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CURRENT DEVELOPMENT: AFGHANISTAN RECOGNIZES CHECHNYA

THOMAS D. GRANT*

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INTRODUCTION

On Sunday, January 16, 2000, the Taliban government of Afghanistan recognized the secessionist government of Chechnya and, moreover, recognized Chechnya as an independent State. Through its foreign minister, Wakil Ahmad Mutawakel, the Afghan government stated, "the Islamic Emirate of Afghanistan has decided to accord immediate recognition to the government of an independent Chechnya."¹ This statement of recognition was followed a week later by an announcement that the Chechen government was opening an em-

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1. See *Afghanistan's Taliban Recognizes Rebel Rule in Chechnya*, AGENCY FR.-PRESSE, Jan. 16, 2000, available in 2000 WL 2713862; *Chechnya-Afghanistan: Chechen President Lauds Taliban Decision on Recognition*, EFE NEWS SERV., Jan. 17, 2000, available in WESTLAW WIREPLUS File.

bassy in Kabul, the capital of Afghanistan.²

Chechnya is a territorial unit on the north side of the Caucasus mountain range that covers an area about the size of Connecticut.³ The population was estimated in early 1996 at around one million.⁴ Notwithstanding, Chechnya is said to possess strategic importance greater than its size.⁵ Chechnya commands the route of pipelines from oil-rich Azerbaijan to Russia and it has oil and natural gas resources of its own.⁶ Moreover, Chechnya lies along post-Soviet Russia's southern flank—a particularly sensitive area, because of its predominantly Muslim population, its proximity to the Islamic Republic of Iran, and Russia's great concern, whether well-founded or not, that the Muslim regions of the Russian Federation might look to political changes in Chechnya as a model for themselves.⁷ Chechnya

2. A semi-official Chechen web site reported that the Chechen embassy in Kabul opened on January 21, 2000, with former Chechen president Zelimkhan Yandarbiyev on hand for the occasion. See *Segodnya v. Kabule Otfrylos' Posol'stvo ChRI An Embassy of the Chechen Republic of Ichkeriya Opened Today in Kabul* (visited Mar. 4, 2000) <http://www.kavkaz.org/news/2000/01/news21_01.htm> (Russian language text). The western media reported the embassy opening on January 23, 2000. See, e.g., *Chechen Embassy Opens in Kabul*, AGENCE FR.-PRESSE, Jan. 23, 2000, available in 2000 WL 2718503; *Chechen Rebels Open Afghan Embassy*, ASSOCIATED PRESS, Jan. 23, 2000, available in 2000 WL 9750060; *Chechen Rebels Open Embassy in Afghan Capital*, DOW JONES INT'L NEWS, Jan. 23, 2000, available in WESTLAW ALLNEWSPLUS File.

3. See THE TIMES ATLAS OF THE WORLD xiii (1994) (providing entries for Caucasus and northeast United States).

4. See THE TERRITORIES OF THE RUSSIAN FEDERATION 50 (Europa Publications Ltd., 1999) [hereinafter TERRITORIES] (estimating the population of Chechnya in 1996 to be 921, 000 individuals).

5. One writer familiar with the Caucasus and Central Asia notes, for example, that “[f]or the U.S., the stakes are prestige, its bilateral relations with Turkey, and the future of NATO.” Michael A. Reynolds, *Central Asia is No Game*, WALL ST. J. EUR., Jan. 25, 2000, at 14.

6. See CARLOTTA GALL & THOMAS DE WAAL, CHECHNYA: A CALAMITY IN THE CAUCASUS 127-28 (1998).

7. See KAREN DAWISHA & BRUCE PARROTT, RUSSIA AND THE NEW STATES OF EURASIA: THE POLITICS OF UPHEAVAL 99-101 (1994) (describing “Islamophobia” and fears of separatism in Russia). Of Russia's 147 million citizens, twenty-seven million belong to non-Russian ethnic groups, and many of these are Muslim. See *id.* at 67. Tatarstan and Bashkortostan, two autonomous republics in the Russian Federation, are perhaps the most prominent examples of territorial units with significant Muslim populations; their secession would seriously damage Russia's

has claimed independence from Russia since autumn 1991. It has defended this claim twice successfully—once in 1991 against a desultory and small-scale Russian police action and again from 1994 to 1996 against a large-scale Russian invasion. In September 1999, Russia again invaded Chechnya. By late January 2000, Russian forces established positions in the northern part of the country and some parts of the capital city, Grozny, but Chechen resistance fighters remained in control of many areas, leaving few Russian positions secure. Currently, Russia only recognizes Chechnya as one of the eighty-nine constituent units of the Russian Federation⁸ and not as an independent State. In addition, until Afghanistan recently recognized Chechnya as an independent State, no other country had done so. In fact, most States and key international organizations made it clear that they recognized that Chechnya belonged to the Russian Federation and that they respected the territorial integrity of Russia.

The legal stance taken by the United States, the United Kingdom, and France vis-à-vis the Russian Federation were indicative of those taken by most states and international organizations. The United States stated: “we support the sovereignty and territorial integrity of the Russian Federation.”⁹ The United Kingdom stated: “the exercise of the right [of self-determination] must also take into account . . . respect for the principle [of] territorial integrity of the unitary state.”¹⁰ According to France, Chechnya belongs to the Russian Federation and respect for the basic principle of sovereignty and territorial integrity is one of the fundamental rules of international existence.¹¹ UN

economic and territorial cohesion. See TERRITORIES, *supra* note 4, at 43–46, 98–100.

8. See Philip Hanson & Michael J. Bradshaw, *The Territories and the Federation: An Economic Perspective*, in THE TERRITORIES OF THE RUSSIAN FEDERATION 3, 3–14 (Europa Publications Ltd., 1999) (providing an overview of the structure of the Russian Federation).

9. Strobe Talbott, *Supporting Democracy and Economic Reform in the New Independent States*, 6 U.S. DEP’T OF STATE DISPATCH 119, 120 (1995).

10. 563 PARL. DEB., H.L. (5th Ser.) 476, *quoted in* BRIT. Y.B. INT’L L. 621 (1995) (noting also that no country has yet recognized Chechnya).

11. See *Pratique Française du Droit International*, 41 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 911 (1995) (translation in text by author) (quoting statement of the French foreign minister on Jan. 9, 1995) (“La Tchétchénie fait partie de la Fédération de Russie. Le respect du principe de souveraineté et d’intégrité territoriale est une des règles de base de la vie internationale”).

officials, such as the High Commissioner for Refugees, discussed Chechnya in language that made it clear that Chechnya is part of the Russian Federation.¹² The Council of Europe Congress of Local and Regional Authorities, in proffering its good offices to assist in reaching a settlement in the North Caucasus, emphasized “respect both of the sovereignty and territorial integrity of the Federation of Russia and the legitimate aspirations of the Chechen population.”¹³ The Council of Europe Parliamentary Assembly, in a resolution expressing concern over the conduct of Russian forces in Chechnya, stated “Russia has the right to preserve its territorial integrity and to protect its citizens from the threat of terrorism.”¹⁴ Very recently, the Republic of Georgia (“Georgia”), the former Soviet State immediately to the south of Chechnya and the territory on which Chechen resistance fighters allegedly took refuge, interpreted Afghanistan’s recognition of Chechnya as no more than its recognition of Chechnya as a territory of the Russian Federation. In fact, a deputy foreign minister of Georgia stated on January 17, 2000 that Georgia “has ruled out the possibility” of recognizing Chechnya as an independent State.¹⁵

Recognition of Chechnya as an independent State by Afghanistan, therefore, stands out against current practice. The remainder of this article will discuss various aspects of Afghanistan’s recognition of Chechnya and its possible implications.

I. INTERNATIONAL LEGAL STATUS OF THE TALIBAN GOVERNMENT

States, notwithstanding the substantial role of non-State actors,

12. See, e.g., U.N. Doc. GA/SHC/3558 (1999) (stating that Sadako Ogata, U.N. High Commissioner for Refugees, took note on Nov. 12, 1999 of the “serious humanitarian situation in the southern border of the Russian Federation”).

13. Council of Europe, *The CLRAE Reaffirms its Availability in the Search for a Political Solution in Chechnya*, Jan. 14, 2000 (visited Mar. 4, 2000) <<http://www.coe.fr/cp/2000/23a%282000%29.htm>>.

14. Council of Europe, *Parliamentary Assembly Declaration on Chechnya*, Paris, Dec. 13, 1999 (visited Mar. 4, 2000) <<http://www.coe.fr/cp/99/720a%2899%29.htm>>.

15. See *Georgia Rules out Recognizing Chechnya’s Independence*, WORLD NEWS CONNECTION, Jan. 17, 2000, available in 2000 WL 10329848 (attributing statement to Georgian Deputy Foreign Minister Georgy Burauli).

continue to hold a leading position in international law.¹⁶ One distinguished publicist writes, “the fact remains that since 1945 the existence of States has provided the basis of the legal order.”¹⁷ Accordingly, recognition of a claim by a non-State actor has less impact than recognition by a State. Recent practice has encouraged some international law scholars to reiterate an old thesis—namely, that existing States decide what entities constitute States.¹⁸ Setting aside the validity of the thesis that States play a constitutive gatekeeper role in international society,¹⁹ scholars, when referring to recognition of a claim to statehood, have seldom meant recognition by any entity other than a State.²⁰ It is of threshold importance, then, in assessing the impact of the recognition of Chechnya by the Taliban govern-

16. See Thomas D. Grant, *Defining Statehood: The Montevideo Convention and its Discontents*, 37 COLUM. J. TRANSNAT'L L. 403, 404-07 (1999) (describing the range of non-State actors present in the contemporary international system).

17. Ian Brownlie, *Rebirth of Statehood*, in ASPECTS OF STATEHOOD AND INSTITUTIONALISM IN CONTEMPORARY EUROPE 5, 5 (Malcolm D. Evans ed., 1997).

18. See Christian Hillgruber, *The Admission of New States to the International Community*, 9 EUR. J. INT'L L. 491, 493 (1998). Hillgruber posits that recognition is a signal that the international community believes that a putative State is likely to abide by the principles that the community wishes to promote as international law. See *id.* Furthermore, he argues that before recognition, a State lacks international legal personality. See *id.*

19. I discuss elsewhere the long-running debate between so-called “constitutivists” and “declarativists.” The constitutive view was that recognition alone creates States. The declarist view held that recognition merely marked the fact that the claimant had already met certain requirements—*i.e.*, that the entity claiming statehood was already a State. See generally THOMAS D. GRANT, THE RECOGNITION OF STATES: LAW AND PRACTICE IN DEBATE AND EVOLUTION 1-45 (1999).

20. The salient exception—but possibly one that proves the rule—is that of admission to international organizations, especially admission to the United Nations (“UN”). John Dugard argued in 1987 that admission to the UN was tantamount to recognition and marked the formation of a system of collective recognition—recognition of States binding on all States but conducted by a super-national authority. See generally JOHN DUGARD, RECOGNITION AND THE UNITED NATIONS (1987). The UN, however, itself is constituted of States and the decisions whether or not to admit new members is controlled by the member States of the UN. To speak, then, of the UN as recognizing States may be only partially correct. Moreover, individual UN member States continue to assert that the discretion whether or not to recognize an entity as a State is a matter of “sovereign” discretion. Insofar as States admit that recognition must be controlled by a collective process, the exact measure and form of that collective process remains unclear. See GRANT, *supra* note 19, at 188-93, 214-18.

ment, to assess the nature of the actor granting that recognition.

A government is not a State.²¹ A State is an international legal person,²² formally co-equal with other States under international law.²³ A government is an agent with authority to represent a State in international law.²⁴ As such, undertakings of a government have binding effect upon a State and generally one government of a State cannot disavow agreements or liabilities incurred by a predecessor government of the same State.²⁵

Recognition of Chechnya by the Taliban takes on its greatest possible significance if actions of the Taliban are legally binding on the State of Afghanistan. If, indeed the Taliban is, as it claims to be, the government of the State of Afghanistan, then its acts are binding on

21. This is reflected in the distinction between recognition of a government and a State. *See* RESTATEMENT (THIRD) FOREIGN RELATIONS LAW OF THE UNITED STATES, sec. 203, cmt. a (1986) [hereinafter RESTATEMENT] (“A state cannot recognize or accept a regime as a government without thereby accepting the statehood of the entity which the regime claims to be governing. A state can, however, treat an entity as a state while denying that a particular regime is a government”).

22. *See* IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 71 (4th ed. 1990) (noting that the criteria of statehood are laid down by the law of nations).

23. *See id.* at 287-91 (“The sovereignty and equality of states represent the basic constitutional doctrine of the law of nations”).

24. *See* STEFAN TALMON, RECOGNITION OF GOVERNMENTS IN INTERNATIONAL LAW vii-viii (1998) (noting that the use of the term “government” by a group indicates only its claim to governmental status and not necessarily its status as such in international law); *id.* at 14-15 (discussing recognition of governments in exile); *id.* at 67 (“The government of a sovereign State, properly so called in international law, is the depository of the State’s sovereignty, exclusively entitled in international law to represent that State in its international relations and to exercise its sovereign rights”).

25. *See* HERBERT W. BRIGGS, THE LAW OF NATIONS: CASES, DOCUMENTS AND NOTES 209-12 (2d ed. 1952) (citing numerous cases arising from the Russian Revolution); *Continuity of States*, 1 HACKWORTH DIGEST, sec. 56, at 387-92 (noting that “all rights and title to property belonging to a State continue to vest in it regardless of changes in its government”); *The Tinoco Claims Arbitration (Great Britain v. Costa Rica)*, 1 R.I.A.A. 369, 381 (1923) (holding that even actions of unrecognized governments are binding upon subsequent governments); *see also* Vienna Convention on the Law of Treaties, May 23, 1969, art. 63, U.N. Doc. A/Conf. 39/27, 8 I.L.M. 679 (1969) (“The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except in so far as the existence of diplomatic and consular relations is indispensable for the application of the treaty”).

the State of Afghanistan. The status of the Taliban, with respect to the State of Afghanistan, is, however, not entirely clear.

There was a time when governments routinely recognized new governments in other States, but modern practice witnessed the fading of that procedure. The change in British practice in 1988 was representative of the trend.²⁶ Today, in most cases, other governments do not formally recognize changes in the government of a State.²⁷ States may sever or downgrade diplomatic relations, as opposed to making an express declaration of non-recognition, in order to protest a new government.²⁸

Recent examples demonstrate a movement away from the express non-recognition of changes in government, as seen in Zaire/Congo at the end of the government of Mobutu Sese Seko.²⁹ Practice toward

26. See BROWNLIE, *supra* note 22, at 105-06 (explaining the decision of the British Government to discontinue its practice of recognizing governments owing to widespread misunderstandings that such recognition represented British approval of the governments and their policies). Other States eschewing recognition of governments have been Australia, Belgium, Canada, France, and Switzerland. See M.J. PETERSON, *RECOGNITION OF GOVERNMENTS: LEGAL DOCTRINE AND STATE PRACTICE 1815-1995*, at 88 (1997) (noting, however, that contenders for power frequently seek explicit statements of recognition from abroad to bolster their legitimacy).

27. Consider the United States' position: "In recent years, U.S. practice has been to de-emphasize and avoid the use of recognition in cases of changes of governments and to concern ourselves with the question of whether we wish to have diplomatic relations with the new governments." *Diplomatic Relations and Recognition, 1975 DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW* sec. 3, at 20. This was still the approach used when compiling the *Restatement (Third) of Foreign Relations Law of the United States* in 1986. See *RESTATEMENT, supra* note 21, sec. 203, reporter's note 1 (confirming the continuation of the practice). The approach applies in particular where a change of government occurs through normal procedures. See *id.* sec. 203, cmt. c ("Where a new administration succeeds to power in accordance with a state's constitutional processes, no issue of recognition or acceptance arises; continued recognition is assumed.").

28. There are two leading treatments of recognition of governments in recent literature. See, e.g., PETERSON, *supra* note 26 (providing an overview of the criteria, forms, and political uses of government recognition); STEFAN TALMON, *RECOGNITION OF GOVERNMENTS IN INTERNATIONAL LAW: WITH PARTICULAR REFERENCE TO GOVERNMENTS IN EXILE* (1998) (discussing the *de facto*, *de jure*, and diplomatic recognition and the effect such recognition has on the legal status of governments, particularly those in exile).

29. See Thomas D. Grant, *An Institution Restored?*, 39 VA. J. INT'L L. 191-92 (1998) (emphasizing that a number of States that previously stated they would no

contemporary Afghanistan is a different example because the violent unrest, involving outside intervention as well as ethnic and religious conflict among indigenous groups for most of the 1980s and 1990s made governance in Afghanistan extremely difficult.³⁰ On September 27, 1996, the Taliban, a militia composed of fundamentalist Muslim students, took control of the capital of Afghanistan, Kabul, and currently controls much of the rest of the country.³¹ Despite the unsettled situation, few States doubt Afghanistan's legitimacy as a State. Afghanistan holds a seat at the United Nations ("UN")³² and holds membership in various other international organizations.³³ The territorial extent of Afghanistan is reasonably certain.³⁴ Nonetheless, the Taliban government that now controls over ninety percent of Afghanistan, however, received little recognition as the government of Afghanistan, and more importantly, many States expressly indicated that they do not recognize it but continue to recognize its predecessor, the government of Burhanuddin Rabbani,³⁵ as the government of Afghanistan. International organizations, including the UN and the Organization of the Islamic Conference, likewise denied or delayed seating Taliban representatives for the Afghanistan seat.³⁶ The Tali-

longer give express recognition to changes of government formally acknowledged both the new regime and the change of the country's name to The Congo).

30. See generally J. Alexander Their, *Afghanistan: Minority Rights and Autonomy in a Multi-Ethnic Failed State*, 35 STAN. J. INT'L L. 351 (1999) (providing a thorough account of the constitutional and political history of Afghanistan, with a particular emphasis on minority treatment based, in large part, on the author's experience working with international aid organizations in Afghanistan).

31. See *id.* at 352.

32. See *United Nations* (visited Feb. 28, 2000) <<http://www.un.org>> (providing information about member States, committees, and documents).

33. See, e.g., *CIA World Factbook 1999* (visited Feb. 28, 2000) <<http://www.odci.gov/cia/publications/factbook/af.html>> (describing Afghanistan's participation in international organizations, such as the Organization of the Islamic Conference, International Monetary Fund, International Labor Organization, International Telecommunications Union, and the Universal Postal Union).

34. See *id.* (including map of Afghanistan).

35. See Mohammad Bashir, *Afghan Taliban call on Muslim world to recognise Chechnya*, AGENCE FR.-PRESSE, Jan. 17, 2000, available in 2000 WL 2714266 (indicating that former Afghanistan President, Rabbani, and his military leader, Ahmad Sha Masood, control portions of the country in the northeast and are recognized by and receive material support from the Russian Federation).

36. See TALMON, *supra* note 28, at 173-84 (discussing the representation of

ban's efforts to implement an extreme interpretation of Islamic law, especially as it applies to Afghani women, have turned some opinion against the *de facto* regime, demonstrating the contrast between its effective control over much of Afghanistan and its near-universal lack of recognition.³⁷ To date, only Pakistan, the United Arab Emirates, and Saudi Arabia have recognized the Taliban as the government of Afghanistan.³⁸

Taliban's international and domestic status example is a salient feature of its recent recognition of the Chechens' claim for statehood, namely, it is recognition given by a government that itself is not widely viewed to have authority to act on behalf of the State it claims to represent. Because it controls most of Afghanistan, the Taliban differs from exiled governments or "national liberation movements" that claim to form the "sole legitimate" governments of a State but have little or no effective footing on the territory of that State.³⁹ Nonetheless, the legal effect of the Taliban's recognition of Chechnya on January 16, 2000 must be qualified by the fact that most States deny the Taliban's legal authority to represent Afghanistan

governments in international bodies, including situations where a government-in-exile, instead of a sitting government, represent the State); *id.* (describing mainly governments-in-exile that do not have any territorial control of the States they represent, in contrast to the Rabbani government's ten percent territorial control).

37. See Marjon E. Ghasemi, *Islam, International Human Rights & Women's Equality: Afghan Women Under Taliban Rule*, 8 S. CAL. REV. L. & WOMEN'S STUD. 445 (1999) (arguing that there should be no international recognition of the Taliban regime until the Taliban's policies toward women improve); Anastasia Telesetsky, *In the Shadows and Behind the Veil: Women in Afghanistan Under Taliban Rule*, 13 BERKELEY WOMEN'S L.J. 292, 294 (1998) (describing the Taliban's treatment of women, Western and Islamic reactions, and possible legal remedies for women); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW: RECOGNITION OR ACCEPTANCE OF GOVERNMENTS sec. 203(2) (noting that States are not obligated to recognize a regime that has asserted its control through the threat or use of force). "A state has an obligation not to recognize or treat a regime as the government of another state if its control has been effected by the threat or use of armed force in violation of the United Nations Charter." *Id.*

38. See *Afghanistan's Taliban recognises rebel rule in Chechnya*, AGENCE FR.-PRESSE, Jan. 16, 2000, available in 2000 WL 2713820 [hereinafter *Afghanistan's Taliban*] (emphasizing that the UN and most countries continue to recognize only the Rabbani regime).

39. See TALMON, *supra* note 28, at 300, 303 (describing the exiled governments in Angola and Algeria as governments that lacked effective control in the territory of the State they each claimed to govern).

and to act as its sovereign authority.⁴⁰

The Taliban's recognition of Chechnya, therefore, may do no more than recapitulate Chechnya's earlier international relations in the territory's tumultuous history. Russia first laid claim to Chechnya in the eighteenth century, but its hold there remained tenuous at best.⁴¹ Following the victory over Napoleon in 1815, the Tsar of Russia began a campaign to extend his writ to Chechnya, which instigated forty years of war.⁴² At the crest of their resistance, the Chechens formed a well-organized administration exercising many of the features associated with a State's domestic responsibilities.⁴³ Attempts to obtain general recognition as a State, however, did not succeed. The Ottoman State, in its role as champion of Muslim peoples, supported the Chechen resisters both with material aid and symbolic statements.⁴⁴ Egypt, too, apparently tendered various forms of assistance as well.⁴⁵ It is unclear, however, whether either of those Muslim powers expressly recognized Chechnya, while it is clear that no western State recognized the nineteenth century Chechen claim to statehood.⁴⁶ Perhaps the most substantial links formed by the nine-

40. See *Afghanistan's Taliban*, *supra* note 38.

41. See MOSHE GAMMER, *MUSLIM RESISTANCE TO THE TSAR: SHAMIL AND THE CONQUEST OF CHECHNIA AND DAGHESTAN* 229 (1994) (providing a thorough account in English of the nineteenth century Chechen State).

42. See *id.* at 229-30 (describing the various combat efforts against the Russians).

43. See *id.* at 225-35 (explaining the composition and maintenance of the Chechen military forces, financial affairs, and legal system (*Shari'a*)).

44. See *id.* at 257-60, 267-76 (noting the relationship between the Ottoman empire and the Chechens, particularly during the Crimean War).

45. See Moshe Gammer, *The Imam and the Pasha: A Note on Shamil and Muhammad Ali*, 32 *MIDDLE E. STUD.* 336-42 (1996) (commenting on relations between the West, Egypt, and the Soviet Union, concerning Muslim resistance to Russian occupation).

46. British strategists, during the Crimean War, contemplated recognizing Chechnya or a North Caucasian "emirate" as part of a comprehensive post-war plan to roll back Russian power, but recognition was not in fact granted. See J.B. CONACHER, *BRITAIN AND THE CRIMEA, 1855-56: PROBLEMS OF WAR AND PEACE* 188 (1987) (describing Lord Palmerston's Crimean War plans); JOHN SHELTON CURTISS, *RUSSIA'S CRIMEAN WAR* 419 (1979) (indicating Britain's overestimation of Turkey's ability to confront Russia's strength in the Caucasus); ANDREW D. LAMBERT, *THE CRIMEAN WAR: BRITISH GRAND STRATEGY 1853-56*, xxi (1990) (criticizing Britain's weak strategy in attacking Russia in order to maintain British

teenth century Chechen "State" and outside political organizations were with other Muslim resistance movements, not internationally recognized as constituting States.⁴⁷ Abd al-Qadir resisted French colonizers in Algeria and may have made contact with the Chechens, while the Chechens sent representatives to the Kurdish areas of the Ottoman empire and Persia to successfully win recruits to their cause.⁴⁸ The Circassians and Kabardians, Muslim peoples on the opposite end of the Caucasus, who also resisted Russia, allied themselves with the Chechens.⁴⁹ The Chechen administration reportedly at times even sought links to Christians in Georgia and Ossetia who were discontent with Russian rule.⁵⁰ The legal consequence, if any, of relations between one unrecognized State and others or between the unrecognized State and insurgent communities, governments-in-exile, or other non-State actors is unclear. Since the nineteenth century, the foregoing relations have not had any pronounced legal effect.⁵¹ Assuming that it was indeed the intention of some or all of the outside non-State actors previously mentioned to recognize the nineteenth century Chechen claim to statehood, the demonstrable impact on the international legal position of the Chechens was small or non-existent. No State protested, for example, when the Tsar of Russia declared himself "Hereditary Prince and Sovereign of the Princes of Circasia and of the Other Montagnard Princes," making him ruler of the entire Caucasus range, including Chechnya.⁵²

interests in the Caucasus).

47. See GAMMER, *supra* note 41, at 248-56 (describing the relationships the Chechen "State" shared with its neighbors and local ethnic and religious tribes).

48. See *id.* at 250-52 (describing the recruitment of volunteers for the Chechen mission).

49. See *id.* at 251.

50. See *id.* at 248-56, 263 (describing the Chechen collaboration with Christian tribes as a means to divert Russia from its control in Chechnya and Daghestan, while at the same time uniting tribes in the Caucasus).

51. See TALMON, *supra* note 28, at 305-06 (commenting on the example of the Philippine secessionist government, Unity Front of the South Moluccan People, which received no recognition except for an unspecified recognition by the anti-Communist Polish government-in-exile).

52. See Treaty of Commerce and Navigation between Russia and Turkey, Jan. 22, 1862, 125 C.T.S. 239 (documenting the Tsar's claim over the Caucasus region, using the term "Montangard" to refer to Chechens and other mountain-dwelling people in nineteenth century Caucasus).

The position of the Taliban in Afghanistan today differs from that of unrecognized non-State groups, because the State of Afghanistan is recognized in addition to the Taliban's control of most of Afghanistan. The Taliban government's claim that it is the agent of Afghanistan, however, is not widely recognized.⁵³

II. ENDING THE DIPLOMATIC BLOCKADE?

Many countries have employed and threatened sanctions in order to deter recognition of claims that they believed derogated their rights; for example, West Germany employed the sanctions tactic with regard to East Germany in the 1950s.⁵⁴ The tactic has also been employed to combat claims for statehood that a country believes is a violation of its territorial integrity. For example, the People's Republic of China employed and threatened sanctions to deter recognition of Taiwan as the Republic of China; the Republic of Cyprus (or its patron, Greece) used sanctions to deter recognition of the Turkish Republic of Northern Cyprus; Morocco used and threatened sanctions to deter recognition of the Sahrawi Arab Democratic Republic; and the Arab League (on behalf of Palestine) used the threat of sanctions to deter recognition of Israel.⁵⁵ Similarly, former Russian Foreign Minister Yevgeni Primakov⁵⁶ and other officials⁵⁷ made it clear that Russia will interpret any recognition of Chechnya as an affront

53. See *Afghanistan's Taliban*, *supra* note 38.

54. See FRITZ A. MANN, *STUDIES IN INTERNATIONAL LAW* 671 n.4 (1973) (delineating the events following the division of post-war Germany and the effect of Soviet recognition of East Germany); see also Josef Jurina, *Deutschlands Rechtslage*, 23 *ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT* 455 (1963) (providing the diplomatic relationship of the divided Germans).

55. See Thomas D. Grant, *Hallstein Revisited: Unilateral Enforcement of Regimes of Non-Recognition Since the Two Germanies*, *STAN. J. INT'L L.* (forthcoming 2000).

56. Viktoria Grankina et al., *Moscow Continues to Regard Chechnya as a Subject of the Federation*, *RUSSIAN PRESS DIG.* (from *NEZAVISIMAYA GAZETA*) Jan. 30, 1997 (indicating that Russia has no intention of recognizing Chechnya, despite the recent presidential elections in Chechnya).

57. Charodeyev & Yusin, *Moscow-Grozny: Dispute Around Embassies*, *RUSSIAN PRESS DIG.* (from *IZVESTIA*) Apr. 22, 1998 (describing the Russian Foreign Ministry's outrage at the acting Chechen president's appointment of nine Chechen ambassadors).

to Russia and will respond by severing diplomatic relations with the State granting such recognition. When Chechnya sent emissaries to explore the possibility of setting up diplomatic missions abroad, the Russian Federation indicated that such missions would be illegal.⁵⁸ During a parliamentary discussion in Lithuania in which opposition delegates proposed that Lithuania recognize Chechnya, Russia warned that it would sever diplomatic relations with any government recognizing Chechnya.⁵⁹ Russia, in effect, constructed a diplomatic blockade to prevent other independent States from providing official State recognition to a territory that Russia views as its own.

As a result of either the blockade or because individual States agree on the basis of their own legal assessments that Russia has legal title to Chechnya, the Russian view has prevailed.⁶⁰ Not only Georgia but also other States with a heightened interest in the crisis have indicated that they continue to respect the view set forth by the Russian Federation that Chechnya is an integral part of the territory of the Russian Federation.⁶¹ Pakistan, however, has not responded favorably to Chechen overtures conveyed through the Taliban.⁶² The United States granted a visa to the Foreign Minister of Chechnya, Ilyas Akhmadov, in January 2000 but assigned low-level State Department staff to meet with him during his time in Washington and the meeting did not take place on United States government premises.⁶³ This is consistent with earlier United States and United King-

58. See *Chechnya out for unlawful diplomatic representation, warns federal foreign ministry* (visited Feb. 28, 2000) <<http://www.rian.ru/>>.

59. Yuri Stroganov, *Vytautas Landsbergis: "I Was Assured that Lithuania Would Be a NATO Member,"* RUSSIAN PRESS DIG. (from TRUD) June 10, 1997 (pointing out that the Chair of the Lithuanian Parliament was against official recognition of Chechnya, because it would strain Lithuania's relationship with Russia).

60. See Thomas D. Grant, *A Panel of Experts for Chechnya: Purposes and Prospects in Light of International Law*, 40 VA. J. INT'L L. 115, 118-19 (1999) (noting the response of western officials to the visit by the President of Chechnya).

61. See *id.*

62. See *id.*

63. See *Radio Free Europe/Radio Liberty, Chechnya Seen Gaining World's Understanding* (visited Jan. 27, 2000) <<http://www.rferl.org/welcome/english/releases/chechnya000118.html>> (describing Chechen Foreign Minister Ilyas Akhmadov's meeting with junior State Department officials and Senator Chuck Hagel).

dom practice.⁶⁴

A number of States were reported to have recognized Chechen independence, but none of these States or the media would confirm the recognition when queried.⁶⁵ Considering the importance of the symbolic dimension of recognition, "hidden" or "clandestine" recognition would be a contradiction in terms. States have made declarations short of recognition by challenging the view that the Chechen crisis only concerns Russia. An Estonian representative, for example, stated before a UN committee that the crisis in Chechnya is not strictly internal, thereby implying that the territorial integrity of Russia does not insulate Russian conduct in Chechnya from international observation or reaction.⁶⁶ This is consistent with a number of multilateral organizations that have taken note of the Chechen crisis on humanitarian grounds.⁶⁷

It should be noted that the UN in autumn 1999 did not expressly reiterate respect for the territorial integrity of Russia while it emphasized human rights.⁶⁸ The office of the Secretary General, for example, in connection with arrangements for a mission to the North Cau-

64. See Grant, *supra* note 60, at 115, 116 n.3, 118-19 (1999) (noting protocol by United States and United Kingdom officials during visits by the President of Chechnya, Aslan Maskhadov, in 1997 and 1998).

65. See Vladimir Yemelyanenko, *Russia-Chechnya: A Forced Love Affair*, MOSCOW NEWS, Nov. 18, 1992, cited in Duncan B. Hollis, *Accountability in Chechnya—Addressing Internal Matters with Legal and Political International Norms*, 36 B.C. L. REV. 793, 799 n.40 (1995) (pointing out a Russian journalist's report on Kuwaiti and Saudi Arabian recognition of Chechnya); see also BOGDAN SZAJKOWSKI, *ENCYCLOPAEDIA OF CONFLICTS, DISPUTES, AND FLASHPOINTS IN EASTERN EUROPE, RUSSIA AND THE SUCCESSOR STATES* 63 (1993) (noting indications that Turkey, Azerbaijan, Iran, Lithuania, and Estonia recognized Chechnya); Sergei Zavorotny, *Politica "Small Fry" Ready to Play Up Chechen Ace*, RUSSIAN PRESS DIG. (from KOMSOMOLSKAYA PRAVDA), Jan. 27, 1997 (describing Chechnya's strategy of gaining recognition from Turkey, Jordan, and other countries in the Middle East); Igor Rotar, *Ichkeria Insists on Being Recognized*, RUSSIAN PRESS DIGEST (from NEZAVISIMAYA GAZETA), Oct. 22, 1997.

66. See U.N. Social, Humanitarian, and Cultural Committee Press Release, U.N. Doc. GA/SHC/3557 (1999) (containing statements of Committee members in regards to the protection of children during armed conflict, where the Estonian representative described the situation in Chechnya to be more than a simple domestic matter).

67. See *id.*

68. See U.N. Press Release, U.N. Doc. SG/SM/7200 (1999).

casus, stated:

The Secretary-General has, for some weeks, been concerned about the severe impact of the conflict in Chechnya on the civilian population, many thousands of whom have been driven from their homes. He is in touch with the Russian authorities and has sent a senior official to Moscow to discuss the possibility of sending a UN humanitarian assistance mission to the Northern Caucasus (Ingushetia and Dagestan). Those consultations were successful, and a mission will leave for the region very soon—possibly before the end of the month.

The Secretary-General reiterates his appeal to both sides in the conflict to show restraint, and to take special care to avoid civilian casualties. While the problem of terrorism is one of legitimate concern to all governments, it is important that the response to it should be proportional, and that the provisions of humanitarian law in armed conflict are respected at all times. In situations as complex as that in Chechnya, the solution must ultimately be political.⁶⁹

Following an ultimatum from the Russian armed forces to the inhabitants of Grozny “to leave or die,” the Organization for Security and Cooperation in Europe, which previously maintained an Assistance Group in Chechnya, also issued statements emphasizing human rights but omitting direct reference to the territorial integrity of the Russian Federation or Chechnya itself,⁷⁰ and increased activity by the Council of Europe appears to be part of a trend.⁷¹

Nevertheless, Russia’s non-recognition policy towards Chechnya appears largely successful. The international organization practice, noted above, may display an incremental change—from careful in-

69. Press Release SG/SM/7200, Oct. 28, 1999 (describing the Secretary General’s concern about the impact the Chechen conflict had on the civilian population).

70. See, e.g., OSCE Press Release (visited Jan. 26, 2000) <<http://www.osce.org/indexe-da.htm>> (emphasizing the Russian Federation’s obligations, under international human rights and humanitarian law, to protect civilians in Grozny during the conflict).

71. See *Chechnya: Council of Europe talks with Russian authorities* (visited Mar. 3, 2000) <<http://www.coe.fr/cp/2000/19a%282000%29.htm>> (describing the dispatch of a high-level mission led by Lord Russell-Johnston, President of the Parliamentary Assembly of the Council, to the North Caucasus and Moscow from Jan. 14 to Jan. 20, 2000).

clusion of “territorial integrity” formulations in every statement to a less conditional emphasis on human rights—but it is a far cry from formal acknowledgment that Chechnya possesses the international legal status that its rebel authorities claim. Insofar as Russian diplomacy concerning Chechnya may be conceived as a blockade, the source of the sole recognition—the Taliban government of Afghanistan—may strengthen the blockade. Spokespersons for the Russian Federation were quick to note that the Taliban government is not only widely unrecognized but also widely condemned.⁷² Drug trafficking and terrorism purportedly taking place under its auspices have marginalized the Taliban government in international processes of authority.⁷³ For example, the Afghani predecessor-government is still recognized by most States and continues to hold the Afghanistan seat on the General Assembly.⁷⁴ Recognition of Chechnya by one State might be seen as an incremental step toward the erosion of the Russian blockade, however, recognition by Afghanistan might just as well confirm majority practice.

Hypothetically, even if the Taliban government is widely recognized as the agent with the authority to enter into binding agreements for Afghanistan, and whose undertakings are in other ways opposable against Afghanistan, recognition by one State alone is comparatively marginal in the power processes of the world community, and would likely have little effect on the legal status of the object of rec-

72. See *Russia denounces Taliban Recognition of Chechnya*, ASSOCIATED PRESS, Jan. 17, 2000 (claiming that the Foreign Ministry of the Russian Federation states that the recognition of Chechnya by the Taliban “leads to the creation of some sort of a bandit international, which once again proves the urgent need for the international community to join forces in the fight against this universal evil-terrorism”); *Chechnya-Afghanistan: Chechen President Lauds Taliban Decision on Recognition*, EFE NEWS SERV., Jan. 17, 2000 (noting that Russia was also reported as characterizing the recognition as an act of “terrorist solidarity”). See generally Ghasemi, *supra* note 37, at 445; Telesetsky, *supra* note 37, at 292.

73. See *Six Plus Two Group Contemplating to Lay Security Belt Around*, PAK. PRESS INT'L INFO. SERV. LTD., Mar. 1, 2000, available in 2000 WL 15354830 (describing UN initiatives aimed at curtailing the drug flow from the Taliban-controlled areas of Afghanistan).

74. See *Afghanistan's Taliban*, *supra* note 38 (noting limited recognition of Taliban as government of Afghanistan and UN “recognition” of Rabbani government).

ognition.⁷⁵ “The consequences [of a decision to recognize],” according to some scholars, “will vary depending on the relative power of the recognizer and the relative dependence of the community seeking recognition.”⁷⁶ It may well be that the “relative dependence” of Chechnya is great but that dependence is not upon Afghanistan; and the relative power of the recognizer, Afghanistan, is weak.⁷⁷ Finally, the number of States recognizing a claim to statehood itself may be important. What one recognizing State may lack in individual authoritative weight may be bolstered if joined by other States.⁷⁸ It could be that the Taliban, by taking up the Chechen cause, draws States toward greater support for the Chechens.⁷⁹ States more likely than others to follow the Taliban government’s lead would be, in the first instance, those recognizing the Taliban as the official government of Afghanistan—these States are Pakistan, Saudi Arabia, and the United Arab Emirates. The Russian blockade against recognition

75. See MYRES S. MCDUGAL & W. MICHAEL REISMAN, *INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE: THE PUBLIC ORDER OF THE WORLD COMMUNITY* 303 (1981) (describing the various factors that determine international recognition).

76. *Id.*

77. *See id.* at 303.

78. *See Reparations for Injuries Suffered in the Service*, UN ICJ REP. 171, 185 (1949) (demonstrating a common understanding of the relationship between treaties and generally applicable international norms). The more parties to a treaty, the stronger the evidence that the treaty represents such a norm. *See id.*

79. *See* Mohammad Bashir, *Afghan Taliban call on Muslim world to recognise Chechnya*, AGENCE FR.-PRESSE, Jan. 17, 2000, available in 2000 WL 2714266 (noting that, though the association just as well could act against the Chechens, Taliban officials since recognizing Chechnya have begun what appears to be a diplomatic program to broaden the basis of support). Taliban Minister of Information, Qudratullah Jamal, said, “it is the obligation of all Muslims to recognize the Chechen government.” *Id.* *See Afghan Taliban criticise Iran over Chechnya*, AGENCE FR.-PRESSE, Jan. 25, 2000, available in 2000 WL 2719844 (pointing out that Deputy Minister of Information, Abdurrahman Hotak, later criticized Iran for having “made deals with the Russians” and urged Iran, as current head of the Organization of the Islamic Conference, to lobby support for the Chechens); *Taliban to welcome Pak-Iran efforts for return of peace*, BUSINESS RECORDER (visited Jan. 25, 2000) <<http://www.brecorder.com/story/S00DD/SDA25/SDA25269.htm>> (reporting that if the Taliban program to broaden the basis of support for the Chechens succeeds, specifically through its recent request to Pakistan, it seems that it will do so not on the basis of the general international prestige of the Taliban, but on the basis of the Taliban’s representatives, if any, of Muslim opinion in other States).

of Chechnya, however, remains, to date, largely successful in preventing recognition from both the most powerful actors and a substantial number of lesser actors. Thus, while the Taliban recognized Chechnya's independence, its recognition has been met with uncertain reception in international society. Accordingly, the final part of this article will set forth various examples of international recognition of States and will evaluate what effect, if any, the Taliban's recognition has had on the crisis in the North Caucasus.

III. HUMANITARIAN RECOGNITION

Recognition has been defined as "the authoritative decision by one participant in expressing its willingness to accept another body politic as a State, as a full participant in world processes of authority, for multiple purposes."⁸⁰ Writers have debated for some time what precise legal consequence flows from recognition.⁸¹ An old source of controversy is whether recognition "makes the State" or, rather, simply reflects statehood already achieved.⁸² When recognizing a putative new State, existing States have meant either to express their appreciation that a legal and factual situation has arisen rendering a claim to statehood difficult to ignore, or to express their willingness to take steps, including recognition, to shape the legal and factual situation into one perfecting a claim to statehood.⁸³

80. MCDUGAL & REISMAN, *supra* note 75, at 303.

81. *See id.*

82. *See* THOMAS D. GRANT, RECOGNITION OF STATES 1-45 (1989) (noting that the American view has traditionally been that official recognition reflects statehood that has already been achieved); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW: RECOGNITION OR ACCEPTANCE OF GOVERNMENTS secs. 202(a), 203(a) (explaining that "recognition of a state is formal acknowledgment that the entity possesses the qualifications for statehood, and implies a commitment to treat the entity as a state").

83. *See* European Community Arbitration Commission on Yugoslavia, *Opinion 7—On the Recognition of the Republic of Slovenia by the European Community and its Member States*, 92 INT'L L. REP. 188-94 (1992) (indicating that Slovenia was recognized by the European Community and its member states on Jan. 15, 1992, after a holding by the arbitration panel that it satisfied certain criteria for recognition); GRANT, *supra* note 82, at 162 (noting that recognition in the case of Slovenia followed attainment of criteria for recognition—which were probably closely related to, if not exactly the same as, the attributes of statehood); A.V. Lower & Colin Warbrick, *Recognition of States*, 41 INT'L & COMP. L.Q. 473, 478

There exists, however, some State practice that would be difficult to reconcile with either branch of the foregoing model. For example, recognition, at times, has been granted as an expression of humanitarian concern as in the case of the recognition of Biafra. Yet in other, more recent cases, such as the cases of Bangladesh and Kosovo, recognition did not result despite grave humanitarian concerns. These divergent examples help inform a conclusion regarding what the Taliban's recognition of Chechnya may mean and, therefore, will be examined briefly below.

Biafra was a region in southeastern Nigeria.⁸⁴ The Ibo were the majority ethnic group in Biafra but a minority in Nigeria as a whole. In the 1960s, frictions between the Ibo and the federal government of Nigeria, in which other ethnic groups held most political influence, became acute.⁸⁵ This resulted in Biafra's secession from the Nigerian federation.⁸⁶ Biafra's secession was successful in the specific sense that it resulted in the establishment of an Ibo-administered territory *de facto* independent from Nigeria.⁸⁷ Biafra thwarted the first attempts by Nigerian federal forces to reverse secession and came close to defeating those forces entirely.⁸⁸ For a time, Biafran independence was securing itself against the competing claim of the Nigerian federal government. No State, however, recognized Biafra

(1992); Matthew C.R. Craven, *The European Community Arbitration Commission on Yugoslavia*, 66 BRIT. Y.B. INT'L L. 333, 375 (1995); Joe Verhoeven, *La Reconnaissance Internationale: Déclin ou Renouveau* 39 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 7, 27 (1993). *But see* Roland Rich, *Recognition of States: The Collapse of Yugoslavia and the Soviet Union*, 4 EUR'N J. INT'L L. 36, 49-51 (1993) (noting in contrast that Bosnia was recognized before it had attained all the marks of statehood); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugo.)*, 1996 ICJ REP. 803 (Kreca, J., dissenting) (asserting that recognition of Bosnia, then, may have had some 'constitutive' effect—that is, recognition may have played some role in creating the Bosnian State, or at least indicated that the recognizing States were willing to take measures, in addition to recognition, to create a Bosnian State).

84. *See* JOHN J. STREMLAU, *THE INTERNATIONAL POLITICS OF THE NIGERIAN CIVIL WAR 1967-1970*, 127-41 (1977) (describing Biafra's bid for independence and recognition as a State).

85. *See id.*

86. *See id.*

87. *See id.*

88. *See id.*

during this time.⁸⁹ In 1967, the Nigerian army, while still recovering from earlier reversals, began in earnest the recovery of the secessionist region. Military operations against Biafra resulted in great loss of property and life. Nigerian federal forces enforced a physical blockade against Biafra, and mass starvation began.⁹⁰ As the starvation continued, the secessionist forces eventually lost their ability to conduct any meaningful defense-at-arms.⁹¹

Though the Biafran independence project was, by that point, beyond recovery, a number of States—belatedly it would seem—recognized Biafra. Tanzania, Gabon, Côte d'Ivoire, and Zambia extended recognition between April 15 and May 20, 1968.⁹² Somewhat later, Haiti became the first and only State outside of Africa to recognize Biafra.⁹³ When queried as to why his government recognized Biafra, the president of Haiti reportedly explained that fellow Africans of the Catholic faith were suffering under the Nigerian army blockade and thus deserved moral support.⁹⁴ Though distinct in its religious content, this explanation was otherwise broadly similar to the rationale behind all five acts of recognition. Basically, the condition of human beings in Biafra deteriorated to a point where a number of outside observers came to the conclusion that it was incumbent upon them to issue statements of support.⁹⁵ Recognizing the putative independence of Biafra when the five States did so was not a statement that those States believed that the Ibo secessionist movement was constituting a State; the movement had been much closer to constituting a State earlier but was by the time of recognition manifestly failing.⁹⁶ Nor did recognition at that time alter the *de facto* situation; Biafran independence had been all but defeated, and none of the recognizing States were prepared to render material assistance

89. See generally David A. Ijalaye, *Was "Biafra" at any Time a State in International Law?*, 65 AM. J. INT'L L. 551 (1971) (discussing Biafra's legal status).

90. See Stremlau, *supra* note 84, at 127-41.

91. See *id.*

92. See *id.*

93. See *id.*

94. See *id.*

95. See *id.*

96. See Stremlau, *supra* note 84, at 127-41.

that might have reversed that fact.⁹⁷

Recognition of Biafra was almost exclusively a symbolic humanitarian intervention—a recognition of the human rights violations being perpetrated there by Nigerian federal authorities. Recognition for the purposes of humanitarian intervention, as in the case of Biafra, marks a divergence from the conventional understanding of recognition. Yet, the fact that recognition for the purposes of humanitarian intervention, relatively low in cost and risk, was not followed by other States raises questions about the necessity of recognition as a humanitarian device.

In a roughly contemporaneous case, recognition did not arise in connection with humanitarian concerns at all. East Pakistan (“Bangladesh”) had been in union with West Pakistan (“Pakistan”).⁹⁸ Bangladesh dissolved that union and forces from West Pakistan violently opposed secession. Bangladesh secured independent control of its territory in 1972 and applied that year for admission to the UN.⁹⁹ Admission was denied until 1974 and recognition was also widely denied until 1974.¹⁰⁰

Finally, more recently, the NATO States that engaged in military operations against the Federal Republic of Yugoslavia (“FRY”) decided against recognizing the putative Kosovo in the course of their own armed intervention, choosing instead to emphasize the “territorial integrity” of the FRY.¹⁰¹ In the Kosovo action, a claim of state-

97. *See id.*

98. *See* James R. Crawford, *State Practice and International Law in Relation to Secession*, 69 BRIT. Y.B. INT’L L. 85, 95 (1998) (discussing Bangladesh’s attempted secession from Pakistan).

99. *See id.*

100. *See id.* at 95.

101. *See, e.g.*, NATO Press Release 98(80), *Statement by NATO Secretary General, Dr. Javier Solana, on Exercise “Determined Falcon,”* June 13, 1998 (emphasizing NATO’s policy of maintaining the territorial integrity of the FRY); UN Security Council Resolution 1160, para. 5, Mar. 31, 1998; *Contact Group Statement on Kosovo* (visited Oct. 23, 1999) <<http://www.fco.gov.uk>>; NATO Press Release 99(020), *Statement by NATO Secretary General Dr. Javier Solana on behalf of the North Atlantic Council*, Feb. 19, 1999; *Crisis in Kosovo and situation in the Federal Republic of Yugoslavia*, Assembly of the Council of Eur. Recommendation No. 1400, para. 2 (Mar. 30, 1999) (adopted by the Standing Committee on behalf of the Assembly); *General Principles of the Political Solution adopted by the G8*

hood was voiced by a group of people subjected to severe human rights violations—indeed, violations characterized by a segment of the international community as precursors to genocide.¹⁰² Although NATO initiated a military operation to protect those people, no NATO member State or any other State, with the possible and qualified exception of Albania,¹⁰³ recognized Kosovo as a State.

Curiously enough, in the foregoing examples, a robust exercise of force preceded recognition of an entity. The relationship between recognition of a State and protection of human rights is a loose one and some individuals' right have little connection to the acknowledged legal status of the territory where those individuals dwell.¹⁰⁴ Yet, the case of Biafra demonstrates that recognition can be deployed as a symbol of humanitarian support, and the Taliban's recognition of Chechnya may well be another example of such symbolic humanitarian recognition.

Recognition of Chechnya appears to have come, as it did in Biafra, at a point when the *de facto* independence of the putative State was in the process of reversal. Prior to its September 1999 invasion by Russia, Chechnya lacked political stability, and the control of the territory of Chechnya by the secessionist government was uncertain at

Foreign Ministers, G-8 Foreign Ministers Point Six (May 6, 1999).

102. See David Pitts, *Indicators of Genocide in Kosovo*, Says Scheffer, USIA NEWS (Apr. 5, 1999) <<http://www.usia.gov/regional/eur/balkans/kosovo/texts/99040522.htm>> (relaying a statement made by David Scheffer, the State Department's Ambassador-at-large for war crimes, that "indicators of genocide" had been found in Kosovo).

103. See *Albanian Foreign Affairs Ministry on Belgrade Breaking Ties*, USIA NEWS (Apr. 20, 1999) <<http://www.usia.gov/regional/eur/balkans/kosovo/texts/99042022.htm>> (announcing Albanian plans to break off ties with Yugoslavia and reaffirming Albanian support for NATO's approach to resolution of the crisis).

104. See, e.g., U.N. GAOR, Hum. Rts. Comm., U.N. Doc. CCPR/C/79/Add.16 (1992) (describing the Committee's concern that individual human rights were being violated and demonstrating concern for the basic dignity of the individual). For individuals to enjoy rights to basic dignity, it is not necessary for them to form, in their narrower community, an independent State. *Id.* Some rights under international law appear to flow to the individual without the intermediation of a State and States are obliged to take steps to assure that all of their citizens enjoy rights to basic dignity. See, e.g., *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. 4/6316 (1966).

best.¹⁰⁵ The competing claimant to title over Chechnya, the Russian Federation, held little sway, and, in this sense, the Chechen claim to independence achieved some success. Recognition, however, was not granted to Chechnya during that time. Afghanistan recognized Chechnya in January 2000, at a point when Russian arms largely disrupted (if not defeated) the independent Chechen government.¹⁰⁶ This belated recognition of Chechnya by the Taliban bears important parallels to the recognition of Biafra by four African States and Haiti in 1968. Authorities in the Taliban government may well view recognition of Chechnya as a humanitarian device. The Foreign Minister of Afghanistan, Wakil Ahmad Mutawakel, said, "our recognition has become absolute[ly] necessary because of the brutal Russian onslaught against Chechens."¹⁰⁷ Further underscoring a linkage between recognition and humanitarian concern, the Deputy Information Minister said that "[t]he world should feel responsible and not allow Moscow to further violate human rights in Chechnya."¹⁰⁸ Recognition of Chechnya in January 2000 is not plausibly explained as a statement that the Chechens' claim to statehood has been vindicated. It may be that the Taliban government aims to assist in the construction of a Chechen State, but many authorities suggest that Afghanistan

105. See *Caucasus Report: A Weekly Review of Political Developments in the North Caucasus and Transcaucasia*, vol. 2, no. 6 (1999) (visited Feb. 10, 1999) <<http://www.rferl.org/caucasus-report/1999/02/6-100299.html>> (noting that Vakha Arsanov, the recently dismissed vice-president of Chechnya, stated that "Chechnya is facing a choice: to be an independent State or spill the blood of its own citizens"); see also *id.* at vol. 2, no. 11 (visited Mar. 17, 1999) <<http://www.rferl.org/caucasus-report/1999/03/11-170399.html>> (noting kidnappings); *id.* at vol. 1, no. 40 (visited Dec. 1, 1998) <<http://www.rferl.org/caucasus-report/1998/12/40-011298.html>> (commenting on political in-fighting amongst Chechen leadership).

106. See *id.* at vol. 3, no. 3 (visited Jan. 21, 1999) <<http://www.rferl.org/caucasus-report/2000/01/3-210100.html>> (noting hopes of Chechen military leaders that the support of Afghanistan would aid them in their battles against Russia); *id.* at vol. 3, no. 2 (visited Jan. 14, 1999) <<http://www.rferl.org/caucasus-report/2000/01/2-140100.html>> (admitting to heavier casualties during fighting than had been expected).

107. See *Afghanistan's Taliban*, *supra* note 38.

108. See *Afghan Taliban criticize Iran over Chechnya*, *supra* note 79 (quoting Taliban Deputy Information Minister Abdurrahman Hotak); *Chechen Embassy Opens in Kabul*, *supra* note 2 (quoting Taliban Deputy Foreign Minister Mawlawi Abdurrahman Zahed as calling the Chechens' a "just fight" against the Russian invaders).

has little to offer.¹⁰⁹

Others have observed, however, that recognition may be, even in its limited symbolic dimension, a valuable form of aid.¹¹⁰ As the result of extensive research, Alexis Heraclides concluded that diplomatic support, especially in the heightened form of recognition, played a role in securing a community's international legal personality.¹¹¹ According to Heraclides:

If words are "cheaper" than deeds . . . then political-diplomatic or moral support would be more readily available and at a higher level and extent than tangible support. Indeed, in the seven cases examined, the number of states providing the former was somewhat greater than that providing the latter But upon close scrutiny, it became clear that the level of political-diplomatic involvement was usually low . . . and that its extent was very limited in most cases, whereas the level of tangible involvement was medium or high . . . in well over half the cases. In fact, extensive political-diplomatic support was evident in only one-seventh of the cases, and high-level political-diplomatic involvement . . . was evident in only one-third of the cases. 'Premature' recognition or recognition in defiance of the world community was given [only six times]—five in the case of Biafra . . . and one in the case of Bangladesh One other . . . secession received recognition: The Turkish Republic of Northern Cyprus was recognized by its patron, Turkey, in 1982. Apparently, . . . states do not generally find the utterance of such words to be "cheap."¹¹²

The weight of recognition has been noted by Heraclides and others

109. See *Chechen Embassy Opens in Kabul*, *supra* note 2 (reporting that Taliban Foreign Minister pledged "all-out backing" to the Chechens). *But see Chechen Rebels Open Afghan Embassy*, *supra* note 2 (reporting that Taliban Foreign Minister "has said that the Taliban have nothing to give because of the relentless civil war with their northern-based opposition").

110. See Alexis Heraclides, *Secessionist Minorities and External Involvement*, 44 INT'L ORG. 341, 369 (1990) (examining the results of seven attempts at secession (Katanga 1960-63; Biafra 1967-70; Southern Sudan 1961-72; Bangladesh 1971; Iraqi Kurdistan 1961-75; Eritrea 1961-90; and the Moro region of the Philippines 1972-90)).

111. See *id.* (proposing that the support that States render secessionist communities may be ranked from least to greatest as follows: (1) expression of concern over the conflict; (2) call for peace talks in a framework of territorial integrity and unity; (3) call for open-ended peace talks, admitting of a right to self-determination in the secessionists; and (4) recognition).

112. See *id.* at 369-70.

writing about inter-State relations.¹¹³ Stephen A. Kocs paralleled Heraclides, but perhaps stated a more pronounced formulation of the idea when he claimed that:

The law-based model [of international relations], in contrast to neorealism, suggests that the survival rate of political entities should depend above all else on whether they have obtained formal diplomatic recognition in the international society of states. Under international law, the act of recognition symbolizes a fundamental commitment on the part of the international community. It signifies extension of the full panoply of international legal protections to the recognized state Thus, polities recognized as sovereign states should enjoy a very high rate of survival. Political entities that lack recognition as sovereign states, by contrast, find themselves in a deeply vulnerable position. International law offers them few protections against conquest and elimination by other political actors. It makes sense to expect, therefore, that political entities lacking diplomatic recognition will suffer extinction at a much higher rate than recognized polities.¹¹⁴

Focusing on practice of the last half century, it is not entirely clear how Kocs reconciles his position with Article 2(4) of the UN Charter.¹¹⁵ To be sure, Kocs is concerned with a long-term historical view and thus need not necessarily consider legal instruments of the UN era when assessing pre-1945 practice. Nonetheless, a contemporary examination of the relationship between recognition and aggression must take into account modern developments in international law. Article 2(4) obliges member States to refrain from the use or threat of force, and the ban protects members of the world body and non-members alike.¹¹⁶ Communities at the margins of international power processes do not lack all protection. Moreover, recent State practice

113. See generally Alan James, *System or Society?*, 19 REV. INT'L STUD. 269 (1993) (outlining an international relations study which alludes to the constitutive character of State recognition).

114. See Stephen A. Kocs, *Explaining the Strategic Behavior of States: International Law as System Structure*, 38 INT'L STUD. Q. 535, 545 (1994).

115. U.N. CHARTER, art. 2, para. 4 (stating that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations").

116. See Malcolm N. Shaw, *INTERNATIONAL LAW* 686 (3d ed. 1991) (describing the practical application of Article 2(4) of the U.N. Charter).

does not entirely sustain the constitutive proposition at root in Heraclides and Kocs analyses. China has not as yet invaded Taiwan; nor is Turkish Cyprus "up for grabs" to any power able to take it. Non-recognition rarely, if ever, has rendered its object *terra nullius*.

The UN Charter and its protections against use or threat of force furthered the development of restraint in inter-State relations after World War II, and some of the most recent instances of UN practice have brought legal punishment on States for abuses against domestic communities as well. UN sanctions against Iraq for mistreatment of its Kurdish and Shi'ite communities exemplify how international law may protect the unrecognized. Yet the cases of recognition that these international relations writers have taken as counterpoints to cases of non-recognition were for the most part cases of widespread, rather than isolated, recognition. Recognition of Chechnya by the Taliban government of Afghanistan stands, then, as a special and limited case.

CONCLUSION

The effect of recognition of a State of Chechnya by the Taliban government of Afghanistan is to draw greater attention to a humanitarian situation grown acute since Russian operations in the territory resumed in September 1999. Recent statements of humanitarian concern from international organizations have been conjoined with statements reaffirming respect for the territorial integrity of Russia. Those latter statements, however, did not say that the territorial integrity of Russia is a matter of less concern than the plight of the inhabitants of Chechnya. Thus, the Taliban's recognition of the Chechen claim to independence may well be no more than an emphatic statement to the international community that the consideration of territorial integrity must in some cases be tempered by the ever-imperative consideration of human dignity.