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## RECENT DEVELOPMENTS: SELF-DETERMINATION IN THE CASE OF CHECHNYA

*Luke P. Bellocchi\**

The recent crisis in Chechnya has brought criticism of world leaders around the world, for acquiescing to the violent suppression of an attempt by a self-declared state to secede from Russia. This incident marks yet another case of inconsistent application by the international community of the generally recognized principles of self-determination and statehood in international law. Since the decolonization era, the United Nations and its members have struggled over the precise meaning of self-determination. Recently, there have been a slew of new nations emerging from the crumbling of the Soviet Union and Yugoslavia, of which Chechnya claims to be one. This paper reviews the traditional and newly forming standards by which a people may form a sovereign state and be recognized as such by the international community. It then tests Chechnya's claim against those standards, finding, ultimately that the claim is valid.

Traditionally, the term "self-determination" was used in the context of decolonization.<sup>1</sup> It was first used by President W. Wilson and although it never found its way into the League of Nations Covenant, it did become part of the United Nations Charter (Art. 1 and 55).<sup>2</sup> There is indication that "peoples" as referred to in those UN Charter articles, became a term which included more than the decolonized populations.<sup>3</sup> This concept was reaffirmed

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<sup>1</sup> MORTON H. HALPERIN, et. al, SELF-DETERMINATION IN THE NEW WORLD ORDER 16 (1992). See GA Res. 2625 (XXV) GAOR, 25th Sess., Supp. 28, at 121.

<sup>2</sup> Frederic L. Kirgis, Jr., *The Degrees of Self-Determination in the United Nations Era*, 88 AM. J. INT'L L. 304 (1994). Pomerance, *United States and Self-Determination: Perspectives on the Wilsonian Conception*, 70 AM. J. INT'L L. 1 (1970).

<sup>3</sup> Kirgis, *supra* note 2, (citing A. RIGO SUREDA, THE EVOLUTION OF THE RIGHT TO SELF-DETERMINATION: A STUDY OF UNITED NATIONS

in the UN Declaration of Principles of International Law Concerning Friendly Relations<sup>4</sup> and in the International Covenants on Civil and Political Rights, as well as the International Covenant on Economic, Social and Cultural Rights.<sup>5</sup> These peoples, once identified, have been regarded by many scholars as having the right to determining their own political and cultural identity as a matter of customary international law.<sup>6</sup>

The questions then become, when, where, and how, in a non-colonial context, can a peoples, utilizing their inherent and UN Chartered right to self-determination, secede into an independent nation-state? First, it must be noted that some scholars reject the idea of self-determination as a right on the grounds that a state not yet legally existing cannot have legal rights.<sup>7</sup> But others, have argued a different understanding of this area of law. For instance, Henkin has announced his understanding that the concept of sovereignty should not even survive in the near future, much less maintain it as a deterrent against self-determination.<sup>8</sup> Moreover, scholars, such as Binder and Franck, argue that there are factors in international law which indicate that peoples exist and are entitled to the right of self-determination, thereby investing those rights through international legal criteria.<sup>9</sup>

Various formulations and factors have been suggested to define peoples and their right to statehood through self-determination, but it should be noted that there is still dispute over whether a people have the automatic

PRACTICE 29-34 (1973)).

<sup>4</sup> GA Res. 2625, UN GAOR, 25th Sess., Supp. No. 28, at 121, UN Doc. A/8028 (1970), 9 I.L.M. 1292 (1970).

<sup>5</sup> GA Res. 2200, 21 GAOR, Supp. 16, UN Doc. A/6316 at 490, 6 I.L.M. 360 (1967). GA Res. 2200, 21 GAOR, Supp. 16, UN Doc. A/6316 at 52, 6 I.L.M. 368 (1967).

<sup>6</sup> CLIVE PARRY, et al., ENCLYCLOPAEDIC DICTIONARY OF INTERNATIONAL LAW 361 (1988), (citing IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 595 (3rd ed. 1988)).

<sup>7</sup> LOUIS HENKIN, et. al., INTERNATIONAL LAW 303, 3d. ed. (1993) (citing Fitzmaurice, *The Future of Public International Law*, in LIVRE DU CENTENAIRE, ANN. INST. DE DROIT INT'L 1973, at 233, n. 85).

<sup>8</sup> Louis Henkin, *The Mythology of Sovereignty*, in STATE SOVEREIGNTY: 'THE CHALLENGE OF A CHANGING WORLD 17 (Alaine Hughes, et. al. eds. 1992).

<sup>9</sup> Guyora Binder, *The Case for Self Determination*, 29 STAN.J.INT'L L. 223 (1993). LOUIS HENKIN, et. al., INTERNATIONAL LAW 303, 3d. ed. (1993) (citing THOMAS FRANCK, THE POWER OF LEGITIMACY AMONG NATIONS 166 (1990)).

right to secede.<sup>10</sup> The European Community has formed "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union," which calls for (1) respect for the Charter of the United Nations, (2) guarantees for the rights of ethnic and national groups and minorities under the framework of the CSCE Helsinki Final Act, (3) respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement, (4) acceptance of commitments for regional stability and security, (5) commitment to settle by agreement, all questions of State secession; it prohibits the recognition of entities which are the result of aggression.<sup>11</sup> A more traditional approach is to find the existence of a people through a subjective assessment of the ethnic, linguistic, religious or cultural ties of the group claiming the right.<sup>12</sup> The Montevideo Convention on Rights and Duties of States required four elements of statehood: (1) a permanent population; (2) a defined territory; (3) government; and a (4) capacity to enter into relations with other states.<sup>13</sup>

Kirgis, in a more modern approach, argues that the two most important factors are the degree of destabilization in any given claim and the degree to which the responding government represents the people belonging to the territory; these are to be measured on a sliding scale to determine the legitimacy of the claim.<sup>14</sup> Halperin et. al., have suggested an altogether new approach to self-determination, which emphasizes (1) an unbiased attitude (i.e.- not status quo), (2) classification of the claim into one of six different types of claims, (3) an evaluation of the ruling government's conduct, (4) historical factors, (5) the people's choice, (6) an evaluation of the conduct of the self-determination movement, and (7) the potential for violent

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<sup>10</sup> See Dietrich Murswiek, *The Issue of a Right of Succession - Reconsidered*, in MODERN LAW OF SELF-DETERMINATION 21 (Christian Tomuschat, ed. 1993). See Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, GA Res. 2625 (XXV), 24 Oct. 1970.

<sup>11</sup> EC Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union," Extraordinary EPC Ministerial Meeting, Brussels, 16 Dec. 1991, *EC Bulletin* 12-1992, p.119; UN Doc. S/23293 of 17 Dec. 1991, Annex II; 31 I.L.M. 1486 (1992).

<sup>12</sup> MORTON H. HALPERIN, *supra* note 1, at 47.

<sup>13</sup> Montevideo Convention on Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19, art. 1

<sup>14</sup> Kirgis, *supra*, note 2, at 308.

consequences.<sup>15</sup>

Knop has categorized many of these factors into two theories, constitutive and declaratory.<sup>16</sup> Constitutive theory requires that established states recognize the newly formed state before it is legitimate. This involves a subjective ruling by the established states as to whether a peoples have formed a state. Declaratory theory only involves the newly formed state meeting already established international criteria on statehood. Chechnya, of course, would have to find statehood under this second theory, as the UN and states in general have declined to extend diplomatic recognition.<sup>17</sup>

Chechnya must find its claim to sovereignty by fulfilling the objective factors discussed above, including the precedents set by the recognition of all the former Soviet Republics. To understand the claim, one must look at the events that led up to the declaration of independence by Chechnya, the recognition of the Soviet republics by the international community, and the events that have led to Russia's recent aggression.

After the failed Soviet coup in 1991, Russia did not declare independence but rather announced that its laws superseded the Soviet Union's.<sup>18</sup> The United States and the European Community granted diplomatic recognition to Russia on Dec. 25, 1991 and it took up the Soviet Union's seat in the United Nations.<sup>19</sup> President Yeltsin then tried to persuade all of Russia's republics to preserve the federal structure, granting the republics the power over their own foreign and economic affairs, except as to budgetary, defense and currency matters; Chechnya-Ingushetia and Tartarstan rejected that treaty.<sup>20</sup> Chechnya had, in fact, declared independence on Nov. 2, 1991, under

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<sup>15</sup> HALPERIN, *supra* note 1, at 74.

<sup>16</sup> Karen Knop, *The "Righting" of Recognition: Recognition of States in Eastern Europe and the Soviet Union*, in STATE SOVEREIGNTY: THE CHALLENGE OF A CHANGING WORLD 39 (Alaine Hughes, et. al. eds., 1992).

<sup>17</sup> See Boris Sitnikov, *Boutros Ghali: Chechen Crisis is Russia's Internal Affair*, ITAR-TASS news agency, Jan. 19, 1995.

<sup>18</sup> HALPERIN, *supra* note 1, at 153.

<sup>19</sup> *Id.*

<sup>20</sup> Griffin C. Hathaway, *Chronology of Events, January 1992 to October 1993*, in KAREN DAWISHA & BRUCE PARROTT, *RUSSIA AND THE NEW STATES OF EURASIA* 298 (1994). *Id.* Federal Treaty (Treaty on Demarcation of Jurisdictions and Powers between the Federal Organs of State Power of the Russia Federation and the Organs of Power within the Russia Federation), Russica Information Inc., RusData Dialine - RusLegisLine, LEXIS (Mar. 13, 1992).

elected president Dzhokhar Dudayev, and Ingushetia broke off from Chechnya to remain in the Russian Federation in 1992.<sup>21</sup>

With the recognition of the former Soviet republics as independent states, one might ask, why is it so hard to recognize the statehood of a Russian republic, an autonomous region under Russia's federation? The fact that President Yeltsin explicitly asked for the Russian republics to sign a treaty affirming a federal structure, while granting autonomy in foreign affairs, further strengthens the Chechen claim that the republics were recognized as independent or at least had the right to secede. Otherwise why would Moscow be asking for Chechnya's agreement to cede the federal structure? Soon after the failed 1991 coup, M. Gorbachev, the then Soviet leader, attempted to form a decentralized union between the Soviet republics. Although it received some support, that attempt ultimately failed. That attempt at treaty closely tracks the case of President Yeltsin's attempt to preserve the federal structure of Russia. Should not the United States and European Community follow the same criteria in recognizing states of the former Soviet Union? The case is further made by looking at the factors for self-determination discussed above, including the EC guidelines for recognition of state in the former Soviet Union.

There are five factors for diplomatic recognition of a former Soviet republic under the EC Guidelines.<sup>22</sup> First, the new entity must respect the Charter of the United Nations especially with regards to human rights, rule of law and democracy. Chechnya has had democratic elections<sup>23</sup> and in all respects has followed the peaceful principles of the United Nations Charter; is it not Russia, with its egregious aggression that has violated those principles? Second, the Guidelines require respect for the rights of ethnic groups. Chechnya allowed Ingushetia, the only area of any other ethnic significance, to cede from it peacefully. Contrary to that policy, Russia has reacted violently to Chechnya's claim from the beginning, when it first tried to send troops into the area at the end of 1991.<sup>24</sup> Third, the Guidelines require respect for the inviolability of all frontiers which can only be changed by peaceful means and common agreement. This requirement may seem

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<sup>21</sup> KAREN DAWISHA & BRUCE PARROTT, *RUSSIA AND THE NEW STATES OF EURASIA* 67 (1994). Tom Post, et. al., *Yeltsin's Iron Fist*, NEWSWEEK, Jan. 9, 1995, at.47. HALPERIN, *supra* note 1, at 153, at 154.

<sup>22</sup> *EC Bulletin*, *supra*, note 14.

<sup>23</sup> Timothy J. Colton, *Politics*, AFTER THE SOVIET UNION 32, (Timothy J. Colton & Robert Legvold, eds. 1992)

<sup>24</sup> DAWISHA, *supra* note 21, at 68.

somewhat contradictory, but the element referring to peaceful means has, again, only been violated by Russia. The fourth requirement refers to commitments on disarmament and regional security and stability. Chechnya has no weapons of mass destruction to speak of but as far as regional stability and security, Chechnya was not an aggressor in any way, but merely put up a defense of its proclaimed capital, Grozny. Finally, the Guidelines require the newly formed states, including Russia, to settle by agreement and arbitration, all questions concerning State secession. Russia has not submitted to arbitration to settle this secession dispute but instead has submitted to using force of arms. If anything, Russia has violated all the requirements of the guidelines, and Chechnya, none. If the European Community were deciding on whether to extend recognition to Russia now, would they, in light of the recent aggression in Chechnya?

Even under a more traditional approach to self-determination, the case of Chechnya passes muster. A look at the ethnic, linguistic, religious and cultural ties of the Chechens indicates that they are a separate and distinct group of people. According to the Great Soviet Encyclopedia, a publication that no doubt was regulated by the Soviet authorities, the ancestors of the "Chechen peoples" inhabited the mountains of the Chechen region since around the first half of the first millennium B.C., and became part of the early feudal state Alania.<sup>25</sup> Islam came into the region from Dagestan in the late 16th century and by the 19th century was the dominant religion. Around the early part of the 18th century, the Nakcho ethnic group became known as Chechens after the mountain village of Chechen.<sup>26</sup> Their language has been formed from the Nakh group of languages that come from that mountain region.<sup>27</sup> The Soviets have claimed that the first Russian ties with the region came about during the Persian Campaign of Peter I in 1722, but due to tsarist colonial policy, Chechens under the imams Gazi-Magomed, Gamzat-Bek, and Shamil (Caucasian War 1817-64) resisted fiercely.<sup>28</sup> By 1859, the resisting Chechens had capitulated overtly, but it is apparent that they did not delight

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<sup>25</sup> V.B. Vinogradov & N.P. Gritsenko, *Chechen-Ingush Autonomous Soviet Socialist Republic*, GREAT SOVIET ENCYCLOPEDIA 79, v. 29, translated and republished by Macmillan, Inc. (1982).

<sup>26</sup> *Id.*

<sup>27</sup> THE NEW ENCYCLOPÆDIA BRITANNICA 145, v.3, 15th ed. (1993).

<sup>28</sup> V.B. Vinogradov, *supra* note 24. *Id.* The constant fighting between Russians and Chechens during this time became the setting of Leo Tolstoy's THE COSSACKS.

in subjugation.<sup>29</sup> After World War II the Chechens were accused of siding with the Germans and were exiled to central Asia until Nikita Khrushchev reestablished them as the autonomous oblast of Chechen-Ingush in 1957.<sup>30</sup> The population of the Chechen-Ingush ASSR in 1989 was 1,338,023 and apparently has the means to be self-sufficient through their vast petroleum resources and diversified agriculture.<sup>31</sup> The long history and distinct culture of the Chechens, along with the distinctness and autonomy that the Russians have treated them, surely indicates the distinctness of the people, and their right to self-determination, under this subjective test.

A more objective test of statehood is the Montevideo Convention on Rights and Duties of States, which requires a permanent population, a defined territory, government and capacity to enter into relations with other states.<sup>32</sup> As mentioned above, the Chechen government, under the presidency of Dzokhar Dudayev, has claimed the territory of the "former" Russian republic of Chechen-Ingushetia minus the territory that the Ingush people have ceded from it. It contains a population of roughly 750,000 people, mainly of Chechen decent. Any government, sensibly, has the capacity to enter into relations with other states. For instance, Azerbaijan recognized Chechnya's right to form foreign relations by initiating an alliance with Chechnya.<sup>33</sup> As such, Chechnya's status as a people and as a state can be exhibited not only under these older approaches, but also, it can be likewise demonstrated under the newer approaches as put forth by Kirgis and Halperin.

Kirgis argues that the most important factors in self-determination are the degree of destabilization and the degree to which a responding government represents the people belonging to the disputed territory.<sup>34</sup> While the dispute has become destabilizing, it did not need to be, if the Russians had decided not to use force in the matter. The very fact that the Russians decided to enter the republic with militaristic intent, illustrates the degree to which the Russians were unrepresentative. Furthermore, the Chechen government not only refused to sign the federal treaty with Russia at the time Russia itself claimed to be a newly formed state, but instead ceded. The Chechen people were not

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<sup>29</sup> THE NEW ENCYCLOPÆDIA BRITANNICA, *supra* note 27.

<sup>30</sup> *Id.*

<sup>31</sup> DAWISHA, *supra* note 20, at 335, Appendix C - Soviet Census Data, Union Republic and ASSR, 1989. *Id.* Vinogradov, *supra* note 25.

<sup>32</sup> See Montevideo Convention on Rights and Duties of States, *supra* note 11.

<sup>33</sup> DAWISHA, *supra* note 21, at 224.

<sup>34</sup> Kirgis, *supra* note 2, at 308.



represented in the Russian legislature since their secession. The forced removal of the Chechen people after World War II, as mentioned above, further demonstrates the unrepresentativeness of the Russian dominated Soviet Union. These two factors are difficult to reconcile since the very nature of a secession claim means the people no longer want to be represented in another government. Yet the claim can embroil destabilizing forces in the dominant government which can seek to belittle the claim under this standard by destabilizing the situation. The final set of standards, suggested by Halperin, incorporates these two factors into another newly formulated legal theory on self-determination.

Halperin discusses eight factors to be considered when evaluating a self-determination claim: (1) an unbiased attitude (i.e.- not status quo), (2) classification of the claim into one of six different types of claims, (3) an evaluation of the ruling government's conduct, (4) historical factors, (5) the people's choice, (6) an evaluation of the conduct of the self-determination movement, and (7) the potential for violent consequences.<sup>35</sup> First, the major powers of the world did not look at this conflict in an unbiased manner, but instead worried about the destabilizing effect they thought would result from a Chechen secession. As it turns out, there really was no other threatening secession movements, especially in light of the fact that all the other Russian republics, save one, signed the federal treaty on preserving the union. Second, Halperin classifies movements into six different types, of which the Chechen crisis can only fall into the *Sub-state self-determination* category. This category, it is claimed should be, "considered in light of the historic, ethnic, religious, or economic dimensions of the group's dispute with the ruling government ...." Those issues were evaluated above in the discussion on the traditional approach to self-determination. Third, the ruling government's conduct, of course, has been violent aggression against the Chechen people. Fourth, historical factors were again discussed above in the section on the traditional approach to self-determination. Fifth, the Chechen people have apparently spoken on the issue through the election of a secessionist government under Dzokhar Dudayev, and through the wave of volunteers willing to give and have given their lives to defend their homeland. Sixth, although there have been reprehensible incidents on both sides of the conflict, Chechnya has not been the aggressor and has not "invaded" any other territory. It has, in contrast, allowed Ingushetia to secede peacefully. Finally, violence

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<sup>35</sup> HALPERIN, *supra* note 1, at 47.

has already begun, but this fact should not be dispositive, lest a ruling government can defeat any legal claim to secession through the threat of violence.

International law scholars have struggled to define the right of self-determination in the post-colonial era, and consequently have produced a diffuse array of factors and requirements to define that right. Yet the Chechens and the state of Chechnya have passed all these requirements and the international community still refuses to recognize its independent status. Why have the members of the United Nations acted so ambivalently towards the former republics of Russia and the Soviet Union? One might speculate that countries feared even further instability from further disintegration; but looking at the situation as Chechnya merely being one of the states that formed after the collapse of the Soviet Union, would its secession be that destabilizing and unjustifiable? The United Nations should clearly define the criteria for people to invoke the right to self-determination in the near future. If they do not, the United Nations risks losing credibility as an organization that unbiasedly admits members on the basis of legal merit rather than politics. If the case of Chechnya is international law, is it international justice? The famous Russian icon, Count Leo Tolstoy, himself, realized after he had taken part on a long ago Russian assault on Grozny in 1852, that the situation was unjust.<sup>36</sup> It is strange that one hundred and forty years later, the international community has not.

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<sup>36</sup> Peter Crane, *What Would Tolstoy Say?*, WASH. POST, Jan. 15, 1995, at C7.

