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## CURRENT LEGAL DEVELOPMENTS

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### Chechnya: In Search of Constructive Accommodation

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**Keywords:** autonomy; Chechnya; Council of Europe; human rights and democracy; OSCE.

**Abstract.** The quest for a constructive solution to the situation in Chechnya is a challenge of the greatest importance. The prospects are examined against a review of the historical background of conflict and suffering. Solutions would have to be based on some form of autonomy within the Russian Federation, providing for extensive self-government in relation to education, culture, use of local languages, measures to protect the environment, local planning, economic development, local policing functions, and housing, health, and other social services. But there are other matters which must be shared with the central authorities. Optimal divisions of functions between autonomous Chechnya and the federal authorities will take time had to proceed step by step. The role of international agencies in achieving and guaranteeing this result is examined.

#### 1. INTRODUCTION

The quest for a constructive solution to the situation in Chechnya is a challenge of the greatest importance for Chechnya itself, the Caucasian region as a whole, the Russian Federation, and indeed for the whole of Europe.

What can be the content of a possible solution? It will not include the emergence of an independent Chechnya. On the other hand, the Russian Federation cannot continue to subject the people and territory of Chechnya to direct rule from Moscow without incurring unacceptably high costs. The solution has to consist of an accommodation of Chechnya as a relatively autonomous unit within the Russian Federation. It is essential, if this is to work, that the internal political system of Chechnya will be based not on ethnocracy or theocracy but on a properly functioning, human rights-based democracy. There must be pluralism allowing the different ethnic groups to enjoy equality and yet preserve their own identity within Chechnya. The Russian Federation must accept and adapt to the required

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level of autonomy for Chechnya. This will become possible only if the European organisations, in constructive collaboration with the Russian Federation, help to construct and consolidate a democratically-based, secular autonomy of Chechnya.

## 2. BACKGROUND: TWO CENTURIES OF CONFLICT AND SUFFERING<sup>1</sup>

The expansion of the Tsarist Empire through the Caucasus region met intense resistance by the mountainous peoples of southern Chechnya. During most of the Caucasian wars from 1817 to 1864, resistance was led by Imam Shamil. He was finally captured in 1859 and the territory of Chechnya incorporated into Tsarist Russia. Many Chechens fled to the Ottoman Empire. Russians started to settle in the lowlands. Grozny was founded in the 1850s as a fortress town by the Russians in their war against the Chechens. In 1893, oil was discovered near Grozny, which led to an accelerated settlement by Russians. Conflicts between the rural Chechens and the Russian settlers occurred sporadically.

For some of the independence-minded leaders in the Caucasus, the Russian revolution in 1917 created new opportunities. Lenin and Stalin had been early exponents of the right of peoples to self-determination, with particular reference to the subjugated peoples under Tsarist rule. Early Bolshevik propaganda encouraged the struggle for self-determination as a way to undermine the power of the Tsar. During the Civil War, the Bolsheviks backed the rebellious Chechens in the mountainous areas that fought the Tsarist ('white') army commanded by General Denikin.

In the belief that they would obtain independence through collaboration with the Bolsheviks, many Caucasian leaders joined the Congress of the Mountain Peoples in January 1921. The Congress was chaired by Stalin (who came from Gori, Georgia on the southern slopes of the Caucasus Mountains). Chechnya, Ingushetia, and other oblasts<sup>2</sup> of the northern Caucasus became nominally autonomous. In 1936, the Chechen-Ingush oblast was transformed into an autonomous republic. The autonomy was largely a fiction, however, as it quickly came under the effective control of the centralising Communist party. Nationalist sentiments were no longer allowed once the Bolsheviks had taken power. 'Bourgeois nationalists'

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1. Extensive information about the history of Chechnya can be found on the Internet. The following brief survey draws, among many others, on the following sources: E. Payin & A. Popov, *Chechnya – From Past to Present* (1996), available at <http://amina.com/article/history/html>; Time Europe Web Exclusive, *Chechnya: A Time Trail*, (2000), available at <http://www.time.com/time/europe/chechnyatrail/chechnyatrail.html>; Encyclopedia Britannica: *Chechnya*, [wysiwyg://11/http://www.britannica.com/article/7/0,5722,23097,00.html](http://www.britannica.com/article/7/0,5722,23097,00.html).

2. The Soviet Union was divided into union republics, autonomous socialist republics, autonomous regions within republics, which were called 'oblasts,' and national districts (called 'okrugs'). An oblast could be designated autonomous or not. The significance of the designation was of little importance.

were severely persecuted under Stalin. Many Chechens and other Caucasian leaders were executed. Mass collectivisation and repression of the kulaks<sup>3</sup> intensified the resistance during the 1930s.

The resistance gradually evolved into guerrilla warfare. Following Nazi Germany's attack on the Soviet Union, the rebel government of Israilov and Sheripov issued an appeal in 1942 to the Chechen-Ingush people to "welcome the Germans as guests," declaring that the Germans should be treated with hospitality if they acknowledged the independence of the Chechen republic. This was later used as a pretext by Stalin to commit one of the worst crimes during his reign: the mass deportation of all Chechen and Ingush people to Kazakhstan and Siberia under extremely inhumane conditions. Large numbers died during the transport itself.

Following Khrushchev's exposition and denunciation of Stalin's crimes in 1956, the Chechens and Ingush people were allowed to migrate back to their home territory, only to find that many Russian settlers had arrived in the meantime. It was therefore a demographically deeply divided society that had emerged out of a century of wars, deportation, and persecution. The Chechen-Ingush Autonomous Republic was reinstated in 1957 as part of the Russian Federation, which was one of the 15 Union Republics of the Soviet Union.

1991 was the last, fateful year of the Soviet Union. It started with Moscow's show of force against the independence-seeking Baltic states and ended with the dissolution of the USSR. Paradoxically, two key persons who supported the Baltic drive for independence subsequently became bitter enemies: President Yeltsin of the Russian Federation, and a retired Air Force General of Chechen nationality, Dzokkhar Dudaev. Yeltsin successfully campaigned to dissolve the Soviet Union; Dudaev less successfully campaigned to make Chechnya independent from the Russian Federation.

In August 1991 Dudaev seized power in Grozny and declared Chechnya independent. Yeltsin faced a serious dilemma: while encouraging self-determination of the 15 Union Republics, the Russian Federation was now facing the demand for self-determination from some of its own provinces. Disintegration could result. In addition, Chechnya was unique in that it has considerable oil resources. A rebellion there could spread to other parts of the Caucasus.

Up until the summer of 1994 the Russian leadership continued to hope that Chechnya would adopt a pragmatic policy. Efforts were made to draft an agreement with Chechnya based on a distribution of power between the federal and the Chechnyan authorities. Dudaev rejected it. Then, in late 1994, Yeltsin initiated a poorly planned military action with disastrous consequences for both the civilian population in Chechnya and for Russian soldiers. The net outcome was a standoff, deeply humiliating to the Russian

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3. A 'kulak' in Russian and Soviet history, was a prosperous farmer, owning a relatively large farm and employing hired labour.

side. In 1996 the parties agreed to postpone any decision of the status of Chechnya to the year 2001, and the Russian forces were withdrawn.

Later in 1996, an election was held in Chechnya under supervision of the Organisation of Security in Europe ('OSCE'), and Aslan Maskhadov was elected President. He was considered more moderate in relation to the Russian Federation, but he soon lost control over the various factions inside Chechnya. Islamic militants from Afghanistan's Taliban and from Central Asia became involved in some of the Chechen factions. In August 1999, hundreds of Islamic guerrillas crossed into Dagestan to launch an insurrection. It was followed by a series of terrorist bomb explosions in Moscow and other Russian cities. Russian leaders claimed that Islamic terrorists from Chechnya were responsible, and reacted swiftly. The guerrilla forces were ousted from Dagestan, and in September an air campaign was launched against targets in Chechnya, followed by the entry of Russian ground forces set on capturing Grozny. The fighting was fierce and the civilian population suffered badly, with hundreds of thousands becoming displaced and Grozny being reduced to ruins. The fighting ended in February 2000 with Russian control of Grozny and the lowlands, but with guerrilla forces continuing to hold out in the high mountains of southern Chechnya.

### 3. POSSIBLE SOLUTIONS

Secession is unlikely to happen until at least the first decade of the new century, for two reasons. First is the relations between Russia and the secessionists, and second is the deep divisions within Chechnya. The Russian Federation will not tolerate a unilateral secession and now has the power to prevent it. The mood in Moscow has changed since 1991. Liberal opinion no longer endorses the belief that self-determination is a road to democracy and peace. The practice in Chechnya between 1996 and 1999, including the introduction of Shari'ah law, public executions, and the threat to impose a Shari'ah dress code appears to have had a strong negative impact on public opinion in Russia. President Putin has a stronger hand than President Yeltsin had.

Another factor is the significance for the Russian economy of Chechnyan oil resources and particularly the use of Chechnyan or Dagestan territory for an oil pipeline between the Tengiz oil field in Kazakhstan and the Black Sea port of Novorossiisk. This is a major geopolitical struggle over control of oil resources. The Caspian Pipeline Consortium, established between the governments of Russia, Kazakhstan, and Oman, has great significance for the future role of Russia in the petroleum industry, and a militant government in Grozny with the ability to carry out acts of sabotage outside its own borders is seen as a great risk in Moscow. With control now established over Grozny and large parts of the country, it appears certain that Russia will not allow Chechnya to leave the Federation.

Russia can also present a number of good arguments in its favour. The population is ethnically and politically divided. A minority of the population is in favour of the establishment of an Islamic state. In 1989, half of the population of Grozny was of Russian origin. While it is difficult to ascertain the present demographic composition after the extensive killings and displacements caused by the war from October 1999 to February 2000, it must be assumed that once security and law and order has been restored, displaced persons of several ethnic groups will return back to Chechnya.

Nor is the international community or any significant single state prepared openly to recommend secession or support an independent Chechnya. West European states find it more important for future European stability to develop good relations with the Russian Federation than to encourage secession in the Caucasus region. Open support for secession would also constitute a violation of the principle of non-intervention.

On the other hand, the Russian Federation must be persuaded to grant Chechnya a great deal of autonomy within the Federation under conditions to be spelled out below. The Russian army is unlikely ever to fully defeat the guerrilla forces. A future situation of law and order and economic development in Chechnya, including the security of the oil pipeline, will depend on the ability of the Russian Federation, assisted by the international community, to achieve a broad political consensus inside Chechnya. This is conceivable only if extensive self-government is accepted. This will also be important in order to improve the standing of the Russian Federation in its international relations. Continuation of heavy-handed military oppression with no end in sight would cause serious friction in its relations with the West.

The Russian constitution, which entered into force in December 1993, is not very clear in its division of competencies between the central authorities and the regions. The Federal Assembly consists of the Federation Council (a 178-member upper house with equal representation for all 89 republics and regions) and a State Duma (a 450-member Lower House elected through proportional representation on a party basis and through single-member constituencies). Eighty-nine political bodies comprise the Russian Federation, including republics, provinces, oblasts, autonomous oblasts, autonomous okrugs,<sup>4</sup> and cities of federal designation such as Moscow and St. Petersburg.

Articles 71 and 73 of the 1993 Constitution define the jurisdiction of the Federation and other major administrative bodies. Matters such as real estate, natural resources such as water and underground resources are covered by Article 72. Matters concerning the distribution of some

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4. The structure of the Russian Federation is deliberately vague, and the degree of self-government of the different units can vary. According to Art. 5 of the Russian Constitution these units are, in principle, equal components of the Russian Federation, but great variations exist. The corresponding words for 'oblast' would be 'area' and for 'okrug' 'district.'

natural resources, such as fuel and gas, are presently the subject of political contention. But all regions are subject to central authorities.

In practice, however, considerable flexibility does exist, illustrated by the Agreement of the Russian Federation and the Republic of Tatarstan on the determination of jurisdiction and mutual delegation of certain powers between the 'bodies of state power' of the Russian Federation and the 'bodies of state power' of the Republic of Tatarstan. It entered into force on 15 February 1994, and could well serve as a model for a comparable arrangement with Chechnya.

The achievement of autonomous status enables a territory and the people inhabiting it to control significant aspects of its economic, social, and cultural affairs. The territory needs to have its own government, with a clear division of power in relation to the federal authorities. Such government should include all three basic branches of a normal government: executive, legislative, and judicial. The transfer of power should ideally be constitutionally entrenched rather than delegated. As to the scope of authority transferred within each of the branches of self-government, this should not be fixed once and for all, but based on a formula of gradual increase in the transfer of power. Appropriate local, regional, or autonomous administrations corresponding to the specific historical and territorial circumstances of ethnic groups may be given functions that respond appropriately to the concerns of these groups.

Of great importance is the control over significant natural resources. Taking into account that Chechnya is rich in oil and is also an important territory of transit for an oil pipeline, an appropriate sharing of the revenues arising from the oil would be required to achieve a peaceful solution.

The autonomy arrangements should provide for extensive self-government in relation to education, culture, use of local languages, measures to protect the environment, local planning, economic development, local policing functions, and housing, health, and other social services. But there are other matters which must be shared with the central authorities, including transport and communication. Taxation will also have to be a joint concern, in order to make sure that the revenues are distributed proportionately to the local and the federal needs.

It will be difficult to immediately find the optimal division of functions between autonomous Chechnya and the federal authorities. One should therefore contemplate provisional or step-by-step arrangements that allow for the testing, and development of new forms of participation should be considered. These arrangements can be established through legislation or informal means within a defined time period, subject to extension, alteration, or termination depending upon the success achieved.

It is of great importance to establish proper safeguards for the arrangements found; otherwise it will be difficult to obtain the necessary confidence that is essential for their functioning. Remedies must be in existence in case violations of the arrangements take place.

While territorial autonomy makes it possible for an ethnic group to have

greater influence over political, cultural, and economic decisions affecting its members, this should not serve to give that group the sense that the local government is exclusively their government. The sub-division should only serve to bring the institutions of power and the service of state closer to them and give them greater influence over it. Decentralisation of power from the centre and the extension of authority to smaller territorial units can lead to a more homogenous ethnic composition. Very rarely, however, will even the smaller unit be entirely 'pure' in the ethnic sense, and it would certainly not be homogenous in the case of Chechnya. By sharing democratic power, the local majority may become more aware of the interests of other groups living in the same territorial unit. There will also be an ethnic, cultural, and possibly also linguistic mosaic that must be respected.

Decentralisation must therefore be coupled with genuine pluralistic democratic governance in each territorial unit and with the same respect for human rights and minority rights as on the national level. Were this to be safeguarded, the prospects for decentralisation are much better, and could also help to ease the burden of overgrown central governments without causing fear for groups which are in a minority position within the smaller units.

#### **4. THE ROLE OF THE INTERNATIONAL COMMUNITY**

The international community interacts with the Russian Federation over the conflict in Chechnya through global and regional organisations, and through bilateral contacts. What roles have the various agents of the international community played, and which of these can perform the most constructive roles in regard to the crisis?

The Security Council of the United Nations has not discussed the case of Chechnya and would be advised not to take it up. This would be futile and probably also counterproductive in that it might lead to a hardening of positions. It would be futile in light of the voting system in the Council. Theoretically, the case of Chechnya could be brought under Chapter VI of the United Nations Charter (peaceful settlements of disputes). When recommendations are made under that Chapter, the party to a dispute shall abstain from voting.<sup>5</sup> The veto of the Russian Federation would then not apply. But it can be safely assumed that there will at least be one other veto (China) against any recommendation unacceptable to the Russian Federation.

On the other hand, the international human rights bodies and the regional organisations can have important roles to play.

The United Nations High Commissioner for Human Rights, the Secretary-General of the Council of Europe and the Chairman-in-Office

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5. Art. 27(3) UN Charter.



of the OSCE have all asked to be allowed to deploy staff in the region in line with their mandates. With the exception of the Council of Europe (*see* below) the Russian Federation has been reluctant to allow such deployment.

The Russian Federation is a party to the International Covenant on Civil and Political Rights including its Optional Protocol, which allows for individual complaints. It is also a party to the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other regional human rights instruments such as the European Convention on Human Rights. These give a set of possibilities for specific interaction with the Russian Federation.

Mechanisms established under the UN Commission on Human Rights could also have been used to re-create a climate of dialogue. In its resolution 2000/58, the Commission on Human Rights requested that the relevant special rapporteurs and working groups of the Commission undertake missions to Chechnya and the neighbouring parts of the Russian Federation to submit reports to the Commission and to the General Assembly. These mechanisms include the Special Rapporteur on the question of torture, the Special Rapporteur on extra-judicial, summary, or arbitrary executions, the Special Rapporteur on violence against women, the Special Representative of the Secretary-General on internally displaced persons, and the Special Representative of the Secretary-General for children and armed conflict. The problem in this regard, however, is that such missions would require consent and invitation from the Russian Federation.

In her report to the Commission on the situation in Chechnya, dated 20 February 2001,<sup>6</sup> the High Commissioner for Human Rights stated that the Russian Federation had extended its invitation to the Special Rapporteur on violence against women and the Special Representative for children and armed conflict, but not to the other mechanisms of the Commission. The two invited subsequently requested the Russian Federation to make a joint visit, but no reply had been forthcoming at the time of the report of the High Commissioner. The Rapporteurs and Special Representatives nevertheless presented in their respective annual reports to the Commission information on individual cases which they had taken up with the government of the Russian Federation, and the replies they had received to some of those cases.<sup>7</sup> The Russian government has also provided some information directly to the High Commissioner. In her con-

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6. UN Doc. E/CN.4/2001/36.

7. Report of the Special Rapporteur on torture, E/CN.4/2001/66; Report of the Special Rapporteur on violence against women, E/CN.4/2001/73 and Add.1; Report of the Special Rapporteur on extra-judicial, summary, or arbitrary executions, E/CN.4/2001/9 and Add.1; Report of the Special Representative of the Secretary-General on internally displaced persons, E/CN.4/2001/5; Report of the Special Representative of the Secretary-General on children and armed conflict, E/CN.4/2001/76.



cluding remarks, the High Commissioner stresses the fact that there are reports from many sources of continued human rights violations, and reiterates that there is a need for credible response from the Russian authorities commensurate with the scale of allegations of serious human rights violations. She also regrets that no independent inquiry has as yet been put in place. The High Commissioner also notes that the situation regarding the economic, social, and cultural rights of the Chechen people in the region remains a matter of serious concern, and that there has been no return of displaced people.<sup>8</sup>

In its resolution 2001/24, adopted on 20 April 2001, the Commission strongly condemned the continued use of disproportionate and indiscriminate use of force by Russian military forces, federal servicemen and state agents, including attacks against civilians and serious human rights violations.<sup>9</sup> On the other hand, it also strongly condemned all terrorist activities and attacks, as well as breaches of international humanitarian law perpetrated by Chechen fighters, including indiscriminate measures causing widespread civilian casualties, and the taking of hostages.<sup>10</sup> The Commission called for a national broad-based and independent commission of inquiry to investigate promptly alleged violations of human rights and breaches of international humanitarian law. It expressed concern over the slow pace of investigating alleged serious violations committed by agents of the Russian Federation, and called for systematic, credible, and exhaustive criminal investigations and prosecutions of all violations of international humanitarian law and human rights, and to investigate and solve all cases of forced disappearances. The Commission reiterated its demand to the Russian authorities to co-operate with the mechanisms of the Commission. It also called on the Russian authorities to ensure an immediate return of the Organisation for Security and Co-operation in Europe's Assistance Group to the Republic of Chechnya, and underlined that a political solution is essential. The Commission argued that the assistance of the Organisation for Security and Co-operation in Europe (hereinafter 'OSCE') would contribute to achieving that goal.<sup>11</sup>

One of the main tasks is to overcome the climate of impunity that reigned during the war from October 1999 to February 2000, and which, to some extent, still continues. It is essential, if there is ever to be progress towards stability and peace in the region, that violations of human rights and international humanitarian law are effectively prevented and that those that already have taken place are prosecuted. Some initial steps have been taken by the Russian authorities, but it will be important to remain vigilant in seeing that this is pursued with greater determination and with international assistance.

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8. *See supra* note 6.

9. UN Doc. E/CN.4/RES/2001/24, at para. 3.

10. *Id.*, at para. 4.

11. *Id.*

The government of the Russian Federation was asked by the UN Commission on Human Rights to give free and effective access in Chechnya to the Red Cross ('ICRC') including access to places of detention such as the alleged 'camps of filtration,' in order to ensure treatment of all detainees in conformity with international law. Agreement was reached to grant the ICRC unrestricted access to all persons detained by the Russian authorities in connection with the conflict in Chechnya, both within Chechnya and elsewhere in the Russian Federation, and ICRC visits started on 17 May 2001. A set of confidential reports have been submitted by the ICRC to the Russian authorities concerning conditions of detention and related matters. The ICRC has stated that its delegates enjoy functional, fruitful, and frank working relations with all military and civilian authorities in the Russian Federation, including the Chechen republic, which are of relevance for its protection and assistance activities. Many places of detention have already been visited in accordance with ICRC standard procedures, several of them in Chechnya itself.

The Council of Europe is involved through several of its institutions. The Commissioner for Human Rights, Mr Alvaro Gil-Robles, has visited Chechnya and other regions of the Russian Federation on several occasions, notably from 7–10 December 1999 and from 25–28 February 2000.<sup>12</sup> Among his recommendations, two have been implemented and may have some positive effect over time.

One outcome is that the Council of Europe is now co-operating with the special representative of the President of the Russian Federation for Ensuring Human Rights and Civil Rights in the Chechen Republic, Mr Kamalanov (who was appointed by President Putin on 17 February 2000). The co-operation consists in the secondment of staff, by the Council of Europe, to the office of Mr Kalamanov, to assist in receiving and processing of complaints of human rights violations on Chechnya.

Another outcome is the holding of seminars aimed at developing the dialogue on possible constructive arrangements concerning the relationship between federal, republican, and local authorities in the region. On 27–28 April 2000 a seminar was held at Pyatigorsk on "The Hierarchy of Rules in a Federal State and Methods of Harmonising Federal and Regional Legislation." It can be seen as a step towards a better understanding of the specificity of the North Caucasus region and help structure the future constitutional arrangements between the Federation and Chechnya. A second seminar held at Vladikavkaz on 30–31 May 2000, on "Democracy, Rule of Law and Human Rights" adopted conclusions consisting of a programme of action to help people from Chechnya to develop capacities in the field of government.<sup>13</sup>

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12. Details of the activities of the Commissioner for Human Rights are available at: <http://www.commissioner.coe.int>.

13. For details, *see* the information contained in the Decision of the Deputies of the Committee of Ministers of the Council of Europe, 715bis meeting, 27 June 2000, item 3.1, available at the website of the Commissioner for Human Rights of the Council of Europe, *id.*

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('CPT') carried out two visits to the North Caucasus (26 February–4 March and 20–27 March 2000) and has held consultations with the Russian authorities. The preliminary report of the first mission has been published with the agreement of the Russian authorities. The Secretary-General of the Council of Europe has prepared interim reports on several occasions.<sup>14</sup>

The Russian Federation is a party to the European Convention on the Protection of Human Rights and Fundamental Freedoms, and 90 individual cases relating to human rights violations in Chechnya had been received by the European Court of Human Rights by February 2001. In the summer of 2000, the Court transmitted six cases to the Russian authorities; the rest are being processed.<sup>15</sup>

In sum, the most intensive interaction with the Russian Federation over Chechnya is now with the Council of Europe. The progress is indeed slow, but some positive developments are taking place. To a large extent due to the prodding of the Council of Europe and its co-operation with the office of the Special Representative of the President of the Russian Federation for Ensuring Human Rights and Civil Rights in the Chechen Republic, Mr Kamalanov, the authorities of the Russian Federation reports that the Office of the Military Procurator, by February 2001, was dealing with 740 cases of crimes committed by servicemen, including 35 committed against local inhabitants.<sup>16</sup>

As requested by the Commission, the OSCE should have been given an important role in facilitating a dialogue between the Russian Federation and different actors inside Chechnya on the transition to a democratic and pluralistic democracy. Negotiations over the return of the OSCE Assistance Group has been difficult, but there are indications that a return to Znamenskoje, Chechnya, might occur at the end of June or early July 2001.<sup>17</sup> A problem in the negotiations has been the issue of security for the OSCE personnel. It would require, however, that OSCE and its members make it clear that they intend to stick squarely to OSCE's own basic principles, including respect for the territorial integrity of the participating states, and that they are primarily concerned with the development of the rule of law and democracy in the region.<sup>18</sup>

The international community has therefore a difficult balancing act to perform. It must avoid giving the impression that it supports secessionist efforts, but must demand respect for human rights and humanitarian law and encourage a dialogue between the Russian Federation and the different

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14. The Third interim report covering the period from 10 October to 1 November 2000 is available at: <http://press.coe.int/press2>.

16. E/CN.4/2001, para. 34(e).

17. E/CN.4/2001, paras. 17 and 18.

18. This is where the offices of Mr Kalamonov and the experts of the Council of Europe are situated.

actors in Chechnya for a constructive alternative to secession in conformity with international law.

## 5. CONCLUDING REMARKS

On the surface, Chechnya might appear to have a good case for a right to secede. The territory was forcibly incorporated into the Tsarist Empire after a prolonged resistance. After a brief spell of self-government in the wake of the Russian revolution in 1917, it was brought back into the Soviet Union largely by deceit. During the Stalin period its nationalistic leaders were severely persecuted. In 1944 the whole of the Chechen and Ingush population was deported under inhumane conditions, and allowed to drift back only after 1957.

When, nevertheless, I have concluded that secession is neither a viable nor desirable option at this stage, I have based it on two arguments, one external and one internal to Chechnya. The external factor is that the Russian Federation has too strong of a geopolitical interest in the region to let it go. The balance of power is overwhelmingly in favour of the Russian Federation in relation to those within Chechnya who seek independence. It is also quite obvious that the international community is neither able nor willing to help the Chechen militants, with the exception of some Islamic fighters from Taliban and a few others. They can be a nuisance to the Russian Federation but not a real threat.

Secondly, the Chechen society is much too divided to be able to develop a democratic, pluralistic political order on its own based on the rule of law. The period of near-independence from 1996 to 1999 vividly illustrated the lack of cohesion within Chechnya. Tensions were too strong between Chechens and Russians, between the secular and the militant Islamists, between those who wanted to develop a modern society and those who wanted to recapture an idealised past. Mr Maskhadov, the winner of the election in 1996, was initially thought to be a moderate who would be able to control the situation, but that soon proved not to be the case.

This is why a gradual elaboration of autonomy for Chechnya appears to be a more constructive approach. It can have a useful function as an intermediate solution preferable both to secession and to complete integration and subordination to the central authorities. The autonomy arrangements must be tested for their compatibility with the principles of the Charter of the United Nations and the requirements of international human rights.

The upsurge of ethnic mobilisation and strong emotional investment in group separateness has given rise to ethnic cleansing, exclusion, and disastrous violence. The negative consequences in terms of denial of equality in the common domain, freedom of movement, and residence is often overlooked in the heat of conflict. Human beings who are mobilized by

'ethnic entrepreneurs' pushing them towards a confrontation for purposes of self-determination often do not see the full consequences, which are often not predictable in light of the swift but confusing changes presently taking place. But a denial of ethnic identity leads in many cases to an escalation of conflict, a hard and repressive policy which generates its own counter-forces, including the potential for terrorist action. Therefore, it might be desirable to opt for some limited autonomy which can be developed over time through a consensual transfer of expanded autonomy when proof is rendered that this will not negatively affect legitimate security concerns of the sovereign state concerned, nor negatively impact the situation of those inhabitants within the autonomy who belong to different ethnic groups.

The main problem is to provide some form of international guarantees. It can be achieved only when a partnership can be built in the construction of a democratic society with social cohesion. The partnership has to include both the Russian Federation and the different factions in Chechnya. In light of its past history, Chechnya is a particularly difficult case, but I hold the road of limited autonomy to be the only possible way out of the present disaster.