and its coming into existence is of great interest for the Legal Studies. Above all, these are concerned with the legal status of self-determination and its position in the juridical hierarchy in international law. The legal perspective on self-determination is, *inter alia*, concerned with ventilating questions such as whether the Right to Self-Determination qualifies as *ius cogens* (Cassese 1995, Gros Espiell 1980, Summers 2007), as a human right (Higgins 1994, Quane 1998), whether it is applicable *erga omnes* (Cassese 1995, Summers 2007, van den Driest 2015), or whether the State practice in regard to Right to Self-Determination indicates the crystallisation of a right to secession in Customary international law (Cassese 1995, Jaber 2011, Quane 1998, van den Driest 2015). A number of scholars have also pointed to the importance of the *travaux préparatoires* of the International Covenants for a comprehensive contextualisation of the legal texts (Cassese 1995, Jaber 2011, Quane 1998, van den Driest 2015). A comprehensive volume of documentations of the general debate in the UN assembly and proposals of member states in the course of the development of the ICCPR has been provided by Bossuyt (1987).

Within Political Science, self-determination has primarily been subject to scrutiny in the context of state formation, decolonisation, territorial disputes along ethnic and religious divides, and their respective solutions in terms of autonomy, federalism, and secession. Self-determination has been identified as the founding condition in the context of the creation of states in International Law (Crawford 2006). Since there is a strong consensus about the Right to Self-Determination being originally intended to be confined to the decolonisation process (Crawford 2006, Emerson 1971, Higgins 1994, Quane 2008), scholars have attempted to attune the Right to Self-Determination to the principles of territorial integrity and state sovereignty by theorising on secession (Buchanan 1991, Buchheit 1978). The unilateral secession of Kosovo from Serbia in 2008 as a relatively successful invocation of collective self-determination (given the circumstances that Kosovo is recognised by the greater part of the international community, and is a member in numerous international organizations, but did not yet achieve membership to the United Nations or recognition by its kin state and the respective allies), the international community has been eager to construe Kosovo as a ‘unique case’ – a claim that has been comprehensively elaborated upon in the literature (Coppieters 2009, Jia 2009, Jaber 2011, Jovanović 2011, Kerr-Lindsay 2013). Additionally, the doctrines of “earned sovereignty” (Berg & Mölder 2012, Scharf 2004, Williams & Pecci 2004) and “remedial secession” (Buchanan 2003, Catala 2013, Laurinavičiūtė & Biekša 2015, Meester 2012, van den Driest 2013) have been discussed against the backdrop of the Kosovar case. Hence, the greater part of the scholarly literature on self-determination has predominantly been concerned with its external dimension. Others have directed the attention to the internal dimension, which entails solutions that do not alter the external borders of states, such as autonomy (e.g. Abushov 2015) and power sharing (e.g. Wolff 2011, Wolff & Rodt 2013). More recently, the independence of the self-proclaimed republics...
of Donezk and Luhansk as well as the secession of the Crimean Peninsula and its subsequent annexation by Russia have initiated a debate on whether the secessions of these entities are consistent with International Law and State practice (van den Driest 2015, Cavandoli 2016). As only few self-determination movements are strictly unitary, recent scholarship has also turned to examining the effect of fragmentation on self-determination disputes (e.g. Cunningham 2014).

To sum up, self-determination in the 20th and 21st century has primarily been scrutinised in terms of its historical development and compliance with international law in specific contexts. While underlying interests of states and the international community are often contemplated in case studies of self-determination disputes, only very few contributions have embedded self-determination disputes in a context of International Relations theory (Pavković & Radan 2003), and even less so from the perspective of Constructivism (Daadaoui 2008). This Master's thesis therefore intends to address this research gap.

1.3 Research Design and Methodology

In contrast to empirical social studies, which seek for explanations and predictions based on data by using more formalised research processes for testing hypotheses, I follow the interpretative paradigm within this paper, which is oriented towards the investigation of contexts, interrelations, and meanings. Therefore, the research of this thesis does neither result in the verification nor falsification of a given hypothesis, but rather its justification. Hence, the main objective is to present a reasoning that is neither ‘right’ or ‘wrong’, but which provides a suitable and coherent corroboration for the argument that the Right to Self-Determination is a political instrument to pursue both national and collective interests of corporate actors with relational identities, such as states or international organisations.

This Master’s thesis is divided into two parts. The first part, which comprises Chapters 1-3, is dedicated to the presentation of the conceptual groundwork for the subsequent theorising. In this section, I illuminate the central issues revolving around the Self-Determination. In so doing, I adopt a legalist-hermeneutic approach. This means that I follow the interpretative paradigm when examining the origins and conceptual controversies of the Right to Self-Determination, with special respect to its entrenchment in international law.

The second part, which includes Chapters 4 and 5, comprises the original theoretical account and a conclusion. In this section, I attempt to provide a systematic interpretation of the function of the Right to Self-Determination in international politics by bringing together the aforementioned controversies and the Constructivist framework. In a two-step synthesis, I first examine the meaning of the Right to Self-Determination for national and collective interests of corporate actors in international politics from a Constructivist perspective. Subsequently, I theorise on how the Right can be used as a vehicle for the pursuit of said interests on the basis of contemporary case examples. The line of argumentation in this thesis thus rests on the analysis
and interpretation of both primary (e.g. international treaties, declarations, official statements, reports etc.) and secondary literature (scholarly books and peer-reviewed journal articles). As collective self-determination only became a moral precept and a matter of international law after World War II, the timeframe of the examples in Chapter 4 is limited to the 20\textsuperscript{th} and 21\textsuperscript{st} century, with a special focus on more recent self-determination disputes that occurred after its codification. Eventually, after summarising my remarks in a conclusion, I discuss the hypothetical possibilities of specifying the legal sources in an outlook.

Within this Master’s thesis, I adopt a macro-level approach with the State being the primary unit of analysis. Although I acknowledge that key individuals and collectives (such as governments or Heads of State) play a vital role in shaping patterns of state action and national interests, the State is conceived as irreducible to the actions of the individuals that constitute it. Instead, I assume that state action only exists by virtue of a state-society relationship (Wendt 2010 [1999], 221). The same is true for interests and objectives: collective action in pursuit of national interests cannot be reduced to the actions of singular persons, because individuals would not defend these interests if it were not for the State. However, these interests are represented by individuals that act on behalf of the State with the respective authority. In this way, the State is perceived as an aggregated corporate actor, which is attributed a distinct personality. This personality is constituted of multiple levels of identity, which are explained further in Section 1.4.1. Although there is some valuable critique to the unitary actor model, “anthropomorphizing the state is not merely an analytical convenience, but essential to predicting and explaining its behaviour” (ibid.). After all, conceptualising corporate actors as having distinct personalities allows to conceive relations between them as social.

1.4 Theoretical Framework: Constructivist International Relations

The underlying theoretical foundation for this thesis draws on the Constructivist school of thought. In contrast to proponents of the “‘neo-neo’ consensus” (Brown & Ainley 2009, 59) that construe State identities and interests as primarily exogenous to international politics, Constructivists emphasise its social constitution. In opposition to understanding the conditions of state interests and actions as given, international relationships are construed as taking place in a “world of our making” (Onuf 1989). In this way, this thesis is also set out to be a critical account, as it brings alleged givens into question and transcends the epistemological frames of reference of Liberalist and Realist thinking. However, a Constructivist approach to International Relations does not imply that interaction within the International System is ‘merely cultural’, but acknowledges the importance of material conditions.

Although Constructivism is not a theory of International Relations per se (Wendt 2010, 7), the social theories of international politics that draw on Constructivist thought share a certain set of propositions. The research agendas drawing from the interactive ‘constructedness’ of
international politics range from the “Wittgensteinian analysis of the rules of the game” (Brown & Ainley 2009, 49) by scholars such as Onuf (1989) and Kratochwil (1989), issues of corporate identities and interests (e.g. Wendt 2010), international co-operation (e.g. Ruggie 1998), the notion of a ‘society of states’ (represented primarily by scholars of the so-called English School, such as Bull 2012 [1977], Dunne 2002 [1998] and Wheeler 2000), and approaches that are focused on the communication and linguistics in world politics (e.g. Risse 2000), which is often referred to as the “Habermasian” strand of Constructivist IR (Brown & Ainley 2009, 49).

The adopted Constructivist approach has further epistemological implications. In the sense of a dialectic relationship, I assume that in order to understand the significance of the Right to Self-Determination within the contemporary International System, I have to look at how individual states handle its implementation. State behaviour in regard to the Right to Self-Determination, in turn, is influenced by structure of international politics, that situates States in a system of interrelated identities, expectations and perceptions. Similarly, national interests that comply or contradict with the moral purport of the Right to Self-Determination only exist in relationship to other states.

Following Wendt’s approach of the social constitution of international politics, this thesis relies on a series of fundamental assumptions and key concepts. It is presumed that shared ideas and perceptions are pivotal to the considerations of corporate actors about how interests are shaped and pursued. Shared ideas, which can be both conflictual and cooperative (Wendt 2010, 228), establish the nature of the anarchy in international politics by constituting particular role relationships. Wendt (ibid., 246-312) asserts that the anarchy of international politics can have at least three different shapes (“cultures”). While in a Hobbesian anarchical culture, the perception of the Other is hostile by default, the Lockean anarchical culture is characterised by utilitarian self-help behaviour, and expectations of reciprocity. Eventually, Kantian anarchy ultimately represents the ideal-typical culture of cooperation, non-violence and mutual aid due to the internalisation of interests of the Other as self-interests. That is, these three ‘cultures’ of anarchy represent three types social environments in which the relations among social actors, e.g. states on the macro-level, are taking place, namely competitive (Hobbesian), extrinsically cooperative or contractual (Lockean), and intrinsically cooperative or solidary (Kantian).

1.4.1 The Identities of the State

As conceptualisations of statehood differ immensely across the various schools of thought, I begin with presenting the working definition which I adopt for this thesis. Following Wendt (2010, 201), I understand ‘the State’ as “an organizational actor that is internally related to the society it governs by a structure of political authority”. This definition combines Weberian, Pluralist and Marxist conceptualisations, thereby making it possible to comprehend the State as an anthropomorphic entity and as being constituted by the structure of a state-society relationship.
at the same time (ibid., 199-200). Wendt (ibid., 202) further proposes a set of features that
distinguishes states from other social actors, namely an institutional-legal order, the claim on the
monopoly on the legitimate and organised use of force, sovereignty (in the sense of non-rival,
unified political authority), a society, and a territory. As these features represent rather clusters
than particular properties, thereby leaving room for interpretation, the specific form a state can
take varies broadly. Consequently, this definition simultaneously renders all the other properties
of a state as non-essential, such as a particular political system, international recognition, or
undivided sovereignty (ibid., 214). It is worth noting that this definition thus integrates the
elements of the Weberian-Jellinekian triad (territory, population, monopoly on the use of force),
but not all of the Montevideo criteria (capacity to officially engage in relations with other states).
This allows to conceive borderline cases, such as unrecognised states, within the framework of
‘the State’.

In contrast to merely being the sum of the identities of its constituting individuals, the
State is understood as a relatively unitary actor with intrinsic motivational dispositions according
to a systemic ontology (Wendt 2010, 243). In regard to self-determination, identity is understood
as a core component to the concept (Daadaoui 2008, 155). This is because there has to be an
awareness of a distinctive ‘Self’ (of an individual, a collective, or a corporate actor) in order to
develop a desire to be self-determined. The State identity has both a subjective and an
intersubjective quality. While the former points to the self-understanding of the actor, the latter
concerns the representation of the Self by others. If these two qualities are not based on the same
perception, social interaction become difficult (Wendt 2010, 224). In other words, a crucial
precondition for frictionless social interaction is the intelligibility of identity. The mutual
recognition of State identities plays a pivotal role in the relations among states, as it is a precursor
for acknowledging the external sovereignty the State (cf. ibid., 208). If the perceptions of the
identities of the corporate actors harmonise, they are accepted as legitimate. In turn, this means
that a decisive factor for whether self-determination claims are supported or rejected by the
international community and individual states, especially those which would yield in the
formation of a new sovereign state, is dependent on the perceived legitimacy of those demands
(cf. Chapter 3).

Furthermore, I understand identity as multi-layered and alterable. Although identities are
certainly resilient, processes of social learning and mutual influence can affect the behaviour of
actors, which can ultimately change character traits. Moreover, identities are composed of
multiple dimensions (“roles”, Wendt 2010, 224-223). Therefore, the terms ‘identity’ and
‘identities’ are used interchangeably within this thesis when referring to corporate actors,
presupposing that they are always multi-faceted and complex. In the following, I discuss four such
types of identities suggested by Wendt.
The personal or corporate identity concerns the material foundations, i.e. the corporeality, of an actor. In the case of persons, this dimension relates to the body. In the case of corporate actors such as states, it refers to materially tangible instances that constitute the State, such as the territory. I further suggest that the corporate identity also refers to the State’s population, i.e. the constitutive people, and in further consequence the bond to the territory of the State. For example, this bond is often given a legal status by awarding citizenship based on the place of birth (also known as *ius solis*). In order to distinguish personal and corporate identities from other living beings and inanimate objects which do not constitute social actors, Wendt (ibid., 225) introduces the criterion of self-awareness about this corporeality. Unlike other identity types, Wendt construes the personal or corporate identity as “constitutionally exogenous to Otherness” (ibid., 225), i.e. pre-social. However, Wendt’s approach is grounded on the assertion that identities are socially constructed. This conceptual exclusion of personal or corporate identities from social interaction and mutual perception constitutes a precarious flaw (cf. Zehfuss 2006). Therefore, I deviate from Wendt in this matter and predicate that having a body (literally and figuratively) does not necessarily mean that this body is perceived as anything meaningful in the absence of an Other to distinguish it from. That is, the meaning of a corpus, regardless whether it is singular (i.e. human) or collective, is socially constructed. Hence, the notion of corporate integrity and inviolability is subject to mutual recognition. In other words, who is in the position to decide over the body in question, is a matter of social negotiation. With the corporate identity being a necessary condition for the existence of the State, any attempt at transforming it constitutes a security issue. In this sense, I adopt a rather poststructuralist perspective on identity formation (cf. Klüfers 2014, 180-1).

Secondly, Wendt conceptualises type identities, which refer to social categories or “labels” according to which actors with similar characteristics can be grouped, such as behavioural traits, attitudes, skills, experience etc. Consequently, actors can have several type identities at the same time. Furthermore, in order to constitute a type identity, these markers have to be socially *meaningful* in a given context. Like personal and corporate identities, Wendt understands the characteristics that underlie type identities as intrinsic, and thus independent from social interaction. This assertion is illustrated by the hypothetical adolescent ‘Max’. Wendt (2010, 226) has argued that the “qualities that make Max a teenager exist whether or not Others are present to recognize them as meaningful, and to that extent he can be a teenager all by himself”. I contend that this not quite the case. This becomes even more clear in the example of corporate actors. In regard to states, Wendt has asserted that type identities correspond with certain regime types, such as democratic, capitalist, or fascist statehood. In turn, these forms of states are construed as exogenous to social interaction, which means that states can be democratic, capitalist, or fascist ‘all by themselves’. My point is not to dispute the claim that forms of societal organisation can develop the characteristic features of the abovementioned regime types. Instead, I contend that,
without the distinction from the Other, neither does Max know that he is a teenager, nor are the corporate actors in question aware that they are ‘democratic’, ‘capitalist’, or ‘fascist’ – or even ‘states’ altogether. Instead, social relationships are a precursor for capabilities and attributes, material or otherwise, to convey a meaning (cf. Griffiths, O’Callaghan & Roach 2008, 52). Therefore, I also presuppose social interaction for the formation and maintenance of type identities.

In regard to self-determination, the notion of nationality is a decisive factor for identity formation. In the post-Westphalian era, the conflation of both in the form of the nation-state has become prevalent. However, statehood and nationhood are not synonymous concepts. While the State refers to a political system which is ruled in a fairly unified fashion, nationhood concerns the coherent and cohesive aspects which constitute a collective identity. This means that they can, but do not have to coincide. This entanglement of statehood and nationhood concerns both the corporate and type identity of the State. While the type identity relates to attributes that ‘make a nation a nation’, such as a common language, ethnicity, or ‘cultural’ heritage; the corporate identity points to the connection of these aspects with the material foundation of the State, resulting in the notions of a national people, national territory, and occasionally even a national consciousness.

Thirdly, role identities are instances of the Self which are acquired by “occupying a position in a social structure and following behavioural norms toward Others possessing relevant counter-identities” (ibid., 227; original emphasis). These usually have some creative leeway. However, if the deviation from an assigned role identity grows too large, its intelligibility is endangered and the role cannot be exercised anymore. Evidently, role identities can be a matter of choice or attribution. In turn, coercion serves as a stabilising mechanism for role identities, both psychologically and physically. Role identities of states can include for example ‘enemy’ or ‘friend’, ‘sovereign state’, ‘UN member’ or ‘regional hegemon’.

Lastly, collective identities relate to the process of identification of the Self with the Other and vice versa. Building on role identity and type identity characteristics, identification entails the incorporation of the Other into the Self, resulting in a combined single identity. Examples of collective identities which will be of greater importance for the subsequent analysis of self-determination are ‘a people’ and ‘the international community’. Following Wendt’s Constructivist conceptualisation, it can be concluded that states, just like individuals, not only have multiple identities which are differently balanced according to the context. Additionally, their identities can also contradict with another.

1.4.2 The Interests of the State

State identities imply, but do not dictate their interests. In order to explain actions, interests and identities have to be considered as complementary to each other (Wendt 2010, 213). Wendt (ibid.,
identifies four types of national interests: physical survival, autonomy, economic well-being, and collective self-esteem. All of these needs have to be met in order to secure the state-society relationship (ibid., 237). Since these interests might be at odds sometimes, their pursuit might require prioritisation and temporal selection. Admittedly, states have a disposition to self-help (cf. ibid., 239). However, the Realist conceptualisation that construes the relations among states as shaped solely by decisions based on cost-benefit calculations of rational actors fails to provide an explanation for the diffusion of norms and social learning in international politics (cf. ibid., 242). Hence, it is assumed that “States are not Realists by nature” (ibid., 234). Instead, Constructivists lay emphasis on the agency that States have for shaping international relations, which go beyond the utilitarian determinism that follows from Realist reasoning (cf. Wendt 1987, 342).

The national interest of physical survival refers to the maintenance of the existence of the State. For states, this consequently concerns the preservation of existing territory (cf. Wendt 2010, 235) and maintaining the cohesion of the national people. Therefore, considering the national interest of physical survival provides a perspective for explaining the reluctance of states to allow secession. The understanding of the physical survival of states to be tightly connected to the preservation of existing territory has developed over time. However, individual elements are not essential to the survival of the collective. On the contrary, certain parts can also be sacrificed while maintaining statehood. As historical examples demonstrate, the survival of the ‘core state’ is still possible if a part of the territory is ceded. For instance, the loss of Alsace-Lorraine did not cause France to ‘die’ in 1871 (ibid.) and, as a more recent example, the Sudan did not cease to exist after the secession of South Sudan in 2011. Consequently, physical survival as a national interest has a tendency to favour the territorial and political unity of the state, but neither does it imply that a state dissolves if a part of the territory secedes, nor does it preclude the voluntary cession of a part of its territory in order to maintain statehood. In conclusion, secession does not per se endanger the viability of a state.

While the physical survival is the most urgent national need to be met, since it is believed to concern the very existence of the State, the three remaining dimensions of the national interest are also relevant to the analysis of the significance of the Right to Self-Determination in contemporary international politics. Autonomy means the control over the allocation of resources and choice of government of a State (ibid., 235). While the need for states to maintain autonomous follows from their sovereignty, they are confronted with conflictive autonomy demands of groups in self-determination disputes. The degree of autonomy that can be ceded or redistributed within a state and between states is a subject to negotiation, which can be immensely conflictive at times. If self-determination claims aim at partitioning territory from, or re-integrating it with, another sovereign state, this can also impact the economic well-being of a country. For example, this is the case if resource-rich land or a significant part of the domestic economy would be gained or lost. Furthermore, states are construed as desiring a positive collective self-esteem and a respected
status (ibid., 236). The self-image of a state-society complex emerges from relationships with other states. While humiliation and indifference by other states tend to lead to negative self-images, positive ones stem from mutual respect and cooperative behaviour (ibid., 237). As these self-images are strongly influenced by the perception of other states, it can be inferred that states are incentivised to restrict their actions and refrain from violating international norms in order to avoid political isolation or sanctions (cf. Johnston 2001), thereby maintaining their positive self-images.

Assuming that the relations among states today are developing into the direction of a Kantian culture of anarchy (Wendt 2010, 314), state collectives are construed as not being exclusively instrumental. Instead, states see themselves as engaging in an international community, or a "society of states" (Wendt 2010, 242). This is to say, apart from national interests that states pursue primarily out of self-help, they also have interests that benefit the collective of states, such as preserving international peace and stability, and the internationalisation of norms. In fact, the very circumstance that states and other agents of international politics accept international law as binding indicates the existence of such an international society (Bull 2012, 124). The Right to Self-Determination as a part of a comprehensive human rights canon contains a strong moral imperative, but it can also have a severe impact on individual members of the state collective. Thus, complications not only arise from contradicting national interests in regard to the Right to Self-Determination, but also from discrepancies between national and collective interests.
2 The Origins of the Right to Self-Determination

In the following section, I provide a brief genealogy of the principle of self-determination with a special focus on the historical dynamics that led to its codification in international law. After tracing the origins and the development of the principle, I discuss the most important (quasi-) legislative texts that refer to self-determination in regard to their role in international law.

2.1 From Principle to Human Right

From the very beginning of its emergence, the radical notion of the political concept of collective self-determination has been evident. Its development is a product of distinct societal relations and historical circumstances. Summers (2007, 86-8) has identified three events that have constituted necessary conditions for the formation of self-determination as a political doctrine. Firstly, the development of the nation state centralised the formerly diffused power structures of feudal rule. Only within the context of an integrated authority can self-determination relevantly be invoked. Secondly, progress in transportation and communication, as well as increasing inter-regional trade relations helped to shift the understanding of identity from the tangible local sphere to a more abstract and broader national level. Thirdly, self-determination conceptually presumes a form of authority which is not divine, but can be contested on a rational and political basis. Thus, the advancing secularism since the Enlightenment was an enabling factor for the emergence of the idea of self-determination. Furthermore, self-determination is a political argument which relies on the assumption that peoples constitute a coherent and predominantly homogenous political unit (ibid. 85; cf. Chapter 3.1).

The origins are built on the groundwork of the idea of popular sovereignty by the social contract philosophers Thomas Hobbes, John Locke and Jean-Jacques Rousseau. Popular sovereignty sets the people of the State as the source of power. Hence, the authority of a government is dependent on the will and consent of the people. The concepts of self-determination and popular sovereignty are not interchangeable, but related, as popular sovereignty can be understood as a required precursor for self-determination. In this sense, Fisch (2010, 72) posited that when there is no popular sovereignty, there is no right to self-determination.

In the literature, the historical inception of the principle of self-determination is frequently traced back to the North American and French Revolutions (e.g. Cassese 1995, Fisch 2010). Curiously enough, the United States Declaration of Independence neither actually features the terms 'independence' or 'self-determination', nor condemns colonial rule per se (ibid., 81). Instead, it is primarily a bill of indictment on the breaches of law by King George III. The right to independence is deduced from the colonial grievances by the British rule and is therefore not a natural, but a conditional entitlement that draws on the classical Right to Resist (ibid.). Thus, if
taking the text of the Declaration literally, it would be a stretch to read the demand for collective self-determination into it. However, it can be interpreted as a remedial approach to rejecting foreign rule on the basis of the lack of consent.

The Caribbean and South American declarations of independence during the following years and decades resembled the Declaration of the United States, although mostly with a more drastic phrasing that condemned the misdeeds of the colonial authority. Similarly, the triggering incident for the independence claims was a point of saturation of breaches of law by the Spanish and French rulers. Later declarations already included references to a natural right to independence, the power to determine one's own destiny, and the idea of a sovereign people, yet without calling it ‘self-determination’ (ibid., 85). Interestingly, the American decolonisation has never been referred to as a movement of self-determination, which is arguably due to the circumstance that the term was not (yet) understood in a collective, but in an individual way. Moreover, the objective of these claims was much more specific (namely, the objective of state sovereignty) than the many options that the notion self-determination conveys (cf. ibid., 88). It is also worth noting that the liberating effect of these independences was restricted to descendants of European settlers and freed captives, but did not include indigenous peoples or slaves (ibid., 89). Additionally, the adoption of the uti possidetis-principle meant taking back some of the liberty to freely determine the political status, as territory was assigned according to the state of the demarcation lines from the colonial administration (ibid., 90).

In light of the American Civil War and the secession crisis, decolonisation was established as a special circumstance, that did not imply a free pass for deliberate invocation of a right to independence for post-colonial sub-entities (ibid., 113). Colonisation was as an exceptional injustice that called for exceptional redress in the form of separating from the parent country. Consequently, only colonies were understood to have a right to secession, but not their respective constituent parts (ibid., 117). Moreover, the issue of self-determination of Native Americans was left out of the public debate altogether. However, if it was benefitting the interest of the United States, e.g. during its involvement in the separation of Panama from Colombia in order to push the construction of the Panama Canal, the US would invoke self-determination (ibid.). Hence, the decolonisation of the Americas was selective in regard to its sphere of action. In Europe, self-determination became the guiding principle for decisions regarding the transfer of territory in the wake of the French Revolution (Cassese 1995, 11), asserting that regions could only be ceded or annexed when the affected population had agreed in a plebiscite. These referendums, however, were heavily biased towards the gain of territory for France (ibid., 12). Yet again, the principle of self-determination was applied selectively and did only affect shifts of external borders. In contrast, it did neither include colonial peoples, ethnic and religious groups, and minorities, nor concern the internal dimension of self-determination.
The rise of nationalism during the decades before World War I helped self-determination to become more popular as a political slogan, albeit at first from within the bourgeoisie (Fisch 2010, 134). Against the backdrop of opposing nationalist movements in Russia and Austro-Hungary, self-determination became increasingly significant in the politics of the labour organisations and in social democratic debates (ibid., 134-6).

When providing a historical background for the development of the self-determination principle, the literature commonly refers to two influential figures: the 28th President of the United States, Woodrow Wilson, and the Russian revolutionary and later Head of Government Vladimir Ilyich Ulyanov, better known as Lenin. The latter is often characterised as the first influential advocate for self-determination on the international level. Against the backdrop of the Communist Revolution, Lenin praised self-determination as the means for liberating oppressed peoples (Cassese 1995, 15). The Leninist understanding of self-determination entailed not only to prohibit territorial shifts without the consent of the affected population, which had already been championed by the French Revolutionaries, but also two more novel aspects (ibid., 16). Firstly, self-determination in Lenin’s sense was to be invoked by ethnic and national groups. Secondly, it was intended to foster decolonisation. Consequently, the primary means by which self-determination was to be implemented was secession, although the ultimate Communist objective was the “inevitable integration of nations” (Lenin cited in Cassese 1995, 17). Therefore, Lenin’s promotion of the self-determination of peoples was undoubtedly radical (cf. Fisch 2010, 139). However, this commitment was not rooted deeply within the Communist ideal, as the decisive social rift was between classes, not nationalities (cf. Summers 2007, 126). The proclamation of self-determination fit well into Lenin’s political agenda, which is why Summers (2007, 127) even characterised this support of the principle as “purely tactical”. Eventually, Lenin convinced the Bolsheviks to cede a significant amount of the Russian territory in order to secure the successes of the October Revolution (Cassese 1995, 18). Hence, as the peace treaty of Brest-Litovsk has illustrated, the political objective of Communism outweighed the one of self-determination.

Self-determination was a powerful political demand that suited the vision of a Communist World Revolution well. Naturally, Lenin’s advance could not go unanswered by the US-American president, who championed a competing vision of a New World Order. This situation led to the rather ironic circumstance that the radical notion of self-determination is often ascribed to Wilson, who is commonly portrayed as the modern pioneer of promoting self-determination of peoples in the 20th century, although he never embraced its popular meaning (Fisch 2010, 156). After all, the potency of the principle of self-determination unfolds in its relationship with state sovereignty and independence (ibid., 153). However, the term ‘self-determination’ conveyed a meaning different from revolutionary liberation for Wilson. He understood it as (democratic) self-government. Consequently, he termed it as a right to freely choose the political leadership and the way in which the State exercises its autonomy (Cassese 1995, 19). In sharp contrast to Lenin’s
position, Wilson did not imply granting independence to ethnic minorities (Fisch 2010, 155). Consequently, self-determination was primarily an issue of domestic politics, which was only invoked in its external dimension when it meant restructuring European territories, especially the Ottoman and Austro-Hungarian empires, after World War I (Cassese 1995, 20). For both Lenin and Wilson, self-determination was a tool to achieve their respective political goals. For Lenin, self-determination was first used as a slogan in domestic politics to bring down the Tsar and promote Communism and was later transferred to foreign policy when self-determination was attributed to an anticolonial agenda. After all, the underlying objective was not (only) to achieve self-determination of peoples and nations, but ultimately of the proletariat (Fisch 2010, 138).

Evidently, the two approaches of Lenin and Wilson differed significantly in three ways. Firstly, the implicit justification and objective of self-determination stemmed from divergent political and ideological underpinnings, either demo-liberal (Wilson) or Communist (Lenin), respectively. Secondly, both politicians had different ideas on the practice of self-determination. While Lenin promoted it as a key principle in the revolutionary liberation of nations, Wilson advocated a reformist and non-violent implementation of self-determination. In contrast to Lenin, self-determination was not a means to change existing power relations for Wilson, who emphasised the international dimension of self-determination (Cassese 1995, 21-2). However, Wilson’s position did not apply to US-American domestic politics. The decolonisation of the Americas was construed as a one-time incident (Fisch 2010, 152) and any entitlement to self-determination was considered to be consumed at the moment of the independence.

At the beginning of the 20th century, the principle was still conceptually and practically applied in a highly selective manner, the efforts of shaping distinct understandings of self-determination by both Lenin and Wilson. While the self-determination movements in the Americas widely ignored any rights of indigenous peoples, Lenin’s inclusion of ethnic minorities was primarily addressed at the various peoples on Russian territory. However, the Soviet efforts regarding self-determination must not be downplayed, as they not only had a major impact on the foreign policy of other States, but are also one of the main reasons why the principle was eventually incorporated into the UN Charter (cf. Cassese 1995, 19). In other parts of the world however, such debates were still a long way off and colonialism had just been gathering pace. In fact, the Scramble for Africa deprived the population of virtually an entire continent of self-determination. This was justified by the view that the colonised peoples simply were incapable to determine themselves (that is, with plain racism) or by asserting they were not yet capable. According to the latter development model, it was even the duty –or ‘burden’– of Europeans to engage in a civilising mission (cf. Fisch 2010, 198). As a result, the concept remained restricted to the self-determination of some peoples at the beginning of the 20th century, the occasional anticolonial postulates notwithstanding.
In the aftermath of World War I, self-determination remained a slogan of political importance, but was often disregarded in order to secure the geopolitical and economic interests of the victors when territories were ceded in the course of various peace negotiations (Cassese 1995, 24-5). At the time, self-determination was still far away from being accessible as a universal right. This became evident in the League of Nations reports on the Åland Islands dispute (see also Chapter 2.2.2), which stated that although self-determination is acknowledged to be a concept of political significance, it had not yet become an international legal norm (ibid., 28). However, as Cassese (1995, 27) has noted, the principle was not adopted in the Covenant of the League of Nations, although its very name (that unites nations, not states) indicates that the drafters wanted to –at least implicitly– uphold the idea of self-determination. Additionally, the annotations to the League of Nations decisions on the Åland Islands case paved the way for the slow and unsteady establishment of the principle in international law.

The self-determination proved to be an effective lever for the revisionist efforts of the vindicated parties in the interwar period. Territorial possessions that countries held due to the right of the victor, and which did not suffice objective criteria of self-determination, could be declared illegitimate by the defeated (Fisch 2010, 187). In interbellum Europe, Germany could make the most use of self-determination as a ‘weapon of the weak’ (ibid., 285) in order to reclaim ceded territory. Although some of the German annexations of the interwar period arguably complied with self-determination claims of the time (such as the annexation of Austria after a referendum with a 99% approval or the incorporation of the Sudetenland along the objective criterion of a common language), self-determination did not become a core ideological objective in the Third Reich (ibid., 190-3). Instead, the goal of a Greater Germany was to be achieved by military conquest and forced relocation, which obviously runs contrary to the principle. In fact, the territorial revisions of the pre-war years marked the temporary demise of collective self-determination. While the Atlantic Charter of 1941 still indicated a ‘defensive’ right to self-determination that pointed to the need to let peoples choose their form of government and decide whether they agree with territorial shifts without actually employing the term, the politics of the victorious powers after the end of World War II paid no heed to the principle (ibid., 209-10). Instead, the victors aimed at preventing any possible invocation of self-determination as a means to revoke territorial provisions in peace treaties in order to weaken the defeated parties politically (ibid., 212).

When the groundwork for the United Nations was laid out at Dumbarton Oaks in 1944, self-determination was not included in the draft, but was only incorporated into the final Charter due to the continuous efforts of the Soviet Union (Cassese 1995, 38). In this way, self-determination was spelled out as a guiding principle of international politics, but not yet as a positive right. Furthermore, the provision, which declared self-determination as a rationale of this new association of states, was heavily criticised for its vagueness from the start. The concerns
raised by national delegates to the 1945 United Nations Conference on International Organization in San Francisco touched upon a number of issues that persist to the present day, such as the possible misuse of the principle for annexations and invasions, the legal personality to which the principle applies, and its potential to foster civil conflict and separatist movements (ibid., 39-40).

In the following years, the popularity of the Socialist understanding of self-determination and the anti-(neo)colonial stance of the 1955 Bandung Conference resulted in a shift of the agenda of the self-determination principle. From this point on, more emphasis was put on the external dimension. The Western powers vehemently rejected any inclusion of a universal understanding of self-determination into the legal texts and treaty law because of their colonial involvements and economic interests (cf. ibid., 50). In the drafting history of the International Human Rights Covenants, the Soviet Union urged to integrate a right to self-determination, with the primary concern being the liberation of colonial peoples. The Soviet Union’s anti-colonial engagement was arguably an important way to exert political pressure on political opponents and most importantly, on the United States (cf. Fisch 2010, 216). While the Soviet Union did not have any colonies, the US were predominantly allied with Western European countries, which constituted the major colonial powers. Although other states did not confine the principle to colonial liberation in their drafts, the USSR aimed at narrowing down the objective of the principle (Cassese 1995, 49). This was supposedly due to the worry that an explicitly universal right to self-determination posed the risk of fragmentation of the multi-national Soviet Union. Eventually, due to a ironic circumstance, Article 1 of the Covenants was adopted without any explicit confinement to anti-colonialism: in an attempt to sabotage the inclusion of self-determination, the Western states voiced concerns about technical issues of such clause. Pointing to the unwarranted restriction to colonial peoples, they argued this would undermine the universalist nature of the Covenants (ibid., 52).

The widespread belief that self-determination was confined to colonial peoples presumably stems from the UN ‘Declaration on Granting of Independence to Colonial Countries and Peoples’. It reiterated the phrase “all peoples have the right to self-determination”, which was included into the draft of the International Covenants five years before (cf. Fisch 2010, 223), thereby topically linking self-determination and decolonisation without making the actual connection explicit. Ultimately, the Right to Self-Determination has been enshrined in written international law through the codification in the International Covenants. Numerous multilateral documents and court rulings have subsequently cemented the status of collective self-determination as an international norm, albeit without making it any less controversial.

2.2 Central Sources of Law

The principal documents of reference for the Right of Peoples to Self-Determination are the two International Covenants and the UN Charter. However, as Higgins (1994, 112) noted,
“international law does not develop from the written word alone”. In fact, a common pattern of state behaviour can manifest into an international norm, which in turn can be set down in law. At the same time, written statements, claims and declarations influence state behaviour and set international standards. Therefore, the legal status of collective self-determination is derived from two primary sources of law, namely international treaty law and customary international law. While the former includes bi- and multilateral written law in its contractual form, the latter refers to a common understanding of legal obligations that are not (yet) codified. In contrast to international treaty law, states are bound by customary international law even without explicitly consenting. In order to become recognised as custom, a principle has to be genuinely and generally accepted as a legal obligation (*opinio iuris*). Furthermore it needs to established in state practice in a consistent, uniform, and persistent manner (*consuetudo*; cf. e.g. Schweisfurth 2006, 63-76). In this section, I first discuss the three abovementioned instances of international treaty law for self-determination. I will then turn to other bodies and documents of ‘soft law’, such as international declarations and advisory opinions, which have contributed to shaping the legal status of collective self-determination.

### 2.2.1 International Treaty Law

The adoption of the UN Charter in 1945 gave a fresh impetus to self-determination in the realm of international politics after World War II. According to Article 1(2) of the Charter, the purpose of the UN is “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” (UN 1945, art. 1 para. 2). Self-determination therein is characterised as one of the core principles of the international community. The same phrasing is echoed in Article 55 on international and social cooperation.

Although the UN Charter is an instance of international treaty law, which means that its signatories and addressees are its member states, its solemn tone undoubtedly inheres the notion of a normative framework for all the peoples of the world. This becomes evident from the very beginning of the Charter that –obviously in the style of the US-American Constitution– starts with “We the people of the United Nations” (UN 1945, preamble). Despite the extensive debates during the preliminary stages, the text neither clarifies what self-determination entails, or what is meant by the term ‘peoples’, nor does it distinguish between ‘external’ and ‘internal’ self-determination.

Cassese (1995, 42-3) identified four “features” of the concept of self-determination as it is incorporated in Article 1(2) of the Charter. Firstly, there was no consent on how to positively define self-determination. Hence, the implicit notion of the principle, which can be inferred from the minutes of the debates preceding the adoption of the article, can only be determined by what it is *not*, namely neither the right of minorities and state subgroups to secede from a sovereign state, nor the immediate entitlement for colonial peoples to achieve independence, nor the right
of a people to freely choose its ruler within a sovereign country, nor the right of nations belonging to sovereign countries to merge. Consequently, what is left is a suggestion for states to grant self-government to their peoples (ibid., 42). Secondly, Article 1(2) spells out the goals of the UN. As a result, self-determination can be read as a distant objective, that does not necessarily have to be achieved right away if it collides with other state or organisational interests. Thirdly, self-determination as laid out in the Charter is one of the primary means to develop and sustain “friendly relations among nations” and ultimately, “universal peace” (UN Charter, art. 1 para. 2). In turn, this means that self-determination might also be disregarded if it impedes achieving or maintaining peace. Thus, it does not have a stand-alone value within the Charter. Lastly, there are no provisions in the Charter which oblige member states to take immediate action, or which impose any direct or indirect sanctions if no action is taken.

According to Higgins (1994, 112), the travaux préparatoires of the first article suggest that the coupling of self-determination with the emphasis on equal rights indicates that both principles are referring to entire populations of states, but not to individuals or dependent peoples. This interpretation is confirmed by the circumstance that Chapters XI and XII on non-self-governing and trust territories do not name self-determination, but self-government as the objective to be achieved for these entities (although Chapter XII does provide for the option of independence for trust territories alongside self-government; UN Charter 1945, art. 76). In fact, the Chapters XI and XII are telling in regard to the notion of self-determination regarding colonial peoples. The wording of the Charter consistently circumvents the use of the terms ‘colonies’ or ‘colonialism’. Fisch (2010, 224) exposes this evasive phrasing as a euphemism which effectively is a distinction between ‘regular colonies’ (that is, non-self-governing territories) and ‘collective colonies’ (that is, trust territories). Ultimately, Chapters XI and XII reveal the underlying ‘development-and-education-model’ (ibid.) of self-determination at the time, which entails that independence and full sovereignty is only to be granted once the entities under foreign rule are ‘mature’ enough to self-determine.

In conclusion, the UN Charter presents self-determination of peoples as a guiding principle and an objective of international politics. However, it does not constitute self-determination as positive law and therefore does not comprise any legal obligation. Nevertheless, as Cassese (1995, 43) has pointed out, the Charter marks a watershed for the “maturing of the political postulate of self-determination into a legal standard of behaviour” in a multilateral treaty.

The development of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) began shortly after the establishment of the UN. Both pacts are intended as complementary to the provisions in the UN Charter (cf. Cassese 1995, 47). As both Covenants are also treaty law, they are only legally binding for the signatories. Together with the 1948 Universal Declaration on Human Rights and two optional protocols, the two Covenants constitute the International Bill of Human Rights (cf.
UNGA 1948, part E). Hence, they mark the introduction of collective self-determination in human rights terms (cf. Higgins 1994, 114). Both Covenants were adopted in 1966, but only entered into force ten years later in 1976, when a sufficient number of member states had ratified the contracts. Up until then, self-determination was not codified and therefore did not constitute positive law. However, as the process of decolonisation was well advanced in the mid-seventies, it is fair to argue that the Right to Self-Determination was already establishing in customary international law, albeit not in its universal sense.

Article 1 was first brought forward word for word in the UNGA Resolution 1514 (UNGA 1960a). However, the article was already finalised to be included in the Covenants in 1955 (cf. Fisch 2010, 223). It provides that

"1. 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.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations" (UNGA 1966, art. 1 para. 1-3).

The word ‘freely’ in the passage cited above conveys at least three different meanings. For one, it signifies that the result of said choice of the political status of peoples is open. This indicates that self-determination can be exercised in various ways, internally and externally. Furthermore, people should choose their political status without being under coercion or influence, both from other states and from the domestic authorities (cf. Cassese 1995, 53-5). The latter understanding ultimately points to the individual rights concerning political participation and representation enshrined in other provisions in the ICCPR.

In contrast to preceding and following declarations, self-determination is not qualified by any insistence on national unity and territorial indivisibility within the Covenants. Given the historical context of its emergence, it is also plausible that the external dimension of the Right to Self-Determination was, at least initially, implicitly intended to be restricted to anti-colonial liberation (cf. Summers 2007, 163). Article 1(3) is conceivably filling the blank spot regarding self-determination in Chapters XI and XII of the UN Charter (cf. Chapter 2.2.1). However, the limitation to the moment of post-colonial independence would run contrary to the proclaimed universality and undermine its credibility. As a consequence, this restriction was not incorporated into the phrasing of the article.
The second paragraph of Article 1 points to the right to economic self-determination. While it might follow that peoples, who have the right to choose their own state authority also have a right to choose how said authority exploits the resources of their land (cf. Cassese 1995, 55), this clause is by no means absolute. Economic self-determination should not violate any international treaties that, at least ostensibly, promote economic co-operation among states (cf. UNGA 1966, art. 1 para. 2). For fear that foreign investments were to be expropriated or abandoned in the name of self-determination, industrialised states insisted on the inclusion of this limitation (Cassese 1995, 56). Article 47 of the ICCPR (and Article 25 in the ICESCR, respectively) reaffirms the right of peoples to economic self-determination by stating that “[n]othing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources” (ICCPR 1996, art. 47). However, the balance between economic autonomy of peoples and state’s obligations to international agreements regarding trade and investments as implied in Article 1(2) were contested during the time of the drafting and remain unclear to the present day (cf. Summers 2007, 183-5).

Additionally, although the Covenants are understood to be core components of the human rights canon which, in turn, are construed to be inalienable and universal, the ICCPR provides for a right to derogation under Article 4(1). According to this clause, states have a right to deviate from obligations of the Covenant “in times of public emergency” (UNGA 1966, art. 4 para. 1). Although the Right of Peoples to Self-Determination is featured prominently in the Covenants by being introduced in the very first article, it is not listed under the category of non-derogable rights. In fact, exemptions from provisions of the ICCPR and other international human rights accords (such as the ECHR) on the grounds of state emergency are not rare at all (Hafner-Burton, Helfer & Fariss 2011). A recent example is the derogation of Turkey in the aftermath of the attempted coup d’état in 2016 (Secretary-General 2016). However, none of the notifications of emergency specifically targeted Article 1.

2.2.2 ‘Soft Law’ and Customary International Law

Besides multilateral treaty law, there is a number of declarations, resolutions and action programmes of international organisations that reaffirm self-determination as a collective entitlement. These are usually recommendations of noncommittal nature. However, although resolutions and declarations are not legally binding, some of them still have an immense moral impact in regard to establishing self-determination as a precept of international law and state practice. As Crawford (2006, 114) has noted, "State practice is just as much State practice when it occurs in the context of the General Assembly as in bilateral forms". Especially if resolutions which intend to create an international norm are adopted unanimously and generally abided by, their effect is quasi-legislative (ibid.).
In the Resolution no. 1514 (XV), the General Assembly of the UN endorsed the ‘Declaration on the Granting of Independence to Colonial Countries and Peoples’ (hereinafter referred to as ‘Decolonisation Declaration’) in 1960. It marked the next step of the development of the self-determination principle from a distant objective to a universal precept in international politics. Drawing on resolutions of the 1955 Bandung Conference and conferences of African states in the following years (cf. Summers 2007, 194-5), this declaration has become the “Magna Charta of decolonization” (Gros Espiell 1980, 8). It echoes Article 1(1) of the Covenants, which had already been finalised, but not yet adopted (cf. Chapter 2.2.1).

In contrast to the UN Charter, the Decolonisation Declaration explicitly acknowledged and condemned the existence of colonialism and calls for its “speedy and unconditional end” (UNGA 1960a, preamble). However, it is worth noting that the Resolution still adopts the wording of the UN Charter, which evasively mentioned ‘non-self-governing’ and ‘trust’ territories when referring colonies. Nevertheless, the moral impact of the Decolonisation Declaration was tremendous, whereas the legitimacy of the ‘civilising mission’ that initially justified colonialism continuously eroded. Additionally, Article 3 of the declarations provides that the “[i]nadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence”, thereby ultimately deploring the ‘development-and-education-approach’ to external self-determination (cf. Fisch 2010, 226). Hence, instead of progressive realisation, self-determination was to be implemented immediately (Summers 2007, 200). As more and more newly independent states joined the UN, possessing colonies became increasingly insupportable. Eventually, none of the member states at the time rejected the resolution adopting the declaration. Merely the major colonial powers, amongst very few others, abstained (UN 1961, 49).

The Decolonisation Declaration also introduces a complementary clause that reiterates the respect for the territorial integrity and political independence of sovereign states. While territorial integrity is usually understood as a precept of international politics among states, the Decolonisation Declaration asserts that it is an “inalienable right” of all peoples (UNGA 1960a, preamble). It therefore condemns all potential attempts of violating national unity and territorial integrity of a country as irreconcilable with the Charter (ibid., art. 6). However, it is not specified whether the term ‘country’ refers to states, nations, colonies, or a combination of these. Consequently, states have arbitrarily chosen whether an instant of colonial independence was violating the principle of territorial integrity from their respective point of view or not (Summers 2007, 197). On the other hand, the equivocal phrasing made it possible to reach the tacit consensus that in the case of colonial independence, the self-determination of the colonial people overrides the territorial integrity of the colonial power (Fisch 2010, 228). However, as was the case during the decolonisation of the Americas, invoking self-determination would not enable any further fragmentation of the post-colonial state.
The Resolution 1541 (XV), which was adopted by the General Assembly of the UN in the same session like Resolution 1514, was intended to provide complementary guidelines for both Article 73e of the UN Charter and the Decolonisation Declaration. It defined the colonial entity (again, without using the term) and laid down 12 principles for decolonisation in accordance with the principle of self-determination. For instance, principle VI names three options through which self-government can be attained, namely through the emergence as a sovereign state, the free association to, or the integration with an independent state (UNGA 1960b, principle VI). Hence, this passage implicitly consolidates the Wilsonian understanding of self-determination as self-government with the external dimension of self-determination.

The most comprehensive elaboration on the principle of self-determination is presented in the 'Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations', which has been adopted by the UNGA Resolution no. 2625 (XXV) in 1970. While fundamental ambiguities regarding the terminology and the scope of self-determination could not be eliminated, the Friendly Relations Declarations constituted another building block in the political development of collective self-determination. It not only reaffirms the Right to Self-Determination, but also expressly expands the applicability to peoples under colonial rule and “alien subjugation, domination and exploitation” (UNGA 1970). It also foresees the incorporation of the principle as a positive right in international law. However, while the majority of member states at the time favoured a universal conceptualisation of self-determination (Summers 2007, 216), the principle was balanced with other precepts of international politics, most importantly territorial integrity. The declaration therefore provides that

“[n]othing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country” (UNGA 1970, principle V para. 7).

This passage, occasionally referred to as a “safeguard clause” (Crawford 2006, 118), points to the imperative to respect the territorial integrity and sovereign equality of states, but with the qualification that it only concerns governments which comply with self-determination and non-discrimination. Thus, the Friendly Relations Declaration not only broadens the scope from the injustices of colonialism to gross inequalities in political representation in general, but implicitly delegitimises abuses of state authority. Some scholars assert that this provision was included in the view of the occasion, such as the apartheid regime in South Africa (e.g. Fisch 2010, 231).
Naturally, the clause was contested, as it could be read as a justification for (remedial) secession (Summers 2007, 218). On the other hand, the balance of self-determination with non-discrimination can be construed as an attempt to resolve the issue of “how to limit the right to self-determination without being seen to arbitrarily deny it” (ibid.), thus tacitly turning the universal Right to Self-Determination, as intended in the Decolonisation Declaration and the International Covenants, into a conditional one.

The last and most recent milestone in the repertoire of UN declarations regarding self-determination is the ‘Declaration on the Rights of Indigenous Peoples’ (UNDRIP), which has been in the making for two and a half decades (cf. Summers 2007, 243). It was adopted by the Human Rights Council in 2006 and by the UN General Assembly in 2007, however not as unanimously as the preceding declarations on this matter. It is worth noting that the four no-votes all came from countries with large indigenous populations, namely Australia, Canada, New Zealand and the United States (UN 2010, 696). The UNDRIP adopts the same wording as in Article 1 of the Covenants, but replacing ‘all peoples’ with ‘indigenous peoples’ (UNGA 2007, art. 3). Furthermore, it specifies that self-determination is meant to be exercised in the form of autonomous self-government, which is to be granted by the respective state that the indigenous territory belongs to. Moreover, it reiterates the precept of non-discrimination of any kind.

Since the adoption of the International Covenants, the Right to Self-Determination has been repeatedly reaffirmed in declarations, accords and charters of other international bodies, as for instance in the Helsinki Final Act of the Conference on Security and Co-operation in Europe (CSCE 1975, chap. 1, sec. VIII), in the African Charter of Human and People’s Rights of 1981 (OAU 1981, art. 20), in the Paris Charter of 1990 (CSCE 1990, 5), and the Vienna Declaration adopted by the World Conference on Human Rights in 1993 (art. 2). In sum, the abovementioned declarations have served as complementary frameworks to the UN Charter and the International Covenants. While they have doubtlessly helped to establish self-determination as a principle of paramount importance in international law, they also worked as reassurances that the right would not trigger an uncontrollable domino effect of secessions. Besides these declarations, self-determination has been a recurring issue in resolutions of the General Assembly. For instance, a resolution on the importance of colonial independence has been adopted annually between 1970-1994, and resolutions on the use of mercenaries to impede the Right to Self-Determination, on the universal realisation of the Right of peoples to Self-Determination, and on the right of the Palestinian people to self-determination have been adopted every year up until the current session since 1981, 1986 and 1994, respectively. The annual resolutions of the General Assembly reminding the member states of their duty points to two persisting problems of the establishment of self-determination in state practice: Firstly, self-determination seems to be far from being universally applied. However, even though self-determination is codified, it lacks means of enforcement or mechanisms of sanctions. Secondly, the constant reminders of the UN thus do not take the full...
effect of fostering immediate and universal implementation. Hence, courts and commissions have occasionally been called upon to settle self-determination disputes or decide on the legality of resolutions when a *fait accompli* had already been created. In the following subsection, I will present a small number of cases which are frequently referred to in self-determination scholarship.

The first territorial dispute that took on greater significance for the establishment of self-determination in international law was the case of the Åland Islands, which has already been touched upon briefly in Chapter 2.1. While the population of the islands were “Swedish in language and culture” (Summers 2007, 279), the territory legally belonged to Finland. A referendum held in 1919 resulted in a 96.4% approval of a reunion of the islands with Sweden (ibid.). After Finnish troops were deployed, the case was referred to the Council of the League of Nations, which subsequently formed two Commissions in order to resolve the case. The first committee, the Commission of Jurists, should decide about whether the League of Nations was competent to settle the Åland Islands questions (or whether the dispute was otherwise to be settled under Finnish domestic jurisdiction). The second committee, the Commission of Rapporteurs, was appointed to develop a programme of action (cf. Cassese 1995, 29). This case became famous because the implicit mandate of the commissions was to establish whether the Ålanders had a right to self-determine and whether this right would supersede the Finnish position in order to comply with international law. In fact, this issue is at the very core of every dispute around external self-determination since then. Consequently, both committees contemplated to what extent self-determination has to be attuned with state sovereignty (i.e. the power of Finland to decide upon all parts of their territory) and minority rights (which would secure the interest of the Ålanders). The Jurists concluded that the dispute resolution fell within the competence of the League of Nations, although not because self-determination was a peremptory norm. Instead, the Commission found that Finland was not yet a fully sovereign state at the point when the dispute had emerged, as it had just declared its independence from Russia. The strategy of marginalising the sovereignty of states was undoubtedly a bold move (Summers 2007, 283), which is not applicable in contemporary self-determination disputes. Interestingly, in contrast to the Jurists, the Commission of Rapporteurs saw the “cup of Finnish sovereignty” (ibid., 287) as being half full. Hence, the Rapporteurs judged that the inviolability of Finnish sovereignty overruled the desire of the Ålanders for self-determination. Furthermore, the Commission asserted in regard to minority rights that self-determination was not enshrined in international law at the time. Although they acknowledged that there might be cases of such severe injustice that a secession could be a solution of the last resort, the Ålanders were not oppressed in the eyes of the Rapporteurs. Ultimately, after having expressed a word of caution that “to concede to minorities [...] a right of withdrawing from the community to which they belong [...] would be to destroy order and stability within States and to inaugurate anarchy in international life”
(Commission of Rapporteurs cited in Summers 2007, 288-9), the Commission recommended to leave the territorial affiliation of the islands unchanged and to introduce an autonomy arrangement instead.

Self-determination has also been a recurring issue in both the trials and the advisory jurisdiction of the International Court of Justice (ICJ). The corpus of case law and opinions associated with self-determination spans virtually the entire timescale of its existence (cf. Zyberi 2009, 431). In contrast to regular court rulings, which are only admissible to states, the ICJ advisory jurisdiction is a means for UN bodies to request consultation in legal issues and ask for guidance. However, it is up to the involved parties to decide whether they will follow the results issued by the Court. Admittedly, compliance with the recommendations has been “less than adequate” (ibid., 430) in matters of self-determination.

While it can be held that ICJ decisions fostered the international recognition of self-determination as a legal right, the formulation of the opinions has been evasive regarding the status and legal hierarchy of self-determination in many cases. In fact, as Summers (2007, 256) has noted, before the 1970 Advisory Opinion on Namibia, self-determination has only been explicitly mentioned in dissenting opinions of judges (cf. Summers 2007, 256).

In the course of the “South West Africa Decolonisation cases” (Zyberi 2009, 435), which span four Advisory Opinions and two judgements between 1949 and 1971, the Court emphasised that the principle of self-determination is applicable to all non-self-governing and trust territories (cf. Cassese 1995, 72). In this way, the ICJ made clear that the UN Charter was to be interpreted in such way that the self-determination of peoples as laid down in Article 1(2) also includes the peoples of future states. This position has been reiterated in the 1974 Advisory Opinion on Western Sahara, when the Court ascertained that the historical legal ties to the territory with both Mauritania and Morocco would not affect the implementation of Resolution 1514 (i.e. the decolonisation of the region) and the exercise of self-determination of the Western Saharan peoples. The Court thereby supported the preferred line of action of the General Assembly to hold a referendum in order to determine the will of the people. However, the conclusions of the ICJ were widely disregarded by the involved parties. As a consequence, the status of Western Sahara continues has been unresolved ever since.

The most recent self-determination dispute which the ICJ assessed has attracted immense scholarly attention. The Advisory Opinion on the ‘Accordance with international law of the unilateral declaration of independence in respect of Kosovo’, which was filed in 2008, is indeed unparalleled in two ways. It was not only the first self-determination dispute of a strictly non-colonial context, but also resulted in an unprecedented decision with large-scale repercussions. Relating to UNGA Resolution 2625, the Court inferred that “the principle of territorial integrity is confined to the sphere of relations between States” (ICJ 2010, 38; emphasis added). As Kosovo was breaking away from within, its independence was not a breach of this precept. Without
determining whether Kosovo had actually achieved statehood (cf. van den Driest 2013, 343), the Court noted that (unilateral) secessions were not prohibited according to international law (ICJ 2010, 37-9). However, the Court also found that there were occasions where the international community, and the UN Security Council in particular, has rejected such one-sided declarations of independence. However, this was not on the ground of the illegality of unilateral secession per se, but because of the “unlawful use of force” (ibid., 38) through which these were achieved. The ICJ’s ruling on Kosovo was widely appreciated by the states which had already recognised the entity as an independent state, but it also sparked the fear of a precedent. In conclusion, although ICJ Advisory Opinions are not legally binding, they can still be said to have a major impact on setting moral standards. After all, the ICJ is the ultimate authority for the interpretation of international law. Besides the ICJ, there are two other (quasi-) judicial bodies worth mentioning, which have dealt with collective self-determination. Firstly, the controversial findings of the Badinter commission included elaborations on the role of self-determination in the emergence of post-Yugoslav statehood. Secondly, the case of the hypothetical secession of Québec has resulted in a decision which is often cited in order to corroborate legal justifications for the remedial secession approach (see also Chapter 1.2).

Against the backdrop of the disintegration of Yugoslavia, the Arbitration Commission of the Conference on Yugoslavia, commonly known as ‘Badinter Commission’ after the chairman Robert Badinter, was formed in 1991. The body issued 15 opinions on several matters of contention regarding the break-up, including which role the Right to Self-Determination should play in the formation of post-Yugoslav states. In the course of the consultation, the Badinter Commission asserted that the Right to Self-Determination applied to the peoples of the Yugoslav republics, but it was too ambiguous to derive specific modes of implementation (Summers 2007, 268). Therefore, it recommended to apply the well-established uti possidetis-doctrine (Pellet 1992, 184; for the concept, see Chapter 3.3) for determining the border of the former Yugoslav republics as the ones of the emerging independent states. Eventually, it disregarded the collective dimension of self-determination altogether by maintaining that “[b]y virtue of [the Right to Self-Determination] every individual may choose to belong to whatever ethnic, religious or linguistic community he or she wishes” (ibid., emphasis added). As a result, the approach presented in Opinion no. 2 and 3 of the Badinter Commission has been heavily criticised as a contortion of international law (e.g. Craven 1996, Weller 1992).

The Reference re Secession of Québec is a ruling by the Supreme Court of Canada from 1998 upon request of the government regarding the question whether a unilateral secession of Québec would be considered legal under domestic and international law. It is commonly characterised as being a landmark judgement, because it addressed two major controversial issues in regard to self-determination. Firstly, the Court pondered whether a right to secession followed from the right to self-determination. Secondly, it was asked to decide whether domestic
or international law would prevail in case there were conflictive provisions. The Court explicitly distinguished between the internal (i.e. the participation in domestic politics) and the external exercise of self-determination, in which the latter "potentially takes the form of the assertion of a right to unilateral secession" (Reference re Secession of Québec 1998, 282). It further stated that self-determination of peoples is usually exercised within the frameworks of existing states. However, the Court also introduced a version of the "safeguard clause" (Crawford 2006, 119). Without any further elaboration, it was acknowledged in an obiter dictum that in exceptional cases, e.g. “when a people is blocked from the meaningful exercise of its right to self-determination internally” (Reference re Secession of Québec 1998, 285), a right to unilateral secession could be granted as ultima ratio. However, the judges also expressed doubt about whether this was a standard of international law (ibid., 286). Eventually, the Court ruled that the Québécois would not fall into this category, as it could not be credibly argued that they were deprived of their right to internal self-determination (i.e. self-government). The judges further asserted that there was no conflict between domestic and international law regarding the hypothetical question of the unilateral secession of Québec, as the Canadian constitution did not include any provisions on secession. Although the Québécois eventually were not provided with the legal justification to secede, the ruling is frequently referred to as a benchmark for the ‘remedial secession’-approach to self-determination disputes.

Evidently, the codification of self-determination faces a dilemma: the more the Right to Self-Determination is reified, the more its universality is undermined. On the other hand, the broader it is formulated, the more meanings can be read into it and the less legally certain it becomes (cf. Summers 2007, 255). By examining the source of ‘hard’ and ‘soft’ law, I have demonstrated how both the drafters (primarily UN bodies) and interpreters (courts and international commissions) of international law have dealt with balancing the universal rationale of self-determination with its restriction in order to comply with other precepts of international politics. Before turning to the agents which mould the Right to Self-Determination into shape in practice, I first turn to discussing its central controversies.
3 Conceptual Controversies around the Right to Self-Determination

As I have mentioned briefly in Chapter 1.2, there are a number of debates around the Right to Self-Determination which concern its specific status and legal nature. Given the circumstance that the initial proposal by the Soviet Union to include collective self-determination in the Universal Declaration of Human Rights of 1948 was denied (Fisch 2010, 222), but that it now occupies a prominent place in the ICCPR and the ICESCR, it is controversial in which way the Right to Self-Determination fits into the human rights framework. In fact, its status is fairly peculiar compared to other human rights, as it has both an individual and a collective dimension. These two elements are laid down separately in Article 13(2) of the Universal Declaration of Human Rights (individual) and Article 1(1) of the two Covenants, respectively. Therefore, it has been argued that it is a rather precondition for the exercise of human rights, than a human right itself (Quane 1998, 559).

Another controversy concerns the issue whether the Right to Self-Determination constitutes a peremptory norm of international law (cf. Summers 2007, 387n). These norms, also referred to as *ius cogens*, are the kind of principles from which derogation is impermissible, any competing national interests notwithstanding (cf. Cassese 1995, 170). This means that any international treaty which violates a peremptory norm has to be declared null and void (albeit with the limitation that only contracting parties are able to do so; ibid., 174). During the Cold War, Socialist states and countries of the Global South have championed self-determination of peoples as *ius cogens* (ibid., 171). After all, if self-determination were restricted to decolonisation, ranking it as *ius cogens* would be a mere figure of speech (Fisch 2010, 230). However, Summers (2007, 389-92) has identified three decisive aspects which suggest that the Right to Self-Determination does not hold the status of a peremptory norm. Firstly, it is questionable whether the state community uniformly endorses the right. Furthermore, there are a number of treaties remaining in effect which theoretically violate the principle. This is aggravated by the fact that states which intend to disobey peremptory norms usually “do so in fact” (Cassese 1995, 173), but –wherever possible– not on record. Thirdly, as a peremptory norm, the Right to Self-Determination should not be subordinate to other international principles, including territorial integrity. Eventually, the assertion that the Right to Self-Determination either is or should be *ius cogens* is less corroborated by the international legal situation, but rather motivated by “ideological conceptions and political attitudes” (ICJ cited in Summers 2007, 392n).

The controversy around the Right to Self-Determination as *ius cogens* is closely connected to another legal attribute, which is referred to as *erga omnes*. In general terms, *erga omnes* refers to legislation which is effective towards all (i.e. in contrast to obligations and entitlements stemming from contractual agreements). Under international law, these kind of norms are owed
“towards the international community as a whole” (ICJ 1970, 33), irrespective of whether states have given their official consent (e.g. in the form of a treaty). Given the Right to Self-Determination had an *erga omnes* character, states could bring cases to the ICJ without being directly involved in a self-determination dispute (cf. Summers 2007, 396). In fact, the ICJ has repeatedly ruled accordingly, e.g. in the 1995 East Timor case or the 2004 Advisory Opinion on the ‘Legality of the Construction of a Wall in the Occupied Palestinian Territory’ (cf. Zyberi 2009, 439-41). Additionally, the repeated affirmation of self-determination as being for ‘all peoples’ (cf. Chapter 3.1) suggests such an absolute scope. However, it remains unclear what the particular gain is in characterising the Right to Self-Determination as *erga omnes*, considering it is already enshrined in customary international law (albeit there is no custom regarding its interpretation).

After having briefly presented central legal debates around the Right to Self-Determination, I now turn to the conceptual foundations and common lines of argument for the subsequent analysis of the Right as a vehicle of national interests in international politics. For this purpose, I discuss three major issues of contention, which have already been mentioned briefly in Chapter 1. The first issue concerns the scope of the Right to Self-Determination in regard to the legal entities, i.e. the rights holders. Debates on the question of who is ‘a people’ entitled to self-determine collectively are central to this controversy. The second issue relates to the temporal and contextual area of application and pivots on the question whether and in what way the Right to Self-Determination applies beyond the context of decolonisation. Eventually, I turn to the last issue which concerns the implementation of the Right to Self-Determination. This segment therefore revolves around the question what is meant by the exercise of self-determination and looks into the implications of its internal and the external dimension for international politics. In short, the following sections address the question: *who* can invoke the Right to Self-Determination in *which context* and for *which purpose*?

### 3.1 The Scope of Self-Determination: Who is ‘a People’?

Presumably, the most controversial uncertainty around the Right to Self-Determination concerns the rights holders, as none of the sources of law explicitly lay down who is entitled to invoke the self-determination as a collective right. Due to the lack of a definition of ‘a people’, Quane (1998, 537) even called the Right to Self-Determination “elusive”. The central contention relates to the circumstance that as soon as a group is recognised as ‘a people’, it is entitled to self-determine, which includes the decision of its political status (cf. ibid. 1998, 560). Therefore, the definition of ‘a people’ which constitutes a collective of rights holders is interdependent on ascertaining implications for the implementation of the Right to Self-Determination. As it were, these conceptualisations represent the two sides of the same coin.

There are four categories of populations which are commonly subsumed under the term ‘a people’, namely the peoples of states, colonial peoples, peoples under foreign and alien
domination (i.e. populations of forcefully annexed or occupied territories), and minorities (i.e. sub-state units of the population; cf. Cassese 1995, 59; Summers 2007, 167-74). However, opinions differ regarding the question of whether ‘all peoples’, as indicated in the ICCPR and the ICESCR, refers to the former three (such as Cassese 1995 or Quane 1998), or also the latter – if only under certain conditions (cf. Buchanan 2003). Minutes of the drafting sessions suggest that the universal wording of references to collective self-determination in both the UN Charter and the International Covenants are not a display of consent on the question at hand, but rather a minimum compromise between profoundly opposing standpoints of the drafting parties (cf. Cassese 1995, 39-40, Bossuyt 1987, 32-3). In this sense, as Buchanan (2003, 342) has argued, it is questionable to talk about ‘the’ Right to Self-Determination, as it is evidently not a “single, one-fits-all entitlement”.

Indeed, there is no definition of the rights holders in any of the relevant legal texts which can be construed as customary in international law and politics. In his study on the Right to Self-Determination, Cristescu named three elements which are repeatedly raised in the UN discourse when discussing the matter of defining ‘a people’:

(a) The term “people” denotes a social entity possessing a clear identity and its own characteristics;
(b) It implies a relationship with a territory, even if the people in question has been wrongfully expelled from it and artificially replaced by another population;
(c) A people should not be confused with ethnic, religious or linguistic minorities, whose existence and rights are recognized in article 27 of the International Covenant on Civil and Political Rights (Cristescu 1981, 41; emphasis added).

The characteristics for determining a ‘clear identity’ referred to under a) can be distinguished into so-called objective and subjective criteria. Objective criteria include observable and externally ascribed aspects. In the course of drafting the ICCPR, aspects such as nationality, ethnicity, culture or history were discussed (Bossuyt 1987, 32). In the scholarly literature, this list has been extended to include other attributes, such as a common religion or language (Jaber 2011, 930). In contrast, subjective criteria are self-defined by the affected group. These concern the self-perceived identity of a social collective, which not only entails that individuals consider themselves to belong to a certain group, but also intend to preserve this identity (ibid., 930-1). These criteria can overlap or conflict with each other. At the first glance, it appears that being ‘a people’ coincides with being a minority. However, as element c) suggests, these are related, but not synonymous concepts. Instead, the requirement of being distinct from ethnic, linguistic and religious minorities ensures that self-determination is only to be granted to some minorities. Then again, this leads to the issue which criterion represents an adequate and sufficiently high enough threshold for a minority to constitute ‘a people’ (cf. ibid., 933). One possibility to set this threshold lies in element b), the relationship to a territory. However, this aspect is problematic. Not only
may opinions differ on the quality of such territorial bond, but it also requires a definition of ‘a territory’ (i.e. administrative, natural, historical etc.). For example, the application of the *uti possidetis*-principle (cf. Section 3.3) in the course of the American and African decolonisation processes is a pragmatic approach to defining territorial entities, which did not represent ethnic, tribal, traditional, or in any other way socially and historically developed demarcation lines in numerous instances. Therefore, the qualifying criterion of a ‘relationship with a territory’ relies on yet another deliberately chosen set of requirements. Referring to the ‘safeguard clause’ of the Friendly Relations Declaration (cf. Chapter 2.2.2), Quane (1998, 563) introduced the lack of a representative government as a distinct criterion to invoke the Right to Self-Determination.

Depending on the set of criteria which is applied to determine the rights holders, different conclusions can be drawn about the implications of implementing the Right to Self-Determination. These implications are highly relevant to corporate actors in international politics (i.e. states and international organisations), because they might interfere with the pursuit of their interests and endanger the integrity of their corporate identity. Hence, I argue that the approach which corporate actors choose to define the holders of the Right to Self-Determination is dependent on the anticipated outcomes of implementing the right based on this definition. As states are generally inclined to put their national interests first (cf. Chapter 1.4), it can further be inferred that they are likely to choose the one definition as adequate which fits their interests best. For that reason, despite the fact that the recurring elements of defining ‘a people’ within the UN, as observed by Cristescu, are interconnected, they are weighed differently depending on the interests of actors. Furthermore, the applied sets of criteria to determine if the requirements a) to c) are met differ across contexts. In this regard, the debate on the scope of ‘all peoples’ can be characterised as following two different conceptual strands. For the purpose of drawing a distinction, I call these strands the territorial approach (see also Quane 1998, 549) and the social approach to defining the holders of the Right to Self-Determination. Within the UN discourse, which can be construed as being shaped by the individual member states and as a product of a singular corporate actor at the same time, both approaches have been present.

The territorial approach emphasises the second element, i.e. it focuses on the territorial entity the population in question inhabits. Although Cassese (1995, 59) asserts that the “general spirit” of the preparatory work suggests that the option to invoke collective self-determination is not dependent on the international status of the territory (that is, whether it is sovereign or not), the affiliation of a population with a territory, delimited by long-established administrative borders, is decisive for determining the status of being ‘a people’. Proponents of this approach argue that the term refers to all the peoples of states and colonies as a whole, which include minorities (cf. Higgins 1994, 124). Hence, minorities and subgroups do not have the Right to Self-Determination as a subgroup, but can only determine their political status in conjunction with the entire national people. In opposition to self-determination, the population of sovereign states is
entitled to self-government within this perspective, which means that they are free to choose which form of government to adopt, although only as a whole.

The territorial approach to defining ‘a people’ is based on two assumptions. Firstly, it emanates from the assertion that the addressees of international treaty law are equal to the rights holders. This is to say, if states are the addressees of treaties such as the UN Charter and the two Covenants, they would also be the ones to be entitled (cf. Quane 1998, 540). However, this assumption does not hold at the present day, as it precludes that addresses, rights bearers and rights holders always coincide. Instead, for human rights legislation such as the Covenants, the ones entitled to the rights are individual people and groups, but the ones to ensure the compliance with the rights as well as sign and ratify the treaties are states and their governments, respectively. Even if the equalisation of the term ‘people’ with ‘States’ in the UN Charter is justified with the understanding of international relations as being restricted to state actors at the time, this argumentation remains inconsistent. As Quane (1998, 540) readily asserts, the term ‘people’ is used differently in the chapters of the Charter which are dedicated to non-self-governing and trust territories. Furthermore, as Fisch (2010, 220) has pointed out, a restriction of self-determination to UN members would be tautological. After all, a right to self-determination for states would in this case merely be a reformulation of the precept of sovereign equality of states, which is expressly declared in Article 2(1) of the UN Charter (see also Reference re Secession of Québec 1998, 281). Consequently, if the reference to ‘peoples’ instead of ‘states’– or at least ‘nations’– is not construed as a formulation inaccuracy, then it can be inferred that ‘all peoples’ rather stems from a deliberate choice of words with the intent to expand the applicability, at the very least, to colonial peoples that do not yet form an independent state (cf. Fisch 2010, 221).

Secondly, the territorial approach to defining the holders of the Right to Self-Determination relies on the assumption that collective self-determination necessarily means independence. Proponents of this view fear that granting self-determination to minorities would unleash the fragmentation of the international system of sovereign states (cf. Quane 1998, 537). The consistent application of the uti possidetis-principle during the decolonisation in the 20th century justifies this perspective. However, the causal link is rather the other way around. Actually, the fear of secession is the very reason why the approach was adopted during decolonisation in the first place (cf. Jaber 2011, 932). In spite of this, Quane (1998, 560) concludes that the “blanket denial of a right to secession” indicates that sub-state groups and minorities do not fall within the category of ‘peoples’ (see also Cassese 1995, 60). While this perspective is understandable given the development of decolonisation in the course of the 20th century, secession is not the only option for self-determination. With regard to the internal dimension of self-determination, the question of defining ‘a people’ is closely linked to the protection of minority rights (cf. Higgins 1994, 125), which are acknowledged in Article 27 of the ICCPR. However, the territorial approach does not categorically preclude secessions of sub-state groups
in the name of self-determination. Independence is achievable on the basis of consent, e.g. by means of a referendum. In this case, the decision would be up to the entire population of the state and therefore in accordance with international law.

In contrast, the social approach to defining the holders of the Right to Self-Determination shifts the focus from the territory of the population to cohesive and distinctive characteristics as precursor for being rights holders. In order to determine whether a group qualifies as ‘a people’, it relies on the concept of collective identity. As I have shown in Chapter 1.4, identity is not pre-social, but formed in a process of establishing ‘Sameness’ and ‘Otherness’ from a Constructivist perspective. In turn, the perception of a distinct identity, individual or collective alike, also relies on a process of differentiation. As a consequence, as Summers (2007, 84) has noted, there might not be a need to develop an explicit wish to self-determine for autochthonous populations, if they are not exposed to a social Other. Hence, establishing aspects of a group identity such as ethnicity or nationality as distinct is relational. While difference itself is not inherently problematic, it gives rise to intergroup conflicts in conjunction with unequal power relations and resource distribution. In fact, virtually all regions of the world have seen national and ethnic conflicts, forced displacements and resettlements, or ethnically and racially motivated genocide at some point in history due to this circumstance.

Additionally, a coherent collective identity can prove as difficult to determine, as declarations of self-perceived belonging to a social group (subjective criterion) might not coincide with ascribed attributes which are used as so-called objective criteria to determine group cohesion. In any case, the invocation of a collective identity is implicitly grounded on two precarious strategies: essentialism and homogenisation. In my understanding, identities are neither absolutely fixed nor limited to a single feature, but rather multi-faceted and (however arduously) adaptable. Reducing them to one or a few aspects relevant to the issue of self-determination bears the risk of declaring this alleged ‘essence’ as determinative and immutable, which opens the door to prejudice and discrimination. On the other hand, it can be useful and necessary to stress some identity aspects more than others in order to pursue political goals and respond to discrimination, as “one can resist only in terms of the identity that is under attack” (Arendt 1995, 18). This approach has become well-known within postcolonial theory as “strategic essentialism” (e.g. Spivak 2009) in the context of anti-colonial and feminist resistance. However, while positive reinterpretations of ‘Otherness’ as the distinct collective identity of a ‘nation’ were influential in the liberation struggles of colonised populations, other social attributes such as language, religion or tribal affiliation did not prevail against the territorial criterion in the moment of independence (cf. Fisch 2010, 237), or as Caspersen (2012, 17) has put it: “the ‘self’ in self-determination has tended to be juridical and territory-focused rather than people-focused”. Additionally, the nationalist argument was misappropriated for rebutting accusations of colonialism by some imperial powers. For instance, by presenting themselves as nation states,
Spain and Portugal tried to argue against the breakup of their empire in the course of decolonisation (Summers 2007, 200).

Furthermore, the determination of an alleged collective identity on the basis of a handful of more or less arbitrary ‘objective’ criteria in regard to the entitlement to self-determination builds on the assumption that individuals with the same attributes constitute a cohesive group with consistent social needs. Individuals which satisfy the requirements of belonging to this ‘people’ are consequently construed as sharing the same interests, which does not necessarily hold true. In fact, homogenisation and the associated uniformity of interests can run contrary to exercising self-determination, both collectively and individually.

Granting the status of ‘a people’ under international law affects the understanding of what self-determination entails, and vice versa. In order to mitigate the risk of “opening a veritable Pandora’s box” (Cassese 1995, 1) of international fragmentation, collective self-determination of minorities is restricted to its internal dimension. For example, the UNDRIP extends the Right to Self-Determination to minorities, particularly indigenous populations. It further claims that indigenous peoples are entitled to exercise this right in the form of self-government and autonomy (UNGA 2007, art. 4), whereas the disapproval of any non-consensual impairment of the territories of sovereign states is reaffirmed (ibid., art. 46).

Eventually, the ‘remedial secession’ approach can be understood as an attempt to seize the middle ground between the two abovementioned strands of defining the populations entitled to collective self-determination. By acknowledging the territorial integrity of states as principally inviolable, the approach implicitly favours the Right to Self-Determination to be exercised by the population of a state as a whole. However, independence can be granted (that is, the international community can abstain from condemning and sanctioning unilateral secessions and recognise the sovereignty of the fledgling state upon the claim of independence) to sub-state groups under certain conditions. While there is neither a consistent and continuous state practice in this matter (van den Driest 2015, 349), nor any compulsory list of criteria, the scholarship often revolves around a two-step approach. It entails to establish whether the affected group satisfies the requirement of being ‘a people’ on the grounds of the three elements named by Cristescu (1981, 41), and to determine whether an additional threshold is met afterwards. Conditions which constitute the thresholds mentioned before are exceptional hardship such as attacks on the group’s physical existence or the denial of fundamental rights, and the deprivation of political participation (e.g. cf. Reference re Secession of Québec 1998, 287-8), for instance. However, secession is seen as a conflict solution of the last resort, as a ‘remedy’, when all other options for exercising internal self-determination have been frustrated (van den Driest 2015, 341).

To sum up, as the systematic application of the uti possidetis-doctrine suggests, the UN has generally adopted the territorial approach to self-determination during the decolonisation. After the decolonisation had ended, more attention is paid to social aspects within the UN discourse.
However, the definition of ‘a people’ has been circumvented in ground-breaking decisions by national and international judicial bodies on self-determination disputes. Moreover, the positions of individual states on whether a specific group constitutes ‘a people’ differ widely across contexts. However, whether social movements are successful in invoking the Right to Self-Determination is not only subject to the definition of the rights holders, but also on the actors with decisive power. In other words, it is not only about what makes people ‘a people’, but also about who decides which criteria to apply. Then again, these kind of decisions are influenced by the interests of actors and power relations between states.

3.2 The Applicability of Self-Determination: Beyond Decolonisation?

The development of the concept of self-determination in the 20th century is closely interconnected with decolonisation (Higgins 1994, 113). With 17 ‘colonial remnants’ (cf. Fisch 2010, 251; UN 2017) remaining, mostly in the form of small islands, the era of decolonisation can be considered as virtually over. This has caused Hilpold (2012, 51) to wonder why the norm of self-determination “has to be kept alive by all means even if it has fulfilled its original function or why there should be an outright obligation to look for new fields of application for such a norm” (Hilpold 2012, 51). While this line of thought ignores the fact that self-determination is not tantamount to independence, it points to the essence of the debate whether the principle applies in non- and post-colonial contexts, which relates to the specific form that the implementation of collective self-determination can take. While there seems to be no opposition to the assertion that the Right to Self-Determination applies beyond decolonisation in the form of self-government (cf. Higgins 1994, 120), it remains a contested issue whether this is also the case for the external dimension.

As mentioned earlier, there are two major reasons why the Right to Self-Determination is frequently seen as being restricted to decolonisation. Firstly, the Decolonisation Declaration introduced the passage which became Article 1(1) in the International Covenants (see also Chapter 2.2). Secondly, the UN (primarily voiced by Secretary-Generals) persistently and vehemently objected to non- and post-colonial attempts at secession. This is exemplified by a statement by U Thant regarding the separation of Biafra from Nigeria:

“So, as far as the question of secession of a particular section of a Member State is concerned, the United Nations’ attitude is unequivocal [sic]. As an international organization, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secessions of a part of its Member State” (U Thant cited in Buchheit 1978, 87).

However, the Covenants, which established self-determination as a legal entitlement for the populations of the signatory states, only entered into force 1976, when the independence of the majority of former colonial entities was already a fait accompli. At this point, the peoples of these
states no longer relied on the concession of a legal entitlement to secede from their colonial authorities.

According to the preparatory works of the ICCPR, the drafting parties reached a consent on the scope ‘all peoples’ to go beyond populations of states and colonies, but at the same time, self-determination was not intended to foster separatist movements (Bossuyt 1987, 32-5). After all, neither the first nor any other articles of the ICCPR and the IESCR include temporal or contextual restrictions in this respect. After all, the practice of granting a right to secession to colonial entities seems to be based on the moral of ‘righting historical wrongs’. Then again, if the implementation of self-determination as secession is based on an ideal of restoring justice, this points to a broader scope of the Right to Self-Determination (cf. Buchanan 2003, 339). Furthermore, multiple instruments of so-called soft law reaffirm the universal subtext of the Right to Self-Determination (cf. Abushov 2015, 186). However, objections to the notion that the Right to Self-Determination is applied to non- and post-colonial context came from both ‘old’ and ‘new’ states. In multinational Eastern Europe, there was little interest to expand self-determination, because the risk for state fragmentation was high. For the newly independent states, self-determination was primarily a matter of emancipating from the former colonial rulers, but not a persisting entitlement for the peoples within this independent state entity (Higgins 1994, 116). Evidently, the risk of fragmentation was and is still the most important reason for states to deny the legal entitlement to external self-determination in post- and non-colonial contexts. In the post-colonial era, more emphasis is put on the option to exercise self-determination internally, i.e. by the free choice of “political and economic systems within the existing boundaries of the state” (Higgins 1994, 123). In this way, the Right to Self-Determinations constitutes a continuous entitlement (cf. ibid., 120; van den Driest 2015, 338).

In conclusion, the question whether the Right to Self-Determination extends to non- and post-colonial context is virtually tantamount to the question whether the is a general legal entitlement to external self-determination for ‘all peoples’. As I have explained in the preceding Chapter 3.1, such concessions are problematic, since international law does not provide for a clear definition of the latter.

3.3 The Implementation of Self-Determination

As self-determination is a legitimising principle for territorial order (cf. Fisch 2010, 196), all of the abovementioned issues relate directly or indirectly to questions of territoriality. During the African decolonisation, when self-determination of peoples inevitably meant independence, the criterion of uti possidetis was introduced in order establish a territorial order for the emerging independent states, while simultaneously preventing that the implementation of self-determination in Africa “would end in each household or clan having its own separate flag” (Bamisaiye 1971, 32). Therefore, the Resolutions 1514 (XV) and 1541 (XV) of the UNGA (cf.
Chapter 3

Chapter 2.2.2) both point to the importance of territorial integrity and national unity when exercising self-determination as independence.

The principle, which originates from ancient Roman Law and translates from Latin as ‘as you possess’, is implicitly to be continued with *ita possideatis*: ‘so you may possess’ (cf. Fisch 2010, 90). In the context of colonial liberation, this entailed to set the external borders of the newly formed state according to the pre-existing boundaries of the colonial administration (cf. Higgins 1994, 122). In other words, the *status quo* was kept for the sake of inter-state stability. Although being adopted as a kind of ‘lesser evil’, the preservation of colonial demarcation lines according to *uti possidetis* has fostered a great number of violent and protracted conflicts. This arbitrary definition of external borders evidently did not always reflect the factual distribution of social relationships. Instead, it divided territory with traditionally indigenous inhabitation, crossed through strategically important and resource-rich land, or lumped together social groups at enmity. In this way, the *uti possidetis*-principle can even be understood as running contrary to the collective self-determination of peoples, both in subjective and objective terms (Fisch 2010, 237).

There are opposing understandings of what the element of ‘freely determining the political status’ of ‘a people’ entails when invoking self-determination. Therefore, two dimensions of self-determination are often distinguished. While the internal dimension refers to the Wilsonian meaning of self-government, that is, the exercise of self-determination by means of political representation within the framework of an existing state, the external dimension refers to an understanding of ‘determining the political status’ in the Leninist sense, that is, by creating an independent state. As will be explained in greater detail in the two following sub-chapters, these dimensions are interrelated. Not only does an external self-determination dispute necessarily affect the internal politics of the parent state, internal self-determination disputes can also become external. In this way, both dimensions are relevant to International Relations, and even more so when no consent can be achieved.

However, it is worth noting that this distinction is neither clear-cut nor entirely cogent. For example, the lines can be blurry in the cases of unrecognised states. These breakaway territories have declared independence unilaterally, but have not (yet?) succeeded in achieving international recognition. As a result, they formally still belong to their parent state. In these cases, the self-determination dispute is an external one for the renegade entity, while it is labelled internal for the parent state and the international community. In Constructivist terms, the perceptions of both the corporate and type identity of the breakaway regions diverge from how they are seen by the parent state. Moreover, it is contested whether the two dimensions can in fact be conceptually separated. As Weller (2008, 23) has noted, the division implies that “self-determination is not a continuous right that applies equally in all circumstances concerning the identity of the state or its governance”. It can also be contended that this distinction is redundant, because the essence of collective self-determination concerns self-government. This is because
the primary goal of self-determination movements is to ultimately achieve adequate political
representation which ensures the free political, economic and social development of all groups
that constitute the State's population. If a movement claims independence on the grounds of self-
determination, it does so in order to establish a new state with a government that does enable this
group to self-determine. Thus, it can be argued that while external self-determination merely
occurs in the moment of invoking independence, the essential objective of the Right to Self-
Determination is self-government, i.e. internal self-determination. This argumentation is
undoubtedly reasonable, but it risks to belittle the international repercussions which self-
determination disputes can have when they culminate in unilateral secessions. Furthermore,
there is no guarantee that the newly formed state will indeed enable the population to freely
choose their political development. Instead, it is also possible that the political leadership does
not provide for meaningful representation, either due to the lack of political will or due to the lack
of resources. To exploit the example of unrecognised states once again, their claims of sovereignty
are often undermined by constraints in their state-building capacities. As the majority of de facto
states rely heavily on external patronage in the form of financial aid and military assistance, they
have been accused for being mere pawns in the covert strategies of the patron states to secure
their spheres of influence or pursue their irredentist interests, which are otherwise condemned
by the international community (cf. Caspersen 2012, 39 and 55). Although the contemporary de
facto states are different from the puppet states, which were established in the course of World
War II (such as Manchukuo), as their leadership is not externally forced upon them, but has
“strong indigenous roots” (ibid., 29) which make self-determination claims substantially more
credible, it is undeniable that patron states have the power to influence the politically isolated
entities significantly by threatening to withdraw their support.

Hence, despite the distinction is fraught with problems, it is still helpful to label self-
determination disputes as ‘internal’ and ‘external’ in order to indicate whether the political
demands substantially affect the International System, and to what extent. Furthermore, it can be
necessary to distinguish between those dimensions for methodical reasons, as will be clarified in
Chapter 4.

3.3.1 Internal Self-Determination

When addressing internal self-determination, scholars and actors of international politics refer to
the entitlement of peoples to freely choose their regime, i.e. their right to an authentic
government. In this way, the Right to Self-Determination is continuous and prevails as long as the
State and its people(s) exist (cf. Cassese 1995, 101). Internal arrangements are the most frequent
solutions to self-determination conflicts (Simpson 2014, 348) and are considered as more feasible
than independence (Buchanan 2003, 332). Internal solutions do not alter the state territory, i.e.
they do not affect the corporeality of the State. As a result, the State’s corporate identity remains unchanged.

Internal self-determination can be implemented in various forms of political devolution, including territorial autonomy, federate and confederate unions, and power sharing. There are different degrees of self-government, up to the point where the federal or autonomous entity has expansive legislative capacities as well as judicative and executive powers, which solely exclude foreign relations (Abushov 2015, 191). Internal solutions to self-determination disputes can also be conditional, like in the case of the Moldovan autonomous region of Gagauzia (cf. Weller 2008, 123). In the event that the political status of Moldova is altered (at the time of the arrangement, the scenario in question concerned a possible merger with Romania), Gagauzia is provided with the option to secede. However, this example shall by no means suggest that internal self-determination arrangements constitute a practicable piecemeal strategy to ultimately achieve independence. On the contrary, a stable implementation of internal self-determination requires to fulfil certain conditions, such as a genuine will to compromise, unbiased dialogue, and goodwill (Abushov 2015, 191). It is also worth noting that the ‘free’ choice of the affected people to such arrangements depends on the possibility to participate in the decision-making process. In this sense, the Right to Self-Determination is inherently interconnected with the ideal of democracy (cf. Fisch 2010, 63-7).

Territorial autonomy as means of exercising internal self-determination is to be distinguished from other meanings of this term. It is distinct from personal or cultural autonomy, which is granted to ethnic groups that live scattered throughout the territory of a state (and therefore can hardly make legitimate self-determination claims containing an entire region or administrative unit; cf. Abushov 2015, 192); from national autonomy, which refers to the external sovereignty of a state (also referred to as Westphalian sovereignty; cf. Krasner 1999, 20-5); and from the precept of non-intervention into the domestic affairs of another state. In contrast, territorial autonomy concerns self-determination claims of populations which are living “compactly” (Abushov 2015, 192) in an area of a state and meet the vague quantitative threshold of “differ[ing] from the majority of the population in the State, and yet constitut[ing] the majority in a specific region” (Lapidoth 1997, 174). It was promoted as early as 1921 in the course of the Ålands case as a means of exercising collective self-determination in accordance with the principle of territorial integrity (cf. Summers 2007, 341, see also Chapter 2). Since then, autonomy settlements have proven to be the “classical means” (Weller 2008, 78) to resolve self-determination disputes outside the colonial contexts, which occasionally resulted in relatively stable settlements. These include, inter alia, South Tyrol/Alto Adige, Catalonia, and up until 2014, Crimea.

In contrast to territorial autonomy, federate and confederate arrangements affect the constitutional order of the state. As amendments to the constitution usually require a quorum,
implementing federate and confederate solutions can prove difficult to achieve. Moreover, as Weller (2008, 145-6) has noted, they receive less international support than autonomy. While such settlements work in some contexts (e.g. for Wales and Scotland, at least until separatism has been revived by the Brexit vote), similar attempts have failed in others, such as in the post-Soviet ‘frozen conflicts’ (cf. Weller 2008, 147). Another increasingly popular strategy in resolving in ethnically divided societies is power sharing, although this primarily concerns cases where territorial disputes are secondary to disparities in the political representation of ethnic groups (cf. Abushov 2015, 193). In order to implement these means of internal self-determination, the State’s institutions, policies, and political as well as administrative structure will have to be adjusted. These changes can alter the type identity of the State (e.g. from a central to a federal state).

Although internal self-determination is conceptually reconcilable with territorial integrity, it is only \textit{prima facie} the “happy medium” (Summers 2007, 342) between these two principles. States in fear for fragmentation due to self-determination claims are unlikely to readily allow their internal political division, especially since there is no legal obligation for states to grant autonomy according to international law. This means that the various options \textit{can}, but do not necessarily \textit{have to} follow from the Right to Self-Determination (cf. ibid., 341-2). Eventually, the way in which states comply with the Right internally is subject to their domestic legislation. On the other hand, whether the abovementioned means are acceptable solutions to a self-determination dispute also depends on the nature of the demands (Abushov 2015, 193). For example, internal arrangements to enable self-determination might be viable options when a group wishes to maintain their collective identity, which is under threat by certain state policies. However, if the demands are about “correcting the historic injustice on the belongingness of the territory” (ibid., 194), or if a part of the state’s population is denied fundamental rights, internal solutions might appear much less attractive. The so-called safeguard clause is repeatedly alluded to in this matter. It provides that the territorial integrity and political unity of states, which comply with the principles of equal rights and self-determination, shall not be disrupted (cf. Chapter 2.2.2). In this way, the protective mechanism of this passage is twofold. On the one hand, it is intended to safeguard the territorial framework of the International System (cf. van den Driest 2015, 336). On the other hand, a number of scholars have interpreted this clause to be a backdoor for remedial secession in the case of non-compliance (e.g. Crawford 2006, 119; Summers 2007, 221; Fisch 2010, 230). In turn, this means that external assistance to liberation movements fighting against oppressive regimes cannot be deemed as violating the territorial integrity of this state (Summers 2007, 221). Then again, this does neither constitute an enforceable entitlement, nor do historical attempts at remedial secession indicate its crystallisation as customary international law (van den Driest 2015, 349).

Similarly, internal agreements are less likely to be made if the self-determination dispute has been violent (Abushov 2015, 194). In view of grave human rights violations by the state
authority, including—but not restricted to—genocide, intra-state struggles for self-determination become an international affair. Additionally, the time factor might play a role when the political status of the contested territorial entity has been consolidated for a long period of time. For example, in the cases of the post-Soviet unrecognised states, giving in to an internal solution would mean to step back from the long-established objective of achieving fully recognised independence, and to render decades of state- and nation-building efforts void.

In conclusion, internal self-determination is often all too easily portrayed as belonging into the realm domestic affairs, thereby making its specific implementation subject to the principle of non-intervention by other states. However, it remains a matter of international politics because the specific ways in which self-determination is implemented not only affects regional stability and peace, but also concerns the protection of human rights, including minority rights, which are enshrined in international law.

3.3.2 External Self-Determination

Due to the circumstance of its development, external self-determination has become widely synonymous to secession. For colonial peoples, self-determination primarily meant the formation of a sovereign state that is independent from the colonial administration. In contrast to internal self-determination, the exercise of external self-determination unfolds in the singular moment of deciding upon independence (or a merger, respectively)—regardless of whether it is voted for or against—and has thus be characterised as a conditional and not continuous (cf. Cassese 1995, 101; Fisch 2010, 63).

However, there are at least two other options for the exercise of external self-determination as provided in the Friendly Relations Declaration. Besides independence, these are “the association or integration with an independent State or the emergence into any other political status” (UNGA 1970, principle V para. 4). The latter are currently not only less frequently implemented, but if so, they are mostly carried out on the basis of a referendum. Therefore, these option cause less commotion for the international relations among states. I will thus focus on the exercise of external self-determination in the form of secession and cover a number of alternative options more briefly at the end of this section.

Although it is mostly debated in its alleged conflictual relationship with territorial integrity, invoking external self-determination as secession is not generally and inherently problematic. For this reason, some scholars have pointed to the distinction between consensual or constitutional, and unilateral or non-consensual secession (e.g. Buchanan 2003, 338). When faced with attempts at unilateral independence in a post- or non-colonial context, the international community has tended to outweigh external self-determination claims with preserving the territorial integrity and political unity of the affected states. This points to the question why territory is considered as such an inviolable and fundamental principle in
international politics. Relating to Wendt (2010, 235), I assert that its eminent importance stems from the prevalent conception that territory is strongly associated with the viability of statehood in the 20th –and presumably also 21st– century. This understanding does not necessarily follow from theory or history (as mentioned before in Chapter 1.4). However, a number of benchmark developments indicate that the Weberian-Jellinekian notion of the conceptual indivisibility of statehood and territory constitutes states practice and has crystallised as customary international law. These include, for example, the criteria for statehood defined in the Montevideo Convention on the Rights and Duties of States (OAS 2017 [1933], art. 1), which was reaffirmed in Opinion no. 1 of the Arbitration Commission of the Peace Conference on Yugoslavia (the so-called Badinter Commission; Pellet 1992, 182). In this sense, the notion of territory as a ‘shared idea’ of international politics is a crucial precursor for the relations among states. When the corporeality of a state is not recognised by others, e.g. because the state failed to credibly communicate its corporate identity or because another state’s self-definition contradicts this corporate identity, conflicts arise.

Hence, various words of caution have been voiced against the universality of the Right to Self-Determination, which could be mistaken as a right to secession. Buchheit (1978, 28-30) has listed a number of underlying fears of the destabilisation of the international order connected to unilateral secession. These are the fear of “balkanization” (i.e. the emergence of a multitude of small states divided along ethnic rifts), the fear of “indefinite divisibility” (i.e. the endless fragmentation of states into increasingly small entities), the fear of adverse effects on the democratic system (i.e. the constant threat of secession by a political group in the face of a lost election), the fear of “infirm states” (i.e. the risk of small fledgling states being unable to maintain themselves, especially in economic terms), the fear of producing “‘trapped’ minorities” (i.e. enclosing and isolating non-members of a distinctive group within the seceding unit), and the fear of “‘stranded’ majorities” in the case of the “surgical” secession of a wealthier region (i.e. the risk that the majority of the population could be left with inadequate resources to survive as a state and as a people). Admittedly, these concerns are not unwarranted. In fact, they are justified by the numerous separatist movements, historical attempts at ‘recursive secession’ (e.g. Pavković 2011), or the circumstance that the majority of de facto states are dependant on external support by patron states (cf. Caspersen 2012, 39). Regarding the approach of the international community to confront these fears, two strategies can be identified. The aforementioned principle of uti possidetis and the more implicit “bigness bias” (Simpson 2014, 347) served to contain the risks of unbridled fragmentation and economic untenability during the decolonisation. In contemporary international politics, the international community seems to have adopted a more post hoc-approach to secession in the form of diplomatic pressure and sanctions, besides affirming of the inviolability of state territory and emphasising minority rights.
However, proponents of the view that self-determination in the form of secession is inherently irreconcilable with the principle of the territorial integrity of states overlook one crucial aspect: territorial integrity is a precept of international politics regulating the affairs between states, not within, as has been made clear by the ICJ (2010, 437) in its Advisory Opinion on Kosovo. Consequently, in regard to self-determination disputes, the principle is only breached when other states intervene militarily. However, external assistance can still be justified with the so-called safeguard clause under certain circumstance, as mentioned in the preceding section. This means that there is in fact no overt legal contradiction between the principle of territorial integrity and the external dimension of the Right to Self-Determination. Instead, changes of international borders concern the corporate identity of the state and therefore touch upon the materiality of modern statehood. Thus, the conflict between these precepts is largely political, as disruptions in the international territorial order can thwart the pursuit of the national and collective interests of states. It is supposedly due to this reason that the imperative of maintaining the 'political unity' is often mentioned complementarily to the territorial integrity of the State (e.g. in UNGA 1970, principle V para. 7).

In fact, secession is not prohibited by international law, regardless of whether it is enforced consensually or unilaterally (cf., inter alia, Higgins 1994). The legal neutrality of international law towards secession indicates that the partitioning of state territory is principally a domestic issue (cf. Abushov 2015, 188). However, if the consequences of a secession cut across international law, the international community can decide to condemn or sanction the actors involved by means such as resolutions, boycotts, or diplomatic pressure. For instance, it is worth noting that no entity which emerged from the unilateral declaration of independence has become a UN member state as long as the parent state opposed (cf. van den Driest 2013, 338), with the sole exception of Bangladesh. However, even if it is asserted that unilateral secession is generally permissible due to the lack of an explicit prohibition, it does not necessarily follow that units below the state-level have the legal capacity to invoke it (Buchanan 2003, 339). In fact, there is a telling "lack of any positive intention" (Summers 2007, 333), which suggests otherwise.

This being the case, proponents of the 'remedial secession'-approach have attempted to provide a framework for state creation which reconciles the alleged inaccessibility of secession for sub-state groups with the Right to Self-Determination. It builds on the idea that if the government of a state denies a part of its population adequate representation and violates fundamental human rights, this part of the population is entitled to legitimately secede in order to establish a state with a representative government (cf. Summers 2007, 344). In fact, the concept of remedial secession “runs to the heart of statehood” (ibid., 347), as it recalls the legitimacy of a state as being grounded in the sovereignty of the people. It follows that if a state does not serve, but rather oppress parts or the whole of its population, it is illegitimate. In turn, separating from this state then is legitimate. In order to determine whether a group is entitled to remedial
secession as exercise of their Right to Self-Determination, various indicators and thresholds have been devised by scholars. Besides holding the status of ‘a people’ (which has been elucidated in Chapter 3.1), these include the absence of meaningful political representation and gross human rights violations. The so-called safeguard clause of the Friendly Relations Declaration has been taken as an indicator for the existence of such possibility (cf. Crawford 2006, 118-21). However, this approach lacks state practice, with Bangladesh being the only fully recognised member of the international community after unilateral secession (but even this case is problematic because of India’s intervention, which was why the Bangladeshi independence has initially been disapproved by a large number of UN member states; cf. Summers 2007, 345-6).

As has been mentioned earlier, means of exercising external self-determination can also include the integration with another independent state. Theoretically, there are several ways to do so, including purchase, cession, absorption, reunification, and annexation. While the latter is proscribed under international law, purchasing and ceding has historically been common practice of territorial aggrandisement (in the cases of US unincorporated territories, for example). However, endowments of land for diplomatic reasons and the selling of populated territories constitutes a sharp violation of the Right to Self-Determination, which is why none of these options are acceptable nowadays. Hence, this leaves the direct cession via referendum, reunification, and the two-step process of requesting the incorporation into a sovereign state after an initial declaration of independence as ways in which the integration of a territory with another state (principally) complies with international law.

All of the abovementioned means to exercise external self-determination have in common that they affect the territoriality of the state. Thus, the corporate identity of the state of origin, the incorporating state, or the newly emerging state, respectively, is altered. Then again, accompanying institutional changes might affect the type identity and, in turn, the role and collective identity (e.g. when the territory which is now an independent state joins the UN and thereby becomes a self-contained member of the international community).

Furthermore, subsumed under the vague category of “any other political status” (UNGA 1970, principle V para. 4), the Friendly Relations Declarations also provides for other ways in which peoples can exercise self-determination externally. This clause points to the option for entities to exercise the Right to Self-Determination by deciding to remain associated with their respective administrative states, as in the cases of Gibraltar and Puerto Rico (cf. Higgins 1994, 118), or the 2014 referendum on Scottish independence. These entities usually hold a special status within their state, which can have both positive (e.g. the right to regional self-government) and negative consequences (e.g. disenfranchisement of the population in regard to voting rights). While the UN Special Committee on Decolonization initially disapproved such “non-independence” choices (ibid., 119), it is now widely held that the will of the people shall be respected in these decisions.
In short, the implementation of the Right to Self-Determination can have severe effects on the identity of the state, to which other states and the international community as a whole respond. On the other hand, the way in which the identity of a state is mutually constituted might affect how states implement self-determination, as certain type and role identities result in particular expectations on how a state will handle self-determination disputes.
Towards a Social Theory of Self-Determination in International Politics

In the following chapter, I present a theoretical approach to understanding the function of the Right to Self-Determination in contemporary international politics. In so doing, I bring together the Constructivist framework outlined in Section 1.4 and the conceptual controversies which I have discussed in the previous chapter. The following synthesis is agent-centred and focused on two categories of corporate actors which are relevant for the analysis of the Right to Self-Determination, namely the affected states on the one hand, and the international community, in the form of international bodies, on the other.

As I have mentioned in Chapter 3.3, the distinction between internal and external self-determination is conceptually problematic and not entirely clear-cut. However, whether interests are reconcilable with self-determination demands and their respective implications depends on the nature of such demands, i.e. whether they aim at independence or arrangements short of state creation. In order to carry out my conceptualisation of the function of the Right to Self-Determination in international politics, I therefore need to distinguish between the exercise of internal and external self-determination, respectively. Furthermore, the following analysis is focused on, albeit not restricted to, the latter, as this thesis is on international (that is, inter-state) relations. In contrast, internal self-determination disputes usually remain a matter of domestic politics up to the point when they become violent or when they are accompanied by grave human rights violations.

As signatories of the UN Charter, the ICCPR, and the ICESCR, states are addressees and the primary guarantors of compliance with the Right to Self-Determination of peoples. For the most part, their respective governments are the opposite party in self-determination disputes. In turn, these very states constitute an international community. Its various bodies, ranging from the UN institutions to trans- and international organisations and association of states such as the EU, are relevant actors for the analysis because they call for compliance with international rules and norms in order to ensure the functioning of relations within the international community in an orderly manner.

The structure of the following section is guided by two central questions. Firstly, I discuss how the interests of the aforementioned corporate actors, i.e. national and collective interests, are compatible with, or in contradiction to, compliance with the Right to Self-Determination. Following this, I theorise on how the conceptual ambiguities in the legal texts can be exploited for the sake of said interests. In order to corroborate my remarks with examples from State practice, I refer to (fairly) recent cases of self-determination disputes that can be conceptualised accordingly.
4.1 Self-Determination and the Pursuit of National Interests

Compliance with the Right to Self-Determination is relevant to all categories of national interests. As states are inclined to self-help, it seems obvious that “states seek to minimize the costs of self-determination challenges, while conceding as little as possible” (Cunningham 2014, 6). However, the reality it is not so trivial. While compliance with the Right to Self-Determination resonates with the pursuit of some interests, it contradicts with the pursuit of others. Therefore, in order to bring them into accordance with international law, national interests have to be balanced with each other.

The national interest of physical survival concerns the conservation of the corporate identity of the state by maintaining its territorial unity and the cohesion of its population (cf. Chapter 1.4.2). As the acquisition of territory in question was unlawful in the first place, the need for physical survival does not provide a valid argument in regard to decolonisation. Therefore, this interest is primarily important in non- and post-colonial self-determination disputes. The pursuit of this particular national interest is generally compatible with the exercise of internal self-determination. However, it collides with aspirations for external self-determination, which aim for separating both a portion of the national territory and the population therein from the parent country. This change of the ‘body’ of the State engenders the alteration of the State’s corporate identity. With the difference to an external Other constituting a necessary condition for the existence of the State, any discontinuities in the identity of either the Self and/or the Other which alter the perception of this difference pose a security threat (cf. Klüfers 2014, 180). Such alterations require a new negotiation process of re-/establishing the Self and the Other, as changes regarding the territory and population can affect other dimensions of a State's identity as well. For example, the loss of overseas territories of the colonial powers in the course of the decolonisation resulted in their conversion of the type identities from imperial states to modern states that adhere to the decolonisation agenda.

As a consequence, the precept of respecting the indivisibility of a state’s territory and its political unity (often termed ‘territorial integrity’, although this term –strictly speaking– only refers to disputes between states, cf. Chapter 3.3.2) is often brought forward as an objection when faced with claims for external self-determination. However, this argument is unwarranted as both historical and recent examples of cession and secession have proven that the parent state is not doomed in the face of the loss of some of its territory and population. In fact, states that experience secession (but not necessarily in the case of dissolution or reunification) usually maintain their status in regard to their type, role, and collective identities in the modern state system, even after their corporate identity has been altered. For instance, Malaysia, Ethiopia, the United States, and Sudan all remained sovereign after Singapore, Eritrea, Palau, and South Sudan, respectively, had gained independence.
This points to the question why territorial indivisibility and political unity are often seen as inviolable values with regard to self-determination claims. I assert that this is because of three reasons. Firstly, bodily or corporate integrity is a value per se in the sense of natural law, whereby every social actor with a distinct personality, singular or collective, is entitled to non-interference with their corporeality by others. Secondly, although altering the corporate identity might not necessarily induce the demise of the separated state, it can still have serious repercussions on its role identity. The reduction in size and territorial spread can affect the State’s geopolitical position and its economic capacity, which can weaken its regional and global influence. In this sense, the pursuit of the national interests of physical survival with the highest priority might be motivated by the fear of the loss of importance. Thirdly, insisting on the territorial unity of the State is also a means of mitigating the risk of fragmentation and dissociation. For these reasons, states are generally inclined to object to any breaches of their territorial unity and favour internal solutions when faced with self-determination claims. However, the exercise of the Right to Self-Determination as independence can also be allowed by the State, when the pursuit of physical survival becomes less important in the light of other national interests.

The national interest of autonomy concerns the ability to freely decide on the government of the State and the use of resources. On top of merely ‘staying alive’ (physical survival), the State also needs to retain its “liberty” (Wendt 2010, 235) for the reproduction of identity. This interest is primarily to be defended against outside intervention. In self-determination disputes, sub-state movements can be conceived as constituting an internal Other, which challenge the governance of the State by threatening to externalise political and material resources in the course of a secession. This would then affect the reproduction of the State’s corporate identity. At the same time, it might also be advantageous for states to cede some of its decisive power in exchange for an improvement of the political position, economic status or security situation. The EU comes to mind as an example for such arrangement.

State autonomy is rarely absolute, but a matter of degree (cf. Wendt 2010, 235). Then again, which extent of autonomy is considered as minimal for the continued existence of the State varies across contexts. While maintaining state autonomy and the physical survival go hand in hand in the case of an external act of aggression, the balance of these two interests in the case of a self-determination unit, which contests the governmental authority of the State from within, is less evident. When the interest of preserving an internally undivided autonomy prevails and the government fights against the self-determination unit politically or physically, the dispute can become external and result in an attempt at unilateral secession. As Siroky and Cuffe (2015, 8) have shown, the motivation to separate increases significantly after autonomy has been retracted or even entirely revoked. Notable examples of this include the attempt at removing the autonomy status of Kosovo (and the Vojvodina) in the course of Milošević’s “antibureaucratic revolution” (cf. Vladisavljević 2008, 78), the “pan-Indianism” (Baruah 2009, 953) and subsequent formal
retraction of Assam’s autonomy in 1991 (Siroky & Cuffe 2015, 12), the Chinese invasion of the
former de facto state Tibet (Davis 2008, 245), or the factual abrogation of the South Sudanese
administrative entity deriving from the Addis Ababa Peace Accords in 1983 by Khartoum (LeRiche
& Arnold 2012, 30), which all have led to an escalation of collective action for self-determination.
On the other hand, when the corporate integrity of the state is prioritised over the unitary inward
autonomy of the government, devolving political power within the State can avoid the separation
of the self-determination unit. While autonomy arrangements are widespread and have been
working well in many contexts (e.g. the aforementioned examples of the Åland Islands or South
Tyrol), other instances, such as the self-administered zones in Myanmar (Nilsen 2013, 127) or the
semi-autonomous status for Bodoland in Northern India (Saikia, Chima & Baro 2016, 157-8) did
not fully succeed in producing a commonly accepted outcome.

The maintenance of the “mode of production in a society and, by extension, the state’s
resource base” (Wendt 2010, 236) constitutes the economic well-being of the country. For
example, in the prevalent case of a capitalist mode of production, the interests in the economic
well-being of the State implies an interest in economic growth. Conversely, this is not necessarily
the case in other modes of production. When demands for self-determination are restricted to
matters of political representation and organisation, their exercise does not have to affect the
mode of productions of a State (although it can, as the relations of production are intertwined with
the way a State is governed, according to my understanding). In order to evaluate the relationship
of the interests of economic well-being with the Right to Self-Determination, it is helpful to
understand economic well-being in a broader sense, i.e. as the interest to maintain and enhance
the State’s economic clout and potential. In this way, the exercise of external self-determination is
problematic, since it entails giving up or being deprived of a part of the economy associated with
the separating entity. This becomes particularly relevant when the territory in question contains
resource-rich land or potent industries, upon which the national economy of the parent states
depends. However, this does not mean that the pursuit of economic well-being is entirely
irreconcilable with the adherence to the Right to Self-Determination. In contrast, it can also be in
the interests of states to comply and settle the dispute, when they otherwise have to fear economic
sanctions, which can increase both the direct (e.g. in the form of an arms and materials embargo)
and indirect costs (e.g. in the form of asset freezes or investment bans) of the conflict (cf.
Beardsley, Cunningham & White 2015, 6). Although such measures usually do not immediately
result in the end of the conflict – as for example the EU sanctions against Serbia during the Kosovo
War did not instantly destabilise Milošević’s government (cf. Giumelli 2011, 92) – they certainly
increase the pressure. Then again, if the targeted government is politically and economically
potent enough, it can launch countermeasures, as Russia is currently doing in the light of the EU
and US sanctions following the Crimea annexation (Wang 2015, 2-3). Theoretically, it can also be
in the economic interest of a state to let the self-determination unit separate when it would be
better off without the seceding part. However, such cases rarely exist, as most self-determination units demanding independence are based in resource-rich territory (with the exception of Slovakia, which was the less affluent part of Czechoslovakia in economic terms, cf. Hoeffler & Collier 2006, 50). In fact, the exploitation of these resources by the central government is a main driver for separatist movements, e.g. in South Sudan or Aceh (cf. ibid., 49). Additionally, economic interests of third parties often play a significant role in the emergence and support of self-determination movements. For example, referring to the attempted secession of Katanga, Hoeffler and Collier (2006, 48) have stated that there was an "overt involvement in the secession by South African mining interests, so that it could more plausibly be interpreted as an external and commercial movement than as a bottom-up cry to protect a historic identity". Another prevailing example of vested economic interests in the meddling with self-determination disputes is the Russian patronage for the de facto states in the Caucasus (i.e. South Ossetia, Abkhazia, Transnistria, Nagorno-Karabakh/Republic of Artsakh, Donezk, and Luhansk), which is in part motivated by the intention to re-integrate the post-Soviet space into the Russia economic and political orbit as potential membership aspirants for the newly established Eurasian Economic Union (Pospisil & Rodehau-Noack 2015, 5).

Lastly, the national interest of collective self-esteem refers to a "group's need to feel good about itself" (Wendt 2010, 236). As positive and negative self-images depend on the relationship to the Other, this need of the State is inherently social. It presupposes an international society, at least in the sense of a grid of relations among corporate actors of whichever nature. Adopting the perspective of the Other helps to assess how the Self is perceived and indicates the status or position within a society. The mutual recognition of sovereignty in the modern state system as an assurance against aggression therefore becomes relevant in this respect. Naturally, this interest can be expressed in various ways, which also differ in regard to the cultures of anarchy (cf. Chapter 1.4). While a positive self-esteem stems from "glory" or "power" at the expense of others in a Hobbesian culture, it originates from a sense of probity in a Lockean culture (e.g. due to an understanding of "virtue" or "being a good citizen", Wendt 2010, 237).

As with the aforementioned other interests, the need for a positive self-esteem has to be brought in line with international law. In regard to self-determination disputes, the interest of maintaining a collective self-esteem is expressed by the inclination to present oneself as a democratic or law-abiding state that operates according to the will of the People. It is also possible that the benefits from non-compliance outweigh the urge to maintain a positive self-image from the perspective of the affected state. However, this can prove as difficult to enforce in the contemporary International System. Furthermore, states do not only act as individual agents, but also as a collective. Hence, before turning to the exploitation of loopholes in order to evade compliance, I will first discuss the collective interests of states in their relationship to self-determination.
4.2 Self-Determination and the Pursuit of Collective Interests

As I have mentioned in Chapter 1.1, states do not only have to balance their national interests and compliance with international law in regard to self-determination disputes, but they also have to align these with collective interests. The latter are formed in interrelation with a collective identity of states, which transcends the limit of the State’s Self and the Other (Wendt 2010, 229). In a process of identification, the role identities (e.g. mutual perception as ‘allies’ or even ‘friends’; ibid., 298) are merged into one, while building on shared characteristics (as for example international recognition when it comes to UN membership). In this way, the Other’s affairs become the affairs of the Self. This process of identification fosters altruism, in which the pursuit of collective interests constitutes a genuine preference over an outcome (cf. ibid., 305). However, such altruistic behaviour can still be driven by rationalism, although not on the basis of the individual (state), but with reference to the (state) collective (ibid., 229). Furthermore, it can include making sacrifices. However, this does not necessarily mean that altruistic behaviour is a zero-sum-game, because the collective identity is constituted by “defining the welfare of the Self to include that of the Other, [but] not by serving the Other’s welfare to the exclusion of the Self’s” (Wendt 2010, 306). Moreover, the identification process is issue-specific (Wendt 2010, 229). Consequently, although various inter- and transnational bodies exist that qualify as state collectives in the broadest sense and are driven by either altruistic or instrumental motives, I will only consider state collectivity with respect to the issue of self-determination.

It follows from the shared identity that it is in the interest of the so-called international community to respond to self-determination disputes in a way which benefits the entire collective. As the positions of the affected state(s) in such a conflict may differ and the question of the legitimacy of self-determination claims is rarely straightforward, the pursuit of collective interests obviously involves some sort of context-specific cost-benefit calculation and compromise. As a consequence, the international community accepted the outcomes of some self-determination disputes (usually in the cases of internal arrangements, consensual secession, and the two borderline cases of remedial secession), while it disapproved of the results of others (usually in the case of unilateral and externally assisted secession).

When the League of Nations and the UN as its descendant are construed as marking the emergence of the contemporary notion of an ‘international community’, the primary objective of this collective of states is to promote peace and prevent future (world) wars (e.g. cf. UN 1945, art. 1 para. 2). In regard to self-determination, it is therefore a collective interest to transform violent conflicts into non-violent forms of dispute, both between and within states. The achievement of negative peace (i.e. the absence of immediate physical violence; cf. Galtung 1969, 183) is a matter of security, as it lessens the risk of aggression between actors.

Furthermore, as it constitutes the foundation for social interaction on the global level and largely goes hand in hand with peace, I assert that the international community is also interested
in the stability of the international system of states. In this way, it seeks to mitigate disruptions in the geopolitical landscape, and particularly to contain state fragmentation, in order to ensure a certain consistency in the composition of the International System and its actors. This can be inferred from the various references to the importance of the political and territorial unity of states in a number of binding and non-binding agreements (cf. Chapter 2.2). It is further illustrated by the international community’s refusal to acknowledge the separations from decolonised African states or to recognise breakaway states that emerged in the wake of the dissolution of the Soviet Union (cf. Ryngaert & Griffioen 2009, 583).

The collective interest of achieving peace and stability can both collide or harmonise self-determination claims. In most cases, there is no need for the international community to step in. With disputes over internal self-determination principally being a matter of domestic politics, international involvement primarily occurs when the regional peace and stability is disrupted, which can take place when an internal self-determination dispute turns violent or an external self-determination dispute culminates in a unilateral declaration of independence. To date, 71 UN peacekeeping missions have taken place in order to appease conflicts and stabilise political situations, many of them in disputes over self-determination. However, it is worth noting that these missions usually do not have an explicit mandate to maintain the territorial unity of a state, with the first UN peacekeeping mission in Katanga (United Nations Operation in the Congo/ONUC) being the sole exception (Caspersen 2012, 38).

As I have clarified in Chapter 3.3.2, international law is legally neutral to secession. Thus, the international community has to form its opinion on external self-determination on a case-by-case basis in the absence of a clear legal guideline in this matter. In the case of secessions, it is therefore decisive whether the views of the affected state(s) and the international community as a whole on the legitimacy on the self-determination claims and the resolution of a dispute differ or coincide. If the separation is consensual, the international community hardly has any reason to condemn such outcome. In these cases, the emerging states are usually recognised quickly by other states and attain UN membership within a few weeks (e.g. Serbia, Montenegro, Eritrea, and South Sudan; cf. Crawford 2006, 417). In turn, the international community can also morally back an affected state not consenting with secessionist claims, when the demands are perceived as illegitimate. In the broad repertoire of (attempted) unilateral secessions, the international community has neither provided support nor granted recognition in such instances, even when the “humanitarian aspects of the situation” (ibid.) have already raised concerns, such as in the case of Chechnya (e.g. cf. UNCHR 2001). However, the views of the international community and the parent state can also differ in cases where the self-determination unit is oppressed or under immediate physical attack by the latter. In such cases, the international community can accept this separation as an instance of lawful remedial secession. However, up until now, this has only been done once on a post hoc-basis in the ICJ Advisory Opinion on Kosovo (ICJ 2010).
Furthermore, the stability of a state depends not only political factors, but on economic circumstances as well. The international community has repeatedly opposed secession if either the seceding unit or the remaining territory would not be economically viable. For instance, Buchheit (1978, 152) supposed that the disapproval for the independence of Katanga was also motivated by the fact that the newly decolonised state of Republic of Congo would have been deprived of a vital part of its revenue from the mining industry.

Besides, it can be assumed that further collective interests concern the widespread compliance to international rules and a consistent state practice, as these help to stabilise mutual anticipations of behaviour further. The international community acts as a moral authority, which emphasises the importance of respecting the Right to Self-Determination. This is illustrated by repeated resolutions, pleas, and reminders to comply in this matter. However, the inclusion of the so-called safeguard clause (cf. Chapter 2.2.2) in a number of these documents points to the need to do so in accordance with other international principles.

4.3 Finding the Loophole: The Balance of Interests and Compliance

In order to examine how corporate actors respond to potential conflicts of their interests with the Right to Self-Determination, I first take a look on the social effect of international law. While Wendt does not elaborate in detail on the function of international law in ‘Social Theory of International Politics’, the insights of the English school scholar Bull are expedient to comprehend how it helps to develop and maintain order in the modern state system. Bull (2012 [1977], 133-4) asserts that conformity with international law is not a value *per se*. However, this does not mean that it is merely instrumental. In contrast,

“[t]he importance of international law does not rest on the willingness of states to abide by its principles to the detriment of their interests, but in the fact that they so often judge it in their interests to conform to it” (Bull 2012, 134).

This means that the formation of interests takes place with respect to, *inter alia*, international law. According to Bull (ibid.), states comply with international law out of “habit or inertia” on the one hand, as they depend on well-established rules in order to function. On the other hand, they do so intentionally out of three motives, namely due to the understanding of the conformity with international law as useful or mandatory (e.g. in order to establish a basis for international relations or in view of security concerns), due to coercion or threat (e.g. in the case of the forced acceptance of peace treaties by defeated states), or due to the expectation of reciprocal action (e.g. in the case of respect for principles such as state sovereignty and territorial integrity). Following Wendt’s assessment of the prevalence of a Lockean anarchy in contemporary international
politics, it can be inferred that international law is primarily respected due to necessity and reciprocity at the present day.

As a consequence, Bull has further observed that there are hardly cases of overt and total disobedience to international law in the modern state system. In contrast, breaches of international law usually occur against the background of conformity to other international rules. In these cases, states perceive it as necessary to provide an explanation for such infringement, or they will deny that any violation has taken place at all. In the case of the Right to Self-Determination, derogation or noncompliance is frequently justified by either prioritising other precepts such as territorial integrity (conformity with other rules) or by exploiting the various ambiguities in the legal provisions regarding the clauses, e.g. when it is argued that the Right to Self-Determination does not apply to the dispute in question (denial of non-compliance). Therefore, Bull (2012, 132) has argued that the conformity to particular instances of international law is not absolute, but rather situated on a spectrum.

Thus, there are three general possibilities for responding to a collision of interests in regard to the Right to Self-Determination: absolute non-compliance, absolute compliance, or something in between, which I call ‘relative (non-)compliance’ for the sake of consistency. Following Bull (2012, 134), it is hardly an option to simply disregard international law without any justification in the modern state system. As a result, such cases have been extremely rare after World War II. The Russian response to the Chechen self-determination claims might be an exception in this regard, as its justification did not focus on the reference to protecting grand precepts such as territorial unity (which would have been difficult to argue, given that Chechnya’s claims for independence originated in the dissolution of the USSR, whose constitution provided for free secession of its republics; cf. Neuberger 2001, 405), but on the illegitimacy of Chechnya’s political and economic mode of operation, which was said to be rooted in mafia criminality and politicised Islamism – an argumentation, which would subsequently fall on sympathetic Western ears in the aftermath of the 9/11 attacks (Graney 2004, 135).

Consequently, this just leaves the two other alternatives. Depending on their specific balance of national interests, corporate actors of international politics either fully comply with international law in the face of self-determination disputes (i.e. they enable the unit in question to exercise self-determination either internally or externally), or when do not adhere to the Right to Self-Determination, they at least deliver an excuse for such behaviour. In the following sections, I look into both of these options in more detail.

The most favourable and prevalent outcome of an intra-state self-determination dispute is an arrangement, where the self-determination unit gets to exercise their right within the existing framework of the state (cf. Chapter 3.3.1). Solutions of such kind are reconcilable with the majority of national interests, because the population, territory and polity remain unified outwardly; the territory in question continues to be a part of the national economy; and the State
can maintain a positive self-image, as no breach of international law is occurring with respect to the self-determination dispute. Although the international political organisation of the state is altered in the course of establishing autonomy or federal arrangements, the risk of disruptions in international politics is relatively low compared to incidents of state creation. However, as I have shown above, states also grant external self-determination (at this point it is worth keeping in mind that the exercise of self-determination is not restricted to independence, but concerns the very act of deciding upon state creation, association etc.), supposedly due to the circumstance that the objective to maintain a positive self-esteem as democratic and law-abiding is prioritised. For instance, in democratic states, separatist movements can occasionally make use of referenda. Following Qvortrup (2013, 4) the number of independence referenda worldwide since the first ones (1861 in Texas, Tennessee and Virgina) is 50 and counting, with the trend line showing the highest peak around 1990, which was evidently caused by the dissolution of the Soviet Union. The decision on separation, regardless of whether the majority is for or against it, then is democratically legitimised and any potential secession arrangement would be based on consensus. In order to maintain their image as a democratic polity operating on the rule of law, states might be inclined to prioritise the implementation of the will of the People over their territorial integrity and political unity. However, even in this case, collective self-determination is not open to everybody, as there are usually barriers in place to ensure that referenda are only taking place with an adequate backing in the population. In order to meet these requirements, such as a sufficient number of supporters of the petition for a referendum, the claims have to be perceived as legitimate and proportional. The vote on Scottish independence comes to mind in this regard, which was held 2014 after the authority to legislate on this question was transferred to the Scottish parliament by the UK government through the Edinburgh Agreement (Casanas Adam 2014, 55). The vote turned out 55,3 to 44,7% for remaining with the United Kingdom.

Conversely, many independence referenda have taken place under conditions which were far less from ideal. Additionally, it is more the rule than the exception that the targeted governments do not feel compelled to abide by the decision (Qvortrup 2013, 5). This is either because the referenda were plainly illegal, such as the plebiscites preceding the unilateral declarations of independence of the so-called People’s Republics of Donezk and Luhansk (Cavandoli 2016, 884), or because they were otherwise unauthorised by the parent state, such as in the cases of the diaspora vote on separation of Tamil Eelam from Sri Lanka (Höglund & Órjuela 2011, 25), or the plebiscites in the post-Soviet de facto states South Ossetia (Ô Tuathail 2008, 680) and Transnistria (Blakksrud & Kolstø 2011, 206) from Georgia and Moldova, respectively. Moreover, referenda can also be misappropriated to serve concealed purposes under the pretence of honouring popular sovereignty. For example, the Crimean separation from the Ukraine and its subsequent association with the Russian Federation was decided by a popular vote. However, neither did the Ukrainian constitution allow for such a plebiscite on independence (in fact, a
passage emphasising the indivisibility of the state indicates quite the opposite, cf. van den Driest 2015, 349), nor did the entire Ukrainian people decide. Along with the presence of Russian troops on the peninsula, this series of events rather represents an annexation by Russia than a legitimate process of independence and association.

The most recent example of a referendum that resulted in the creation of a new state is South Sudan. In 2011, it separated from the North after a six-year interim period provided for in the Comprehensive Peace Agreement (CPA), in which many of the most pressing issues (e.g. border demarcation) remained unaddressed and a number of the most basic provisions were only implemented in part – or even not at all (LeRiche & Arnold 2012, 115-40). Although South Sudan’s independence was a success for those pressing for Southern self-determination in –yet another– civil war, it did not bring an immediate solution to many of the pre-existing difficulties. Ultimately, the world’s youngest state was created only to descend into its very own armed conflict.

From the perspective of states as a collective, i.e. in the form of the ‘international community’, it is preferable to fully comply with the Right to Self-Determination. Furthermore, as secession is not prohibited according to international law, there is theoretically no restriction on its external exercise. However, if self-determination units attempt to redraw boundaries without the consent of the affected states, this can collide with the pursuit of other collective interests, namely the achievement and maintenance of international peace and stability. Relative non-compliance can then strike a balance between both collective and national interests, and self-determination demands. On the one hand, non-compliance with the Right to Self-Determination is mitigated by the conformity with other rules and norms of the international community. For example, another precept –besides the already extensively covered protection of territorial unity– which has repeatedly resulted in the refusal of self-determination demands are the unlawful use of force and human rights abuse. This motive has been reiterated as an obiter dictum in the ICJ Advisory Opinion on Kosovo. With reference to the cases of South Rhodesia, Northern Cyprus, and the Republika Srpska Krajina, the Court has argued that de facto states which emerged from self-determination disputes were denied recognition due to the involvement of foreign military or “other egregious violations of norms” (ICJ 2010, 38). Another more recent example is the action of Russian troops, which helped to enforce the alleged independence of Crimea and its subsequent incorporation into the Federation. Although the presence of Russian military in Crimea is permitted under the provisions of the Black Sea Fleet Agreement, operations outside the military bases, the occupation of strategically important locations, and the intervention in Ukrainian domestic politics clearly constituted a breach of the pact (van den Driest 2015, 358).

A notable exception in this regard is the independence of Bangladesh from Pakistan, which was quickly and widely recognised despite the foreign intervention into the conflict (Crawford 2006, 141). It is supposedly due to the particular circumstances that the East Pakistani people could invoke the first instance of full recognition after unilateral secession, the unlawful use of
force by India notwithstanding. This was because, on one hand, the territory was both geographically separated and ethnically distinct from its parent country. On the other hand, and even more importantly, the conduct of the Pakistani government and military in East Pakistan was severely repressive and has largely been characterised as genocide (cf. Crawford 2006, 142). As a consequence, it can be argued that Pakistan forfeited its right to territorial integrity by exploiting and oppressing its population in the East.

Another version of relative (non-)compliance is to deny that the Right to Self-Determination is violated in the face of a particular self-determination dispute altogether. If states do not want give in to self-determination demands in order to prevent a precedent for the fragmentation of their territory and population (which is a widespread threat, as most states are multi-ethnic; Toft 2012, 585), they have to bring together the pursuit of national interests and the compliance with international law. For the purpose of disputing external self-determination claims, states can make use of the vagueness in the provisions of the legal texts. Following the central controversies regarding the scope, applicability and implementation of the Right to Self-Determination (cf. Chapter 3), there are at least three possible ways to do so, namely to argue that the unit invoking self-determination is not entitled due to not qualifying as ‘a people’ in the sense of the provisions, that self-determination is not exercisable as independence beyond decolonisation, or that its implementation is restricted to self-government in non- and post-colonial contexts.

Arguing that the unit invoking self-determination does not suffice the criteria of being ‘a people’ is tantamount to declaring the claims illegitimate. Then again, the lack of specific, uniform and universally binding criteria for such definition makes the judgement on the legitimacy of collective self-determination claims highly arbitrary. In the absence of specific criteria for such definition, the international community has virtually never denied external self-determination to a group on the basis of not qualifying as ‘a people’ according to international law. In order to make an argument for international peace and stability in self-determination disputes, international bodies have often chosen to sit on the fence when it comes to the subject of ‘a people’. In some cases, it has been acknowledged that the unit in question is entitled to self-determination according to international law, although this did not necessarily entail the external exercise, but rather internal self-determination in the form of “meaningful access to government” (Reference re Secession of Québec 1998, 6). This is best illustrated with the 2007 UN Declaration on the Rights of Indigenous Peoples, which grants indigenous peoples a status which is “equal to all other peoples” (that is, national and colonial peoples), but simultaneously clarifies that “in exercising their right to self-determination, [indigenous peoples] have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions” (UNGA 2007, art. 4). Yet again, this does not explicitly preclude the entitlement to secede with a just cause, but it certainly shows a tendency towards
exercising the Right to Self-Determination internally. However, even if the self-determination unit is granted the status of ‘a people’, thus being entitled to self-determine, this does not need to entail a specific form of implementation, as the 2004 Advisory Opinion on the ‘Legality of the Construction of a Wall in the Occupied Palestinian Territory’ has shown. The ICJ emphasised the Right to Self-Determination of the Palestinian people, but was cautious to derive any implications for their exercise of self-determination in general. Instead, it merely judged that Israel disregarded its obligation to enable the Palestinians to self-determine by building the wall (Summers 2007, 263). In yet other cases, such definition was circumvented altogether. For example, the Badinter Commission (cf. Chapter 2.2.2) expressed the rather equivocal opinion that the Serbs have both minority rights (i.e. they are a minority, but not ‘a people’ within Yugoslavia) and a right to self-determine (i.e. they are ‘a people’ according to international law; Summers 2007, 270).

In contrast to the international community, individual states have been much more straightforward with this argument in order to avoid separation. For example, a plebiscite on the independence of Catalonia from Spain is deemed illegal by the Spanish government, as Article 2 of the Spanish constitution provides for the “indissoluble unity of the Spanish Nation, common and indivisible patria of all Spaniards” (Guibernau 2014, 14). As such, the demos entitled to self-determination is constituted of all Spaniards, of which the Catalans are merely a sub-group, but not ‘a people’ in the sense of Article 1 of the ICCPR and the ICESCR.

Secondly, it can be argued that self-determination in the form of secession only applies to colonies and the people therein. In fact, this has implicitly been the basic assumption for state practice in regard to non-consensual secession beyond the colonial context, apart from Bangladesh and the highly contested case of Kosovo.

Even before the adoption of collective self-determination as a right in the ICCPR, Emperor Haile Selassie of Ethiopia and the President of India Sarvepalli Radhakrishnan declared in a joint communiqué in regard to the situation in Kashmir that “the principle that self-determination should apply only to colonial territories which have not yet attained their independence and not to parts of sovereign or independent states” (Touval 1967, 125n). Given its numerous separatist movements, e.g. in the regions of the aforementioned Kashmir, Assam, Nagaland, or Punjab, India has recently been the most forthright in regard to its disapproval or the Right to Self-Determination to apply in post-colonial contexts. In the Addendum of the third periodic report on the implementation status of the ICCPR, it states that

“the right to self-determination is said to have both internal and external aspects. [...] it does appear that so far as external aspects are concerned, the context, background and the drafting history support the view that it was colonies (and trust territories) that were envisaged and not other peoples” (UNHRC 1996, 13).
thereby implying that compliance with the pact is fulfilled by granting internal self-determination to the Indian peoples. As a result of the alleged restriction of external self-determination to decolonisation, the Chechens separatists have tried to coin the dispute as colonial by arguing that Chechnya had been forcibly integrated into Russia. Evidently, this claim did not receive any international recognition (Weller 2005, 10).

On the other hand, the argument that external self-determination is restricted to decolonisation can also work in favour of secessionist entities. For example, although the emergence of the independent state of Eritrea originated in the separation from Ethiopia in 1993, it can be argued that the precept of territorial inviolability did not hold. Eritrea had been a separate Italian colonial entity before the British administration and its UN-sponsored federation with Ethiopia, which in fact has clashed with the *uti possidetis*-principle of decolonisation in the first place. Therefore, Eritrea’s independence can also be seen as an instance of ‘delayed duly decolonisation’ instead of a secession (Fisch 2010, 240-1). Similarly, Timor-Leste was illegally occupied by Indonesia shortly after its first declaration of independence in 1975. Thus, the (renewed) independence of Timor-Leste in 2002 was widely seen as not violating the principle of territorial integrity, but as being an instance of late decolonisation (cf. Caspersen 2012, 18-9).

Thirdly, with regard to the particular implementation of self-determination demands, states can argue that the exercise of self-determination is intended to imply nothing more than self-government (as in the Kashmir case cited above), which is largely in line with state practice (but in fact contradicts the options presented in Resolution 1541 of the UN General Assembly, UNGA 1960b). Here, the point is not to deny self-determination as such, but to restrict the way in which it is exercised. Since the international community has historically prioritised territorial unity over independence, it seems fair to argue that the internal exercise of the Right to Self-Determination is the preferred option from the collective perspective. However, against the backdrop of the grave human rights violations and genocides in the 20th century, the occurrence of a just cause for secession as the last resort has increasingly been given consideration, but lacks state practice (van den Driest 2015, 360). In this context, the Supreme Court of Canada has ruled that the desired independence of the Québécois lacked such just cause for a remedial secession by judging that

"the international law right to self-determination only generates, at best, a right to external self-determination in situations of former colonies; where a people is oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development. In all three situations, the people in question are entitled to a right to external self-determination because they have been denied the ability to exert internally their right to self-determination. Such exceptional circumstances are manifestly inapplicable to Quebec under existing conditions. Accordingly, neither the population of the province of Quebec, even if characterized in terms of "people" or "peoples", nor its representative institutions, the National Assembly, the legislature or government of Quebec, possess a right, under international law, to
However, as recent instances of unilateral secession invoking self-determination have shown, the remedial secession approach also inheres several entry points for dissent and instrumentalisation. The Russian approach to remedial secession can be seen as a paragon for adjusting the support or disapproval for self-determination claims according to its national interests. While Russia disapproved of the implication of the Chechen and Kosovar self-determination claims to culminate in the formation of independent states, the justification for the secession and subsequent integration of Crimea into the Russian Federation was based on this very understanding of self-determination (cf. Cavandoli 2016, 880; van den Driest 2015, 331). In fact, the Russian approach can be seen as beating the proponents of remedial secession’ at their own game:

"[a]s it declared independence and decided to hold a referendum, the Supreme Council of Crimea referred to the United Nations Charter, which speaks of the right of nations to self-determination. Incidentally, I would like to remind you that when Ukraine seceded from the USSR it did exactly the same thing, almost word for word. Ukraine used this right, yet the residents of Crimea are denied it. Why is that?

Moreover, the Crimean authorities referred to the well-known Kosovo precedent – a precedent our western colleagues created with their own hands in a very similar situation, when they agreed that the unilateral separation of Kosovo from Serbia, exactly what Crimea is doing now, was legitimate and did not require any permission from the country’s central authorities" (’Address by the President of the Russian Federation’, 2014).

Furthermore, there is a variety of options for exercising internal self-determination (e.g. see the non-exhaustive list in Chapter 3.3.1). It is unclear who determines which possibilities have been left out. Additionally, not all options are equally preferable for all involved parties. In fact, implementing claims for self-determination is usually not done by a trial-and-error method, but on the basis of specific demands. Consequently, the argument of fully exploiting all internal arrangements before opting for independence can also be used as a delaying tactic to the end that this is not feasible. However, it is worth noting that this strategy can produce a gridlock the situation in so-called frozen conflicts, when the breakaway entity engages in state- and nation-building activities in the absence of practicable peace talks, thereby gradually reducing the options for a conflict solution to recognise of the de facto independence (Pokalova 2015, 81).
Conclusion: The Many Faces of Self-Determination

From its very beginning, collective self-determination has been a contested concept. In its checkered past, collective self-determination has been upheld as a political ideal invoking nothing less than the liberty of all peoples, it has been used as a weapon to threaten political enemies, it has been voiced as a promise to oppressed populations, and it has been dismissed as a trigger to unchain uncontrollable fragmentation of states. Although it quickly developed into a political slogan following its emergence in the revolutions of the late 18th century, collective self-determination still took some time to be established as an international principle against the backdrop colonialism and the two World Wars. Self-determination was disregarded time and again, or applied only selectively in the light of geopolitical and economic considerations. Higgins (1994, 119) has pointed out that self-determination “has never simply meant independence. It has meant the free choice of peoples”. While it is certainly correct that collective self-determination also entails adequate political representation, meaningful participation, and the possibility to freely decide one’s fate, self-determination has been a matter of contention exactly when it meant to be any less than independence. Ultimately, it is rather the “denial of self-determination, not its pursuit […] that […] leads to upheavals and conflicts” (Bahcheli, Bartmann & Srebrnik 2004, 246). As Cassese (1995, 54) has pointed out, the Right to Self-Determination is neither absolute, not consequently universally applied. Contrary to its moral purport as a liberal concept, it has been used to both enfranchise and disenfranchise peoples. Evidently, its incorporation into international law did not succeed in making it less contentious, as the balance of the “the letter and the spirit of the law” (Zyberi 2009, 437) remains unresolved and the most pressing issues remained unaddressed and are still “haunting” (Neuberger 2001, 391) world politics.

5.1 The Role of the Right to Self-Determination in International Politics

In this thesis, I have presented a theoretical approach for understanding how corporate actors in international politics shape their stance towards the compliance with the Right to Self-Determination. By applying a Constructivist framework which is drawing on Wendt’s Social Theory of International Politics (2010 [1999]), I have shown in which ways internal and external self-determination collide or harmonise with the pursuit of national and collective interests. I have further argued that the definitional ambiguities and conceptual controversies of the Right to Self-Determination make it possible for corporate actors to engage in “legal gymnastics” (Summers 2007, 302) in order to achieve their objectives.

By considering the specific implication of each of these national interests for the compliance with the Right to Self-Determination, I have shown that their balance shapes the stances of states towards collective self-determination. Then again, this balance is affected by the social relationships in the contemporary state system. Therefore, I have contended that the Right
to Self-Determination has to be understood with respect to its embeddedness in international politics. By use of a Constructivist perspective, I have shown that the Right to Self-Determination is not only a legal issue of great moral depth, but also an inherently political concept.

In my analysis, I have adopted a two-fold approach by looking at interests from both the state and the collective perspective. By examining the role of the State’s identity, I have explored the relationship of compliance with the Right to Self-Determination and the four national interests, i.e. physical survival, autonomy, economic well-being, and collective self-esteem. The first one is particularly relevant in external self-determination claims beyond the colonial context, as these aim for the alteration of the State’s territory and composition of the State’s population. Such interference with the ‘body’ of the state is widely seen as violating the precept of territorial integrity and political unity of the state. In accordance with Wendt’s framework, I have found that states are generally inclined to protect the unity of their corporate identity, which clashes with granting external self-determination. Furthermore, while acknowledging that the national interest of autonomy primarily refers to the State’s maintenance of freedom in regard to the non-interference into domestic affairs, I have argued that it also affects a State’s stance towards collective self-determination, considering the aspect that sub-state self-determination units contest the State’s governmental authority and thus can be conceived as an ‘internal Other’. Hence, assuming that it is in the national interests to protect autonomy, states also object to claims of internal self-determination, particularly in order to mitigate the risk of such movements to become external and set a precedent for state fragmentation. However, past examples have shown that the retraction and revocation of autonomy in fact has the opposite effect and even fosters the emergence of self-determination movements. Additionally, I have discussed the national interest of economic well-being, which points to the importance of the political economy of self-determination. Facing a loss of resource-rich territories due to the independence of an internal self-determination unit, it is in the interest of states to object to such exercise of self-determination in order to avoid adverse effects on the the mode of production, and, even more importantly, the resource-base of the State. On the other hand, states might be incentivised to comply with international law in the light of economic sanctions. In this regard, I have also asserted that economic interests of third parties can affect the dynamics and outcomes of self-determination disputes. Eventually, I have discussed the importance of maintaining a positive self-esteem. The evaluation of this particular national interest relies on the assumption that the intrinsic human desire ‘to feel good about oneself’ is applicable to corporate actors. According to Wendt, the contemporary quality of anarchy in international politics can be seen as Lockean with occasional Kantian behaviour (cf. Wendt 2010, 314), i.e. as generally characterised by cooperation and mutual recognition. Consequently, states usually adhere to a social understanding of righteous behaviour. Hence, I have concluded that the interest of maintaining a positive self-esteem constitutes a counterweight
to the pursuit of other interests, which collide with adhering to the Right to Self-Determination. This is because in the contemporary International System, states are inclined to present themselves as orderly and law-abiding in order to avert isolation.

As states do not only act individually, but also as a "society of states" (Wendt 2010, 242), I have subsequently turned to the collective interests and their relationship to the Right to Self-Determination. Due to identification, which is a process of incorporating the interests of the Other into the Self, altruistic and solidary behaviour can emerge. Therefore, collective interests are the ones which benefit the community of states. I have identified four such objectives in regard to the Right to Self-Determination, namely the achievement of international peace, the maintenance of international stability, widespread compliance, and the establishment of a consistent state practice. As the greater number of self-determination disputes remain domestic issues, they generally correspond with the pursuit of these collective interests. Due to the international legal neutrality towards secession, the consensual exercise of external self-determination is in principle equally reconcilable with the aforementioned collective interests. However, if a self-determination dispute turns violent, if it is accompanied by grave human rights violations, or culminates in a unilateral separation from the parent state, the collective interest of compliance with international law, and the Right to Self-Determination in particular, clashes with the maintaining international peace and security. Therefore, the various bodies international community also make use of the legal ambiguities of the Right to Self-Determination in order to balance the collective interests.

After having explained the relationship of the Right to Self-Determination with national and collective interests, I have demonstrated how the conceptual controversies can be (and are) exploited by agents in international politics in order to pursue the latter. Drawing on Bull’s framework of International Order, I have asserted that international rules are rarely totally disobeyed. I have then concluded that this leaves two options for responding to self-determination claims. On the one hand, corporate actors can fully adhere to the law, i.e. they enable the self-determination unit to exercise their right either internally or externally (for example, I have discussed independence referenda in this regard). Ultimately, a peaceful solution in accordance with international law is also in the interest of states as a collective. On the other hand, if the pursuit national or collective interests collides with compliance, there are two strategies which I have subsumed under the category of ‘relative non-compliance’. Firstly, corporate actors can avoid giving in to external self-determination demands by pointing to other international precepts, such as territorial integrity or the unlawful use of force, which have to be followed. Secondly, in order emphasise a general willingness to abide by the Right to Self-Determination (if only ostensibly), corporate actors can also argue that no violation has taken place in a specific context by exploiting its conceptual uncertainties. All of these argumentations are based on the premise that self-determination can only be exercised in the form of independence from a
sovereign state in the case of colonial liberation. Hence, these lines of reasoning are intertwined in a way, but they focus on different entry points for contention, namely the rights holders, the historical context, or the implementation of the Right to Self-Determination.

In regard to the rights holders, the international community usually adopts a rather inconclusive approach of either acknowledging that a people’ according to international law, but cautiously circumvents any implications that such status entails the entitlement to self-determination which exceeds self-government within the framework of an existing state, or it evades the definition of a self-determination unit as ‘a people’ altogether. In contrast, states have adopted the approach of defining only the people of the nation-state in its entirety to be entitled to exercise self-determination collectively in order to prevent their breakup. A second strand of argumentation exploits the uncertainty about whether external self-determination is restricted to the process of decolonisation. Various indications in the preparatory works for the respective legislative texts and comments by states suggest that it is indeed the preferred reading for the international community and the affected parent states that self-determination is to be exercised internally beyond the colonial context. The underlying assumption here is that the objective of ‘righting the wrongs’ of colonial injustice is fulfilled in the moment of independence of the entity. In a similar vein, corporate actors can argue that they do not deny the unit in question to exercise the Right to Self-Determination, but ‘merely’ dispute the issue of implementation in order to prevent a precedent and avoid the fragmentation of the State.

To sum up, the Right to Self-Determination has been enshrined into international law in order to secure the free choice of peoples to decide over their own course of political, economic, and cultural development. However, in order to pursue collective and national interests that collide with compliance, states make use of the Right’s indeterminacy. Therefore, I end this thesis with some concluding remarks on the option of filling these loopholes.

5.2 Outlook: Is Specification a Solution?

Eventually, the question arises whether and how the dilemma of conflicting interests can be mitigated in order to prevent cases of relative non-compliance. While some scholars contend that the formulation of the Right to Self-Determination is inconclusive, because

“[s]elf-determination belongs to an area where states’ interests and views are so conflicting that states are unable to agree upon definite and specific standards of behaviour and must therefore be content with the loose formulation of very general guidelines and principles” (Zyberi 2009, 450),

thus rendering it as a contingent outcome caused by the sheer variety of incompatible interests and perceptions, others have argued that the respective legal texts are deliberately ambiguous (e.g. Fisch 2010, 40; Hilpold 2012, 49; Quane 1998, 452). The latter can be true for several reasons.
Firstly, this could be the case in order to “enable the Charter to adapt to changing conditions” (Quane 1998, 452). Secondly, there is obviously no international consensus on how to deal with the alleged contradiction with other universal principles. Therefore, it can be inferred that the phrasing was necessarily kept ambiguous in order to obtain and maintain support for the Right to Self-Determination. Thirdly, a certain degree of generalisation is mandatory to make a principle qualify as a human right, which is universal and peremptory by definition.

However, acknowledging that the Right to Self-Determination is ambiguous by choice does not necessarily mean that there is room for improvement. In fact, any change in the legal foundations faces serious complications. For example, the Right to Self-Determination, as laid out in Article 1 of the International Covenants, is legally binding for any state that has signed and ratified the treaties. As of 2017, 169 have ratified the former and 165 states have ratified the latter (OHCHR 2017). In order to be effective, any specification of the Right to Self-Determination would need to have the same juridical status. However, a widespread ratification that specifies the Right to Self-Determination in any of the ways mentioned below is unlikely to be achieved due to lack of consent in the international community.

On the highest level of abstraction, there are three general possibilities of making the current legal situation of the Right to Self-Determination more precise, namely explicit affirmation, qualification and revocation. By affirming the Right to Self-Determination, the universality of the right would be confirmed by any self-defined people, colonial or not (Fisch 2010, 41). Furthermore, it would be left to the ‘people’ invoking the Right to Self-Determination whether they want to exercise it internally or by seceding from a pre-existing state. However, the analysis in this thesis, corroborated by numerous instances of self-determination disputes, suggests that the scenario of an explicit and unconditional affirmation of the Right to Self-Determination is highly unlikely.

Secondly, self-determination could be addressed as a domestic issue. This would entail that the Right to Self-Determination is generally to expressed internally, except under extraordinary circumstances. This approach has been discussed in the literature the ‘remedial secession’ approach. If the Right to Self-Determination were to be specified as allowing secession as the last resort, the international community would then need to agree on the requirements to be met in order to exercise the external dimension of self-determination. Assumedly, the threshold that a self-determination unit needs to need in order to invoke the right to remedial secession would need to be set extraordinarily high, so that this entitlement remains reserved for the worst cases. However, as Buchheit (1978, 213) has pointed out, this paints a “rather demonic picture of international opinion demanding sanguinary evidence of a people’s suffering – greater than endured by the Biafrans, but perhaps less than that inflicted upon the East Pakistanis – before a claim to separation from their tormentors will be considered legitimate”.

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In this sense, explicitly allowing secession as the last resort bears the risk of violent escalation of self-determination disputes. In order to encourage foreign intervention and prove the exigency of the conflict, groups might engage in “suicidal rebellions” (Ker-Lindsay 2013, 848) against the government. Likewise, state authorities might be inclined to covertly nip any self-determination movements in the bud in order to prevent the criteria for remedial secession from emerging (cf. Hilpold 2012, 54).

A third way to settle the issue of ambiguity of the Right to Self-Determination would be to revoke the respective statutes altogether (cf. Fisch 2010, 41). This scenario is virtually inconceivable as well, as there is no precedent for eliminating legislation of human rights status in the history of modern international law. In addition, it would immensely weaken the moral impact of peremptory norms and universal rights, if they proved to be revocable.

In conclusion, the slightly fatalistic résumé of this thesis thus is that the risk of evading and misappropriating the Right to Self-Determination is here to stay in international politics. Therefore, it is necessary to understand international law, and the Right to Self-Determination in particular, in its functioning within international politics. With virtually no prospect on elimination of its central ambiguities, the certainty emerges that the Right to Self-Determination will maintain its versatile nature. Eventually, it continues to be what it has always been: a political ideal, a weapon, a promise, a trap, a trigger, a sweet remedy, a spectre –but first and foremost– a matter of contention.
6 References


References


References


7 Appendix

7.1 Abstract (English)

Although collective self-determination is a relatively young concept, it has quickly developed great moral power and has caused much commotion in international politics ever since. In fact, disputes over self-determination are the most common reason for contemporary armed conflicts nowadays. Originally entrenched in international law as the legal foundation for the process of decolonisation, the Right of peoples to Self-Determination has become a widely contested issue. One the one hand, this is due to its conflictual relationship with other international norms of peremptory character, such as territorial integrity. On the other hand, central controversies regarding the holders of the right, the application in non- and post-colonial contexts, and the specific implementation of the Right to Self-Determination remain unresolved. Therefore, this thesis is not only motivated by the complexity of collective self-determination, which touches upon core concepts of international politics and political philosophy, such as statehood, nationhood, and the legitimacy of political rule. In addition, recent incidents of separatism, such as in Mali or the Eastern Ukraine, have shown that self-determination also remains a topic of current interest.

To date, the Right to Self-Determination has usually been scrutinised from the perspective of the Legal Studies. Only very few contributions have placed the Right to Self-Determination in international politics, and even less so from a Constructivist point of view. This Master’s thesis therefore intends to address this research gap. The objective is to examine how identities and interests of corporate actors affect the realisation of the Right to Self-Determination. In so doing, I embed the central dilemmas arising from the codification of self-determination within International Relations theory. In order to show how identities are formed and interests are balanced with the Right to Self-Determination, I draw on Alexander Wendt’s framework in ‘Social Theory of International Politics’. Thus, this thesis is a theoretical contribution at the intersection of international politics, international law, and political theory.

By applying a Constructivist perspective, I argue that the compliance with international law harmonises with the pursuit of some interests, while it collides with the pursuit of others. As there are hardly any cases of absolute ignorance towards international law in contemporary international politics, corporate actors need to justify their behaviour when they disregard the Right to Self-Determination. This is done by either prioritising other international precepts, such as territorial integrity, over self-determination, or by denying that any violation is taking place after all. I refer to this phenomenon as ‘relative non-compliance’. In order to circumvent concessions to groups invoking self-determination, corporate actors exploit the definitional ambiguities of the Right to Self-Determination concerning the rights holders, the specific implementation, and its alleged restriction to the colonial context.
7.2 Abstract (German)


8 Curriculum Vitae

Education

2014 – 2017 Master of Arts in Political Science, University of Vienna
2011 – 2014 Bachelor of Arts in International Development, University of Vienna
2008 – 2014 Sound Engineering Studies, University of Music and Performing Arts Vienna
2007 High-School Diploma, Georg-Friedrich-Händel-Gymnasium, Berlin
2004 Student Exchange, Lycée Collège Voltaire, Paris

Research Experience

2015 Internship, Austrian Institute for International Affairs (oiip), Vienna
2012 Internship, Paulo Freire Zentrum, Vienna

Teaching Assistantships

2015 Lecture course BAK8 LK “Internationale Politik” with J. Pospisil
2013 – 2014 Seminar course TEF A „Transdisziplinäre Entwicklungsforschung“ with J. Jäger
2008 Volunteer at the Primary School of the Child Care Foundation, Accra, Ghana

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