

**International Law and the Just and Justifiable in Secessionist
Conflicts:
The Cases of Tatarstan and Chechnya (1990-94)**

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Introduction

The statistics on self-determination conflicts are worrisome. Some 67 armed self-determination conflicts have occurred in the world since 1955, not counting the wars of independence in the former European colonies. Of them, 35% are 'ongoing' and have been in that phase for the median duration of 17 years. Another 30% of these conflicts are of a 'contained' status. Yet another 15% have ended with agreements, which are 'contested' by parties within the minority group or the government, or both.² All in all, 80% of armed self-determination conflicts - instead of being settled - persist and are apt to inspire new generations of freedom fighters (for some) and terrorists (for others).

Why do so many of the self-determination conflicts persist? Why do they tend to become and remain violent? These questions are difficult and require a more systematic investigation than the one undertaken here. As a first step in search for answers I explore the way international law delineates the domains of just and justifiable in secessionist conflicts and how this delineation can affect expectations and policy choices of the leaderships of conflicting sides. I do so against the empirical background of two self-determination cases, which occurred in the territory of the Russian Federation and present the alternative roads to nation-building: the case of Tatarstan with its road of negotiation and the case of Chechnya with its road of violence.

It is not well remembered today but is of importance that Tatarstan was the first autonomous republic of the Russian Soviet Federal Socialist Republic (RSFSR) to issue a Declaration of Sovereignty. In early 90s it was the republic of Tatarstan that attracted the attention of international academic and media communities. The New York Times, for instance, predicted in 1992 that Tatarstan would become the first battlefield in the dismemberment of the Russian Federation. And not utterly unreasonably, as Tatarstan is home to the largest ethnic minority in the federation and its location and assets offered significant resources for political leverage. Contrary to the predictions, however, the past decade in Tatarstan has been of peace and economic stabilisation, permitting to speak internationally of a 'Tatarstan model' to nation-building.

² As assessed from CIDCM's 2001 *Peace and Conflict* (Table 4: Armed Self-determination Conflicts and their Outcomes, pp. 29-31).

In many ways, the Republic of Ichkeria (Chechnya) appears to be the opposite. The Checheno-Ingush autonomous republic was one of the backward regions of the RSFSR and was not really in the vanguard of the “Parade of Sovereignties.” The Chechens, who shared the republican autonomy with the Ingushes, constituted a relatively small minority group in the confines of the Russian Federation (~700,000 in 1991). Also, contrary to the Tatars, the Chechens have a border location and claim a more recent history of conquest and repression. The past decade in the territory of Chechnya has been of destruction and bloodshed.³

With all the differences between the two republics, it is nonetheless important to acknowledge a number of similarities: Tatarstan and Chechnya are both predominantly Muslim⁴, with a deep sense of cultural distinctiveness from their once ‘conqueror’ Orthodox Russia. In Soviet times both Tatarstan and Chechnya enjoyed a de-jure autonomy within the RSFSR. In the post-perestroika environment both sought an upgrade to the status of a Union republic. With the collapse of the USSR both tried to voice their demands for independence internationally. In 1992 Tatarstan and Chechnya were the only two of the Russian Federation’s subjects to reject the Federal Treaty that would otherwise equalise the RF’s ethnic autonomous republics with territorial-administrative constituencies.

The paper is threefold: In part I, I discuss the narratives of the two conflicts with the focus on the leaders’ backgrounds, expectations and strategies. I suggest that besides scrutinising ‘preconditions’, it is

³ If one is interested in a relatively controlled comparison with an aim of explaining the occurrence of armed self-determination violence, one can investigate 1990-1994 developments in Dagestan, Kabardino-Balkaria, Karachai-Cherkessia, and carved out of the Checheno-Ingush Republic Ingushetia. All four are ethnic autonomous republics, located similarly to Chechnya - on the southern border of the federation. In 1944 all of them were affected by Stalin’s deportations (see footnote 10). Also, all of these minority groups have a history of participation in the Caucasus wars against the Tsarist Army, with the Cherkesses and the Avars (not the Chechens) commonly portrayed by Lermontov and Tolstoi as unbending fighters. None of these republics, however, has given way to war.

⁴ For the purposes of this paper, I will not attend to the difference between Sunni Islam (the Tatars) and Sufi Islam (the Chechens). One is invited to look into the cases of other Sufi peoples in the Russian Federation, including the Avars, the Dargins, the Ingushes, etc.

critical to understand idiosyncratic political processes operative in each case and see how the oft conflictual interaction of international law guidelines translates through self-interested interpretations into conflicts on the ground. I attend to the period of 1990-1994 when, arguably, the more important decisions were made by Tatarstany, Chechen and Moscow leaderships that have provided for the situation in the two Russian Federation's constituencies today.

Against the historical development of Moscow-Kazan and Moscow-Grozny interaction, I then examine as many as three discernible interpretations of the self-determination principle. I test these interpretations for consistency with the key readings of contemporary international law.

In the third part, I attempt to look at the cases from yet another angle, inquiring into what lies beyond the conventional fragmentation of the self-determination principle into competing interpretations. I suggest that such fragmentation - though initially appealing - obscures the very problematique of self-determination, without the understanding of which no self-determination conflict could be properly analysed and managed.

PART I. Two Narratives of Self-determination: Tatarstan and Chechnya

1) Historical background

Tatarstan

Tatarstan (68,000 sq. km) is located in the heart of Russia, on the banks of the Volga River, the Russian Federation's strategic waterway. The republic accounts for 26% of the RF's oil production and is rich in other natural resources, including gas, fertile land and timber. At the time of the USSR collapse, Tatarstan scored the leading position among the RF's regions in positive balance of regional exchange and international exports, industrial and agricultural output, and the annual amount of investments.

In 1991 Tatarstan was populated by 3,700,000 people, with 48% Tatars, 43% Russians and 9% composed of 70 other nationalities. Overall, the Tatars constitute the largest ethnic minority in the Russian Federation (~5%). Only a third of ethnic Tatars reside in Tatarstan; another two-thirds live elsewhere in the predominantly Russian regions of the federation. The degree of intermixing of the Russians and the Tatars is significant and can be illustrated by the famous saying of XIX century Russian historian Vasily Klyuchevsky: "Scratch a Russian and find a Tatar."

The ancestors of the Volga Tatars - the tribes of ancient Bulgars - populated the Volga River region in the 8th century. Volga-Kama Rivers' Bulgaria, established in the end of the 9th century, is claimed by some historians to be the first feudal state in north-eastern Europe.⁵ In 922 Volga Bulgaria adopted Islam (ancient Russia accepted Christianity in 988). Two centuries later Genghis-Khan swung across Eurasia, establishing in Volga Bulgaria his main residence - the Golden Horde. The collapse of Genghis-Khan's empire in the 14th century resulted in the formation of a number of successor states. One of them - the Kazan Khanate - existed until 1552 when Russian Tsar Ivan Grozny conquered Kazan and incorporated the territory into the Russian State.⁶

⁵ *Istorija Kazani (The History of Kazan')*. Volume I. Tatarskoje Knizhnoje Izdatel'stvo, 1988.

⁶ It is important to note that the 1552 incorporation of Kazan territories into the Russian state did not lead to immediate russification. Tatar mosques, schools and local

1917 Bolshevik revolution coincided with several ethnic self-determination revolutions, including those in the Volga region and Caucasus. It is largely taking this into account that the Third All-Russia Congress of Soviets adopted on the basis of Lenin's "Declaration of Rights of the Working Class and the Exploited Peoples" the federal administrative structure of Soviet Russia. According to Article 11 of the 1918 Constitution of the RSFSR, the Soviet Russian Republic was to be the federation of Soviet ethnic republics. It would be inaccurate to talk of the establishment of a truly functioning federation, but the constitution was of significance: it laid the foundation for an asymmetrical federal structure, which 1) combined territorial Russian constituencies with ethnic republics and 2) gave the latter more administrative autonomy than the former, especially with regards to minority language education.⁷ Tataria was among the first ethnic republics to receive autonomy in 1918. Over the decades of communism the republic was saved from the alterations of borders and ethnically-based repression. As all other parts of the Soviet Union, however, it was forcefully secularised and collectivised.

Chechnya

Chechnya is a land-locked republic of some 17,000 sq. km, located in the south of the federation and neighbouring Georgia. Its Soviet ancestor, the Autonomous Republic of Checheno-Ingushetia, was populated by 1,300,000 people: 56% Chechens, 14% Ingushes, 25% Russians, and a number of other nationalities. The Checheno-Ingush republic was one of the least socio-economically developed regions of the Soviet Union, producing modest amounts of grain, wool, cement and petroleum. 1990 Soviet Encyclopaedia and Britannica indicate as resources only fertile soil and animal husbandry. The more recent reference sources mention oil. What is (or was) to Chechnya's relative advantage is the location of an almost-completed in 1990 oil pipe, the only (with the break-up of the USSR) Russian oil route from the Caspian Sea to Europe.

administrations carried on with the Tatar language using Arabic alphabet for almost 400 years. The contemporary Tatar Cyrillic alphabet is as recent as 1930s.

⁷ This asymmetrical federal principle was reaffirmed in the 1978 Constitution of the Russian Soviet Federal Socialist Republic and in 1993 Constitution of the Russian Federation.

The Caucasian conflict could be dated to 1711 when the Cossacks, then in the Russian Tsar's border service, moved beyond the Terek River in the territory populated by the Mountainous peoples: the Cherkesses, the Avars, the Kabards, the Balkars, the Chechens and others. The Cossacks actively pursued the Russian Empire's policy of strengthening the positions in the Caucasus and the Black Sea. A century later in 1817 the Caucasus Wars began. They ended in 1864 with great losses on all sides and the victory of the Tsarist army. Imam Shamil, the leader of the Mountainous peoples and an Avar (of today's Dagestan) was captured and brought to St Petersburg. Alexander II had him settled in Kaluga with a considerable remuneration. Later in his life the tsar allowed Shamil to travel to Mecca, where he died and is not known to try to resume the anti-Russian struggle. This latter ambiguity may in fact explain why one of his sons became a Russian general and the other became a Turkish general, and they fought each other.⁸

In 1918, the Republic of North Caucasus (North Caucasian Emirate), of which Chechnya was a part, declared independence from struggling through the Civil War Russia. As the Red Army gained control over the Caucasus, it heavily suppressed the secessionist (taken as anti-Soviet) rebellion. Chaired by Iosif Stalin, then the Soviet Commissar of Nationalities, the Soviet Convention of the Mountain People established the Mountainous Soviet Republic. Totalitarianism of the 1920/30s was marked by severe mass repressions of collectivisation and secularisation campaigns throughout the Soviet space. During one of these campaigns 35,000 Cossacks, suspected of supporting the Whites, the pro-Tsar army, during the Civil War, were displaced from their territories. The Chechens, among other Mountainous peoples, were encouraged in 1930s to settle in the Cossacks' 'vacant' lands.

In June 1942 the rebel Chechen government of Israilov and Sheripov issued an appeal "to wait for the Germans as [welcome] guests"⁹ in return for the German promise to acknowledge the

⁸ For this and many other interesting details and documents, see *Chechnya. White Book*, at the web-site of the Russian mission to the United Nations (<http://www.un.int/russia/home.htm#english>). p.10.

⁹ John Dunlop. *Russia Confronts Chechnya. Roots of a Separatist Conflict*. Cambridge Press, 1998, p 16-64.

independence of the Caucasus. In 1944 Stalin used this appeal as a pretext for the merciless deportation of the Chechens and the Ingushes, among other Caucasus ethnic groups, into Kazakhstan.¹⁰ After the war Stalin called on the Ukrainians, the Belorussians and the Russians to resettle from the burnt by the war lands into the now again 'vacant' territories. In 1957 Nikita Khrushchev restored the Checheno-Ingush Autonomous Republic and allowed the removed people to return to their lands. He also ordered the enlargement of the republic into the predominantly Russian populated territories of Stavropolski krai.

2) 1990-1994: leaders and the processes of self-determination

Tatarstan

In 1988, in the environment of the perestroika's ethnicisation of the USSR, the Tatar Public Centre was created. First aimed at the promotion of traditional Tatar culture, the centre soon took lead in the national movement for independence. In 1990 its most radical elements formed the Tatar Party for National Independence – Ittifak, called after the organization of the first generation of Tatar nationalists dating to the 1905 revolution. Not subscribing to the rhetoric of Ittifak, the Tatar communist leadership, led by Mintimer Shaimiev, initiated negotiations with Moscow for upgrading the republic's status to that of a republic of the Soviet Union. A new Union Treaty had been drafted under Gorbachev.¹¹ To acquire support from regional leaders in his struggle against Gorbachev, Yeltsin, then the elected president of the RSFSR, loudly encouraged the elites of Tatarstan "to grab as much sovereignty as they could swallow." Accordingly, in August 1990 the Tatar Supreme Soviet adopted the Declaration of State Sovereignty of the Republic of Tatarstan.¹²

¹⁰ Deportations, however, did not affect the minorities evenly. For instance, the Balkars were deported and the Kabards were not; the Karachais were deported but not the Cherkesses. With the view of the 1990 split between the Chechens and the Ingushes, it is interesting that only the Chechens and the Ingushes share the history of deportations and are known to remain closely connected in Kazakhstan (unlike others, they also have fully comprehensible languages).

¹¹ L.M. Drobizheva. "The Problem of Sovereignty in the Eyes of Elites and Masses". Seminar on "Ethnic Factor in the Federalization of Russia", Kazan 2000. <http://federalism.soros.ksu.ru/conference/seminar3/drobizheva.htm>

¹² *Sovereign Tatarstan*, Moscow INSAN: 1997, p. 195.

In contrast with many other republican governments, Shaimiev's team remained remarkably monolithic well into the new century, and intra-governmental differences of opinion seldom made newspapers headlines.¹³ Former Tatar Communist Party Secretary, Shaimiev believed that the 'excessive enthusiasm' of democrats and nationalists would bring nothing but ruin to the republic.¹⁴ He also well understood that with the collapse of the USSR and communism he could survive in the warmth of the corridors only if succeeded in proposing an alternative to post-perestroika uncertainty, which was vulnerable to the abuse of radicals.¹⁵ Against the Tatar radicals, Shaimiev argued that - instead of seeking independence - the republic should work on the possibilities for economic growth 'in association with Russia.'¹⁶ He maintained that given its geographical location in the heart of Russia, Tatarstan is bound to Russia by economic, transportation and other ties and, even if independence was gained, would be inevitably affected by the Russian Federation's legislation and political environment.¹⁷

In the dialogue with Moscow, Shaimiev acknowledged that Tataria contributed to the centre more than it received in return and that it would no longer be a 'milk-cow' of the federation. He recognised Tatarstan's vulnerable dependence on inter-regional exchange for consumer goods and stressed the necessity to translate the republic's industrial strength and positive exchange balance into appropriate living standards.¹⁸ Shaimiev's strategy of combining economic openness and self-efficiency was aimed primarily at ensuring *stability*. Stability was indeed the key word in his and his team's speeches.¹⁹ It was *to achieve stability* that Tatarstan had to become independent; it could become independent only by becoming an equal partner to

¹³ Sergei Kondrashov. *Nationalism and the Drive for Sovereignty in Tatarstan, 1988-1992*, St. Martin's Press, 2000, p. 92

¹⁴ Kondrashov, p. 189

¹⁵ Ibid., p. 93

¹⁶ Kaplan, Cynthia. "Ethnicity and Sovereignty: Insights from Russian Negotiations with Estonia and Tatarstan" in *International Spread of Ethnic Conflict*, edited by David Lake and Donald Rothchild, Princeton University press, 1998 p. 267.

¹⁷ Kondrashov, p. 108

¹⁸ Musina, Roza. "Contemporary Ethnosocial and Ethnopolitical Processes in Tatarstan." In *Ethnic Conflict in Post-Soviet World (Case Studies and Analysis)*, M.E. Sharpe: 1996, p. 202.

¹⁹ *Sovereign Tatarstan*, p. 18.

Moscow; and it could become an equal partner to Moscow only 'prudentially', by making use - on the contractual basis - of its economic assets and resources.²⁰

By 1991, however, it was not easy to maintain stability in the republic because of all destabilising trends in the USSR. The Union was yet to be dismembered, but it was at the peak of ethnicisation. The Ittifak, Tatar nationalist party, was pushing for complete independence and tried to create an ethnic Tatar militia. Retrospectively, it is difficult to judge if Tatarstan would have yielded to an ethnic war, if an Ittifak member has become president. Ittifak's 'freedom at any cost' rhetoric was similar to that of Dudaev.²¹ But history does not have a subjunctive mood. In 1991 Shaimiev won the presidency, and now we can only analyse what he endeavoured and how successful or unsuccessful his efforts were. In his first presidential decree Shaimiev prohibited all armed formations and all forms of infringements on ethnic equality.²² Then, he authoritatively declined an Ittifak's proposal to institutionalise a new republican holiday, October 15th, a Day of Remembrance (the day of the 1552 capture of Kazan by Ivan Grozny).²³ On the constructive side, significant financial resources were devoted to the projects of Interethnic Harmony. Specifically, prime TV time was officially reserved for the joint dialogue of spiritual leaders of Christianity and Islam. Moreover, the government sponsored a series of conventions of the Multiethnic Congress of Authorities of Tatarstan and the issuance of the Joint Declaration of the Political Organisations to work together for prosperity and social protection of all citizens of the republic.²⁴ Again and again Shaimiev publicly assured the Russians residing in Tatarstan that they would never find themselves in "Tatarstan for the Tatars only." Accordingly, the 1992 constitution of the republic adopted inclusive criteria for citizenship and established two official languages: Tatar and Russian. Even during the major

²⁰ Kondrashov, p. 97

²¹ Pope, Victoria "Descendants of Genghis Khan are Marching". *US News and World Report*, Washington, February 24, 1992, p. 48

²² Musina, p. 205.

²³ L. S. Hanauer. "Tatarstan's Bid for Autonomy: Tatarstan as a Model for the Devolution of Power in the Russian Federation". *Journal of Communist Studies and Transition Politics*. 1996, Vol. 12, No 1., p. 64.

²⁴ Kondrashov, p. 110, 194

disagreements with Yeltsin, Shaimiev refrained from the closer cooperation with the radical Ittifik and from adopting its rhetoric.²⁵

To the extent that it is possible to judge today, Shaimiev's project of economic stability and political inclusion did work out.²⁶ It is revealing that, whereas in 1991 70% of the population regarded the situation in the republic as unsatisfactory and unstable, some two years later the polls were reversed: almost 70% said the situation was stable, good or satisfactory.²⁷ The 'success' is often explained by the conducive to peace and development historical preconditions, and as it has been considered in Part I.1 there is evidence in support of such explanation. Arguably, however, structural preconditions and historical memories do not 'act'. It takes an enterprise of human agency to endorse the preconditions with causal power and meaning. Accordingly, it could be held that Shaimiev's persistent efforts of 'gate-keeping' of ethnic provocations, the promotion of an inclusive and multi-layered understanding of sovereignty and a sound socio-economic policy, were each and in combination decisive. It is indeed remarkable that only banks in the territory of Tatarstan could survive the 1998 banks crash that hit heavily and indiscriminately across Russia. It is also remarkable that Tatarstan, lacking factual international legal personality, was successful in establishing foreign missions in many corners of the world, notably in Western Europe, Middle East and Central Asia.

Chechnya

As many other autonomous republics of the RSFSR, the Checheno-Ingush republic followed Tatarstan with the demands for upgrading its status to that of a Union republic. Independence discourse did not enter the Checheno-Ingush political arena until the appearance of Dzhokhar Dudaev, a Soviet Air Force major-general, who was elected at November 1990 Chechen National Congress to the post of CNC chairman. Dudaev's speeches and interviews of the time suggest that he was highly optimistic of the Chechen chances to wrestle independence from Russia. In the 'pursuit of freedom from the colonial oppressor', he openly held the use of force to be justifiable. In some ways, his position could be anticipated. Born in 1944, Dudaev was

²⁵ Kaplan, p. 269.; Dunlop, p. 61-66.

²⁶ Kondrashov. p. 94

²⁷ Ibid., p. 189.

several months old when the Chechens were declared the enemy of the Soviet people and deported to Kazakhstan. There, in exile, he spent his childhood. Later, he joined one of the most prestigious Soviet military academies and was the only Chechen to reach a high military ranking in the USSR army - Soviet Air Force Major-General.²⁸ In the late 1980s he was stationed in Estonia and witnessed (and some say 'allowed') the Estonians to raise in Tallinn their national flag. Inspired by the Baltic precedent, he saw few reasons why Chechnya should not share in Estonia's secessionist success and be recognised by the international community. Like Estonia, he thought, Chechnya had a distinct identity, border location and a recent history of discrimination and revolt.²⁹ There is also evidence that Dudaev hoped that Yeltsin would remain 'dovish' in his dialogue with the breakaway republic not to jeopardise the receipt of Western loans.³⁰

Whereas Estonia had 'supportive' Finland and the EC, Dudaev trusted that the Caucasus had a good ally in Turkey.³¹ Few sources are available on that matter, but clearly it was not without Dudaev's endorsement that in November 1991 three Chechens, led by Shamil Basaev (later famous for 1996 campaign in Budennovsk) hijacked a Soviet TU 154 and demanded it to land in Turkey. When in Turkey, the hijackers requested to organise a press conference, so that they could state the Chechen demands for self-determination. As ambiguous as the Turkish authorities were at the time in their relationship with Chechnya, they refused to organise a conference and returned the plane to the USSR, but did not release the 'terrorists' to the federal authorities.³²

Proximity to the oil-rich Caspian Sea and the convenient location of the oil-pipe that runs from the latter to Europe also contributed to

²⁸ Interestingly, he was married to a Russian, who is known to support him in his secessionist undertakings as the CNC Chairman and the President of the Chechen Republic.

²⁹ Of course, the degree to which Estonia and Chechnya were 'different' in 1991 should not be underestimated. In difference with Chechnya, Estonia was not recognized by the international community as a part of the USSR.

³⁰ Edgar O'Balance. *Wars in the Caucasus*. New York, 1997, p.172

³¹ The Caucasus and The Caspian: 1996-1997 Seminar Series, Harvard University, John Kennedy School of Government, [http:// www.ciaonet.org/conf/jfk01/](http://www.ciaonet.org/conf/jfk01/)

³² Soon, however, as the Turkish Chechens raised their heads claiming discrimination, the Turkish government appeared to abandon its public compassion for Chechen self-determination.

Dudaev's optimism. Almost in all of his speeches, broadcast at the time in Russia and the West, he elaborated on the importance of this oil-route and saw the West, and the US in particular, as business partners.³³ Dudaev's oil-politics related ambitions went as far as to plan the (re)establishment of the Caucasus Confederation, which would include Azerbaijan, and closer cooperation with Arabic oil-exporters, especially Saudi Arabia.³⁴ In his later interviews Dudaev appeared surprised that even the nearer Muslim brothers like Ingushetia, Dagestan and Tatarstan dissociated themselves from the Chechen republic.

That much about Dudaev expectations. What about his strategy and policies? Dudaev started his CNC chairmanship by creating an armed National Guard and establishing all-Chechen compulsory military service. He publicly encouraged the enrolment of volunteers as young as 15 years old. In another decree, he ordered the transfer of prisoners of Chechen nationality from prisons in the Russian Federation to Chechnya to immediately liberate them and recruit them into the National Guard. Through his former Soviet army connections he obtained a significant arsenal of Soviet weaponry and heavily armed the Chechen male population. More importantly, Dudaev abolished both federal and republican social welfare systems that predictably hit primarily the urban - non-Chechen population (the Chechens were able to rely on their extended rural families).³⁵ The Chechen Declaration of Sovereignty was explicitly Chechen specific, excluding not only the Russians, residing permanently in the republic, but also the Ingushes and other Muslim 'brothers'.

By autumn 1991 Dudaev seized by force, and with casualties, all of the key Grozny assets and took control of the local security structures. He requested the deputies of the Supreme Soviet of the Checheno-Ingush republic to self-dissolve and declared that parliamentary and presidential elections would be held in the republic in November. One week before the elections, Yeltsin issued an ultimatum demanding Dudaev disarm illegal military formations and release all captured

³³ Dzhokhar Dudaev. *Time*, Vol. 147, Issue 10

³⁴ Dunlop, p. 95.

³⁵ Galina Soldatova. "The former Checheno-Ingushetia. Inter-ethnic Relations and Ethnic Conflicts". *Ethnic Conflict in the Post-Soviet World: Case Studies and Analysis*, M.E. Sharpe, 1996, p. 218.

buildings, an ultimatum that Dudaev ignored. He held the elections and won them, although it should be noted that the elections' observers reported serious procedural violations. On the one hand, the elections were conducted only in the territory arbitrarily demarcated as the Republic of Chechnya, and thus the populations of six (out of fourteen) regions of the Checheno-Ingush Republic were excluded (not to mention the 'excluded' Russians who fled the republic as a consequence of life threats and criminal harassment).³⁶ On the other hand, the representatives of the Chechen Diaspora, permanently residing outside of Chechnya, were allowed to cast a vote.

In the discussion of Dudaev's strategy it is also perhaps important to realise Dudaev's attitude towards Islam. Many of Dudaev's early supporters disclose his mistrust of religion (it could hardly be otherwise for a Soviet Air Force General!) and his plans for a secular oil-refining state. Yet despite his initial attitude to religion, he soon understood its potential mobilisability. When elected again to the presidency in 1992, he symbolically swore on the Koran. Apparently, this was done to unite the clans, legitimise his presidential authority in the republic and 'to scare off' the Russians. Arguably, Dudaev also wanted to signal to possible 'Islamic allies.'³⁷ Increasingly with his rule (and not without the help of Russian and international media), Islam became the symbol of the Chechen resistance to Russia.³⁸

3) 1990-94 Moscow's counter-strategies and their impact

Tatarstan

The federal authorities were aware of the price of instability in Tatarstan, a junction to all Eurasian transport and energy routes and one of the few 'milk-cow' regions of the federation. Many feared that had Moscow violently displaced Shaimiev, his successors would have been of the radical Ittifak.³⁹ Largely for these reasons, Moscow-Kazan relations never became militarised. Apparently, there was only one instance of semi-military pressure - in 1992, in the context of Yeltsin's

³⁶ <http://www.un.int/russia/home.htm#english>

³⁷ Gammer Moshe. "The Imam and the Pasha: A Note on Shamil and Muhammad Ali". *Middle Eastern Studies*; London, Oct. 1996

³⁸ Zarakhovitch Dmitri. "Chechen Leader D. Dudaev: Terms of War and Peace" *Time*. Chicago, March 4, 1996

³⁹ "The Regions: A Country of Countries". *The Economist*, London, March 27, 1993, p. 21-24.

attempt at re-centralisation. Frustrated with Tatarstan's refusal to sign the Federal Treaty, Yeltsin called for an all-Tatarstan referendum to test the legitimacy of the Shaimiev presidency and his self-determination claims. When the referendum questions were formulated by the Tatar administration, Yeltsin and the Russian Federation's Constitutional Court declared the referendum illegal. Federal army exercises were held in the neighbouring Volga region. Yeltsin himself engaged in a "No campaign," calling on the 'decent population' of Tatarstan to boycott the event.⁴⁰ Notwithstanding, 82% of the Tatarstany population (that is composed of the Tatars and the Russians) participated in the referendum. 62% of those voted supported the Shaimiev formulation that "*Tatarstan should be a sovereign state and subject of international law in association with the Russian Federation on the basis of equal treaties.*"⁴¹

With the view of these developments, Russia's 1993 constitution affirmed the asymmetric composition of the federation, though the language remains ambiguous. For instance, Article 5 (1) states that all subjects are of *equal rights*. Article 5 (2), on the other hand, poses that whereas krais, oblasts, autonomous okrugs and cities of federal significance are to have *ustavs* (charters), republics (in brackets called states) are to have *constitutions*. Also, only 'republics' are allowed to establish their own languages to be used in addition to Russian (Article 68 (2)) and bilaterally negotiate with the centre the scope and content of their administrative and legislative competence.

In February 1994 - ten months before the beginning of the war in Chechnya - Kazan and Moscow signed a Bilateral Treaty entitled "On the Delimitation of the Issues of Administration and Mutual Delegation of Powers between the Federal Authority and the Authority of the Republic of Tatarstan."⁴² This treaty recognised Tatarstan as a *sovereign state united with the Russian Federation* under the Constitution of the Russian Federation, the Constitution of the Republic of Tatarstan and the above Treaty. The Treaty was accompanied by twelve issue-specific agreements, signed for a period of 5 years. As it

⁴⁰ Raphael Khakimov. "Prospects of Federalism in Russia: A View from Tatarstan". *Security Dialogue*. March 1996, Vol.27, No.1, p. 74.

⁴¹ *Sovereign Tatarstan*, p. 122.

⁴² A similar treaty was negotiated with the government of Dzhokhar Dudaev, but it is yet to be written why without success.

is possible to judge from the agreements, prolonged for another term, Tatarstan was granted the 'privileges' to a) establish and administer republican legislation, republican budget and republican taxes, that is to have independent control over the collection and distribution of republican revenues in return for assuming all social welfare obligations, such as wages and pensions; b) independently decide on matters of ownership and deployment of enterprises (except for those owned by the central government); c) have jurisdiction over the republic's land and natural resources; d) appeal against the federal government in the case of a violation of the treaty. In accordance with the Agreement on the delimitation of authority in the area of international relations, the republic was allowed to independently (to the extent that it does not contradict the federal foreign policy) participate in foreign economic relations, establish foreign missions, create free economic zones, and sign trade and cooperation treaties with foreign countries and their constituencies. According to the agreement between Moscow and Kazan in the military sphere, the Republic of Tatarstan was explicitly 'secured' against any kind of armed intervention or the threat of it.⁴³

Chechnya

Preoccupied with the dethroning of Gorbachev, Yeltsin (then the President of the RSFSR) openly encouraged the developments in the Checheno-Ingush republic and saw Dudaev as a useful ally (during the 1991 Putsch, Dudaev organized a demonstration in Grozny, among other slogans in support of Yeltsin). When, shortly after, Dudaev dissolved the Chechen Parliament and seized by force all the government assets, Yeltsin made the first attempt at delegitimising the CNC and its leadership. He passed the State of Emergency decree for the territory of the Checheno-Ingush republic and authorised a series of political attempts to replace Dudaev with Akhmet Arsanov, one of

⁴³ For a brief and informative account of recent development in Tatarstan, see Andrey Makarychev "In Search of International Roles: Volga Federal District." Discussion Paper No. 21, Local Government and Public Service Reform Initiative, Open Society Institute, 2001 (<http://lgi.osi.hu/publications/2001/37/21.PDF>)

For important documents see, Federalnyi Zakon (Federal Law) N 184- 3 of 6 October 1999 and Amendment to it of 29 July 2000 N 106- 3. Accordingly, a number of significant articles in Tatarstan's constitution have been modified. For an updated version, see <http://www.tatar.ru/constitution.html>

the Checheno-Ingush Republic's deputies to the Federal Parliament. Dudaev responded to the State Emergency decree with the following Resolution of the Parliament of the Chechen Republic (N25), the text of which is of interest, especially for the purposes of this paper:

On Illegitimacy of the Decree of the President of the RSFSR Introducing a State of Emergency in the Chechen Republic

By his decree the President of the RSFSR illegally introduced a state of emergency in the territory of our sovereign republic. It is known that a state of emergency is imposed in the event of mass riots involving human casualties, a natural disaster and other circumstances.

None of these circumstances were in evidence in the territory of the Chechen Republic. The authorities of Russia following the lead of the toppled totalitarian forces and proceeding from imperial interests introduced such state in the territory of the republic whose sovereignty was announced back in November 1990.

Considering the actions by the President of the RSFSR as contradicting the norms of international law, the Universal Human Rights Declaration, and the resolution of the Parliament of the Chechen Republic of November 2, 1991 "On State Sovereignty of the Chechen Republic", the [new] Parliament of the Chechen Republic hereby resolves that:

1. The Decree of the President of the RSFSR "On Introduction of a State of Emergency in the Chechen-Ingushi Republic" of November 7, 1991 be denounced as illegal and not having legal force.
2. Demand to be made of the President of the RSFSR that all armed units be withdrawn from the territory of the sovereign Chechen Republic within 24 hours.
3. All parliaments and peoples of the world be informed about the interference of the Russian authorities in the internal affairs of the sovereign Chechen Republic.

In this context, units from the USSR and RSFSR interior ministries landed on an airfield near Grozny and were met by the National Guard

and volunteers. The RF's Congress of People's Deputies - then the highest Russian legislative body - refused to ratify Yeltsin's decree. The troops had to return to Moscow. This incident cast shade on Yeltsin's self-esteem and apparently impacted his relations with General Dudaev thereafter. It also intensified anti-Russian sentiments among the Chechen population and radically increased the number of Dudaev's supporters.

December of 1991 saw the break up of the Soviet Union, the development, which kept Moscow occupied. And it is not that there was much interest in reopening the Chechen issue. Apparently, Yeltsin hoped that the Chechen 'revolutionary fever' - if not remaining under his control - would be short-lived. It is said that with this hope and not to exacerbate the tensions at the time, that the Russian army left the Chechen territory. By some mysterious arrangement, most of the Soviet armament remained at the disposition of Dudaev.⁴⁴

Until the fall of 1994 the Kremlin opted for a peaceful-temporising strategy. Witnessing Yugoslavia explode, many in Moscow opposed military solutions to ethno-secessionism in the federation. On the other hand, it was increasingly hoped that Dudaev's adventurous political, social and diplomatic policies would discredit his regime in the eyes of the Chechen people and that the 'implacable General-President' would be removed by a domestic opponent who would be more inclined to compromise with Moscow. In fact, the discontent in the republic was increasing and the Chechen clans had visibly grouped into two camps: pro- and contra-Dudaev.

Why then did Yeltsin initiate the federal army's latent support of the anti-Dudaev opposition in Chechnya in the fall of 1994? At the time many said that a powerful trigger of Yeltsin's decision to reopen the Chechen issue was President Clinton's pronouncement early 1994 of the Caspian Sea as within the sphere of strategic interest of the United States. In this pronouncement Clinton also strongly promoted Turkey as an ideal outlet for foreign trade and a secular model for the Islamic nations and emphasised the importance of alternative non-Russian routes, namely through Turkey.⁴⁵ It is important to remember that in

⁴⁴ For an official and largely credible account of late 1990-early 1991 situation in Checheno-Ingush Republic and interesting documents, see *Chechnya. White Book* at <http://www.un.int/russia/home.htm#english>. pp. 51-77.

⁴⁵ Oil Politics. *World Politics Journal*, Spring 1998

1992-94 Yeltsin's administration was involved in intense negotiations with the Caspian Sea neighbours over the oil deposits' arrangements, promising Azerbaijan to make the Chechen-land pipe fully operative. At the time, a number of international analysts argued that declaring Russia and the US as the Caspian Sea rivals was politically incorrect and diplomatically detrimental and impacted significant changes in the RF's foreign policy. But what matters for the question under consideration is that the emerged "triangle" of Chechnya, Turkey and the US appeared threatening to Russian oil-businesses, diplomats and intellectuals and thus refocused the Duma and Yeltsin's administration onto the situation in Chechnya.

Another rationale for the militarisation of the Chechen conflict, often articulated by Yeltsin himself, was to deter Tatarstan and other ethnic (and non-ethnic!) regions from making more radical demands - a chain reaction that could leave Moscow as the capital of the Moscow alone.⁴⁶ Related to the fear of fragmentation, was the former superpower's international and domestic prestige. On the international plane, Yeltsin worried that he might appear to the West as incapable of securing his country's constitutional order and adequately 'managing internal difficulties.' On the domestic plane, Yeltsin started to bare the audience costs of his three years' bluff in his dialogue with Dudaev and shelving the Chechen problem long enough to make it incurable. Arguably, this accusation became particularly intolerable to Yeltsin when the media picked up on persistently portraying Chechnya as a crime-breeding zone.⁴⁷ Of course, it is not implausible that the causal arrow pointed exactly the other way: from Yeltsin's plans to reopen the Chechen issue to 'crime-breeding' media discourse.

With the November 29 disclosure that federal forces were covertly taking sides in the Chechen civil war, Yeltsin went to the immediate forefront of Chechnya-related decision-making. Trusting that a demonstration of a serious intent to wage a full-scale military action would bring Dudaev to intimidation, Yeltsin ordered forces to close off the borders of Chechnya and to secure the strategically important oil-pipe, roads and railroads.⁴⁸ Confident as he was though, Dudaev

⁴⁶ Claudia Rosett. "Tatarstan Dances Around the Bear Hug." *Wall Street Journal*, Jan 20, 1995

⁴⁷ O'Balance. p. 178.

⁴⁸ O'Balance, pp. 178, 190.

replied with a declaration of war. On December 9 Yeltsin authorised 40,000 interior army troops to invade Chechnya and “restore constitutional order with all measures available to the state.”

PART II. Three Interpretations of the Principle of Self-determination of Peoples⁴⁹

What do the above narratives tell us? They manifest something simple and important: that each case is an absolutely unique entanglement of its constitutive characteristics, human idiosyncrasies and accidents of any sort. They also show us something less evident: that the positions of the chief executives discussed (i.e. of Chechnya, Tatarstan and the Russian federal centre) fall neatly into the matrix of three common interpretations of the self-determination principle:

- 1) The right to self-determination as the inalienable and unlimited right of dependent peoples to independent statehood; the interpretation possibly attributable to the Chechen president D. Dudaev.
- 2) The right to self-determination as the right to internal sovereignty, subject to an established state's territorial integrity; the interpretation possibly attributable to the federal authorities, specifically President Yeltsin (after he had successfully disunited the USSR).
- 3) The right to self-determination as the right to internal and external sovereignty, subject to the principle of the respect for individual human rights; the interpretation possibly attributable to Tatarstan's president M. Shaimiev.

Another study is necessary to reveal if the above interpretations have in fact influenced these leaders' assessment and strategies. But for the questions I ask, a kind of structural reasoning may suffice. Indeed, the positions of Dudaev and Yeltsin are predictable: the former strives for secession, the latter is uneasy about letting the former go. This logic is present in every self-determination conflict, tempting to conceptualise these conflicts in an inadequately narrow framework of the right to self-

⁴⁹ Without going into the controversy about what is it that constitutes a people (which is really a peripheral issue to the questions I ask), I assume that any linguistic (or multi-linguistic) identity historically constituted with a view of certain symbols or space could potentially invoke the right to cultural or political self-determination. By 'could potentially' I do not necessarily mean that any such identity should invoke the right, but that contemporary International law is unfit to counter such appeals. One may further argue, of course, that the key international law instruments and the history of precedents (notably, the recognition of the seceding republics of the Yugoslav Federation) necessarily support the assumed reading.

determination (as if enjoyed exclusively by an ethnic minority) vs. the right to territorial integrity (enjoyed by an established state). Why such conceptualisation is inadequate I will discuss below.

The third interpretation - of the preeminence of the principle of the respect for individual human rights - is not fixed to one or the other party in a self-determination conflict. But given the characteristics of the contemporary international law, the latter interpretation is much less likely to be invoked by the minority leaders than by the leaders of the state (as was in fact invoked by Yeltsin and his aids). I will return to this phenomenon later, suggesting that the emphasis on 'individual' rights is representative of relatively 'secure' collectivities; relatively 'insecure' collectivities tend to prioritise collective rights. It is in this regard that the Tatar case adds a new dimension. One needs to appreciate that, at least in the official discourse, the 'human rights' interpretation was systematically advanced by a minority leader as a viable alternative to the 'inalienable and unlimited' view of the right to self-determination. The appreciation should come despite of the fact that the Shaimiev leadership could have employed the individual human rights framework at least partially instrumentally, for the above-discussed narratives suggest that the leaders' choice between an inclusive conception of republican citizenship (see the policies of Shaimiev) and an ethnically exclusive one (see the policies of Dudaev) does in itself matter.

All three of the outlined interpretations appear reasonable in the framework of international law, as it has been sporadically developed by the XXI century. But let us evaluate each interpretation systematically with resort to the texts of the relevant General Assembly resolutions and other international instruments.

1) The perceived preeminence of the right of self-determination.

As the right of dependent peoples to be free, the right to self-determination, became a recognised international law principle in 1950-60s. There is a disagreement whether it is in this sense that the right to self-determination is mentioned in Articles 1(2) and 55 of the United Nations Charter⁵⁰, but the wording of the 1960 Declaration of

⁵⁰ See for instance, Rosalyn Higgins. *Problems and The Process: International Law and How We Use It.*, 1994, pp. 111-113.

the Granting of Independence to Colonial Countries and Peoples (G.A. Res. 1514) is unambiguous:

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national sovereignty,

Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations [and] declares that:

1. The subjection of peoples to alien [...] domination [...] constitutes a denial of fundamental human rights, is contrary to the [UN Charter] and is an impediment to the promotion of world peace [..]

2. All peoples have the right of self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

The right of self-determination was reaffirmed in common Article 1(1) of 1966 International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. Importantly, the covenants reaffirmed it without strengthening the distinction between the dependent peoples separated from their once conquerors by *blue and salt water*⁵¹ and the dependent peoples residing *within the established sovereign states*. In a similarly 'universal' manner the right of self-determination was addressed in the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations (G.A. 2625). The declaration stated that States have the

⁵¹ UN General Assembly Resolution 1541 (1960).

duty to promote [...] the realisation of the principles of equal rights and self-determination of peoples..
in order [...] to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned, [...] bearing in mind that subjection of people to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter of the United Nations.

The declaration also maintained that

The establishment of a sovereign and independent State [...] constitute[s] mode of implementing the right to self-determination by that people.

and that

Every State has the duty to refrain from any forcible action which deprives peoples [...] in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against and resistance to such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the [UN] Charter.

Later, the right of self-determination made the texts of the 1975 Final Act of the Conference on Security and Cooperation in Europe (1.a.VIII), a series of European regional human rights instruments and the 1992 Declaration of the Rights of Persons Belonging to the National, Ethnic, Religious and Linguistic Minorities (GA Res. 47/135), and many other international law documents.⁵² As such, it appears to be a generally accepted pillar of the contemporary international legal and normative framework. Yet the question under consideration is not whether the right of self-determination is internationally accredited. The question is rather whether this right can be rightly seen as preeminent

⁵² Though it should be noted there was an important shift in the framing of the right of self-determination: the 1950-60s discussion of the right in the context of decolonization gave way to the discussion of the right in the framework of the respect for human rights. This shift is interesting and will be addressed in Part III.

to other rights, such as individual human rights, states' rights to territorial integrity, and states' and individual rights to be free from coercion and violence. Specifically, in reference to the details of the Chechen conflict, can Dzhokhar Dudaev's reading of the self-determination principle as prevailing over other rights be justified?

A positive inquiry into the question (that is: Is there anything in the international law framework that signifies the preeminence of this interpretation of the self-determination principle) is associated with many difficulties. To the extent possible it will be considered in part III. For the purposes of this section, a negative type of inquiry may suffice - Is there anything that would delineate that the right to self-determination is *not* preeminent? If so, what is it subordinated to and on what grounds?

The latter questions are tricky, as answers to them are likely to be ideologically underpinned. Specifically, an answer to whether individual human rights are superior to the right of self-determination requires an *a priori* (and semi-religious) commitment to either 'individual' or 'collective' life. This commitment, in turn, is structurally predetermined. Thus, if I am a member of a recognised social entity, such as Russia, and to the end that it is populous and recognised, have good reasons to believe that it, with its linguistic and cultural characteristics, will not become extinct if I or any other individual member vanishes, I would rationally disregard 'Russia's right to life' whenever it is disconnected from an immediate threat to Russian citizens' individual rights to life. In other words, identifying ourselves with relatively *non-endangered* social entities, as states appear to be in the post-WWII environment, we naturally assign preeminence to individual 'basic' human rights over all other 'non-basic' rights, such as minorities' collective right to life and *complete* political independence. On the contrary, if I am a member of the Chechen or Tatar minority and believe that my ethnic group is on the verge of extinction via rather peaceful but irreversible socio-economic assimilation (it is just more remunerative for children growing in the Russian Federation to become the Russians than the Chechens or the Tatars), I may be more inclined to assign preeminence to the more 'basic' *group's right to life*, subjecting 'non-basic' individual rights to life to a mission of liberation.

Importantly, it is the latter reading prioritising the collective (state) right to free life over individual human rights that is characteristic of the

westphalian international legal system. It is conceivable to the end that the sovereign entities of the previous centuries were more in the 'endangered' position of minorities of today than in the stabilised, especially with the emergence of nuclear weapons, position of today's states.⁵³ Whether or not a post-westphalian international order will instead prioritise individual human rights to states' rights remains to be seen. As of now, even with the strengthening of international human rights discourse, there are rather few indicators of the preeminent position of individual rights *vis a vis* states' rights, and the question really is on what grounds, if any, the collective rights of states are held superior to the collective rights of 'semi-states' - politically mobilised linguistic identities.

This second question is just as difficult. On the surface, the westphalian legal framework holds the sovereign rights superior. The problem is deeper: the westphalian system does not legally specify what is it – 'sovereignty' and where it comes from. Whatever assumptions of the previous centuries, in 2000s it is virtually impossible to authoritatively justify why sovereignty lies in anything *other* than people. If it does lie in people, why is it indivisible. If it is essentially divisible, how could there be any legal abstract postulations of the superiority of some collective entities over others. Such unearthing of sovereignty brings more questions than answers, and having unpacked it for the question in hand, it is prudent to leave it. What matters in the conclusion of this section is that legal and normative foundations for holding the rights of 'semi-states' inferior to 1) the rights of individuals and 2) the rights of states are non-existing or frail to meaningfully counteract an *a la* Dudaev reading of the right to ethnic self-determination as preeminent to other rights.

2) The preeminence of state sovereignty and territorial integrity

International legal instruments, addressing the right of self-determination, almost invariably make reservations on the inviolability of existing states' borders. How could it be otherwise, if the instruments are prepared and endorsed by states and most states are not homogenous? The 1960 Declaration of the Granting of Independence to Colonial Countries and Peoples (G.A. Res. 1514), quoted in the

⁵³ Although, of course, one should not overestimate the 'stability' of contemporary international relations.

above section to state that “the subjection of peoples to alien domination is contrary to the UN Charter”, controversially concluded:

6. Any attempt aimed at partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

The 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations (G.A. Res. 2625), also explicitly reaffirmed it:

Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples [..]

It should be noted that the reading of this paragraph is more ambiguous. Re-establishing the right of the sovereign states to territorial integrity, it conditions this right on state compliance with the principle of self-determination. Ever since, and especially with the end of the Cold War, the ‘compliance’ thesis has been gaining in popularity, supplemented with or superseded by the framework of individual human rights.⁵⁴ Nonetheless, those building on the preeminence of the right to territorial integrity have their rationales. The principle of ‘sovereign equality and territorial integrity of States’ remains one of the pillars of the contemporary international legal system. Accordingly, if the world community is still concerned with the maintenance of international peace, the widening of the ‘conditioning’ discourse may appear to be counterproductive. First, because the boundaries and content of the self-determination principle remain highly contested. Second, because conditioning the right to territorial integrity on state’s refraining from the use of force in the defence of its constitutional order (without enforcing a similarly restraining regime on the leaders of a

⁵⁴ See James Anaya “A Contemporary Definition of the International Norm of Self-determination”, *Transnational Law and Contemporary Problems* 131 (1993), pp. 143-162

secessionist minority) is likely to encourage minority violent provocations.

Possibly, it is out of the understanding of the latter that the more recent documents, as the 1992 Declaration of the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (G.A. Res. 47/135), avoid conditioning the right to territorial integrity on the compliance with anything else.

Article 8(4): Nothing in this Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations Charter, including sovereign equality, territorial integrity and political independence of States.

3) The preeminence of the respect for individual human rights

In comparison with the other two interpretations of the self-determination principle, the normative superiority of the principle of the respect for individual human rights is increasingly fervently enforced by the legal and academic community.⁵⁵ For instance, the 1992 Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (G.A. Res. 47/135) expresses:

Article 8(2): The exercise of the [self-determination] rights set forth in this Declaration, shall not prejudice the enjoyment by all persons of universally recognised human rights and freedoms.

A more explicit formulation can be found in the provisional text of European Framework Convention for the Protection of National Minorities (Council of Europe, 1995):

Section III. Article 20: In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation

⁵⁵ Robert McCorquodale, for instance, argues that the very *nature* of the right of self-determination “require[s] [individual human rights] limitations to be implied in its exercise” (McCorquodale, “Self-Determination: A Human Rights Approach”. *International and Comparative Law Quarterly* 43, 1994. pp. 875-883)

and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

Similarly revealing are the provisions of the Guidelines of the Recognition of New States in Eastern Europe and the Soviet Union, adopted by the EC Council of Ministers in 1991:

Recognition of these new states [...] requires: respect for the provisions of the [UN Charter] and the commitments subscribed to in the Final Act of Helsinki and the Charter of Paris, especially with regard to the rule of law, democracy and human rights [and] guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments [of] the framework of the CSCE.

With it, as it has been argued above, it is still too early to speak of the preeminence of individual human rights over the various forms of collective rights, which would be established either legally or normatively.

PART III. Beyond the Three Interpretations

The above undertaken segmentation of the self-determination principle into three interrelated interpretations is revealing. International law is rich enough to back up each of the three readings. To the extent that they are yet to find settlement at the legal level, it may be naïve to hope to see them easily reconciled at the level of factual politics. Accordingly, there is a growing temptation to conceptualise these conflicts in the matrix of three dichotomies: ‘the right to self-determination’ vs. ‘territorial integrity’, ‘territorial integrity’ vs. ‘individual human rights’, ‘individual human rights’ vs. ‘self-determination.’ Such conceptualisation, however, is dangerously inadequate. It obscures the very problematique of self-determination, without the understanding of which no self-determination conflict could be properly analysed and managed.

As a kind of intellectual exercise let us look into the cases from a different angle. We will see that it is not that some defend ‘post-westphalian’ human rights and self-determination and others ‘westphalian’ territorial integrity. In an important sense, all three entities considered in the paper, pursue their own self-determinations⁵⁶ and defend their largely egocentric accounts of territorial integrity and human rights. What matters, in this regard, is that international law is rich enough not only to support the three interpretations of the self-determination principle. It can be found to sufficiently back up ‘the rights to self-determination’ on both sides of a secessionist conflict. These ‘rights’ have been constituted by different historical forces but have come to have a very similar content. For an established state, self-determination means keeping the wholeness of its political and socio-economic space, securing its identity and strategic assets. For an ethnic minority, self-determination means something similar: preserving the integrity of their group’s identity, culture, resources and land. It is *because of* these similarities that, when directed at the same spatial and temporal coordinates, these ‘self-determinations’ are hardly reconcilable: a win for one, is a loss for another.

⁵⁶ Similarly, Michla Pomerance notes: “self-determination claims do not clash with non-self-determination or anti-self-determination claims but with some countervailing self-determination claims”. Michla Pomerance. “Self-determination Today: The Metamorphosis of an Ideal”, 19 *Israel Law Review*, 1984. pp. 310-315.

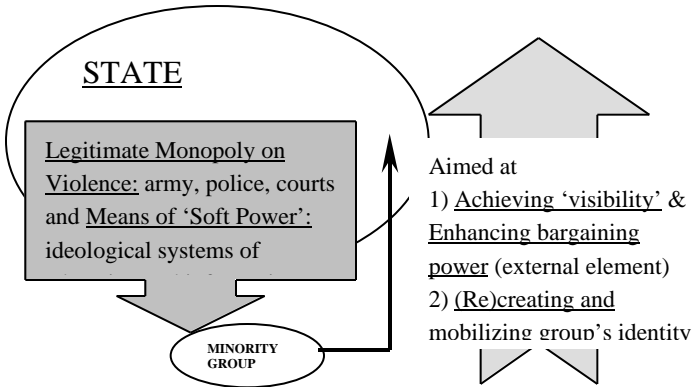
No conflict, however, is only about similarities. Differences have a role to play. In secessionist conflicts, one set of differences lies in the nature of injustices against which the parties react. Specifically, whereas in the case of a minority, injustice is *structural* (arising from a seemingly oppressive status quo), in the case of a sovereign government, it is *injustice of an event*, of a rebellion by its formerly loyal subject. Injustice of an event is more *visible* and, as a result, attracts the attention of legal, research and media communities. But, by and large, there is no established difference between *structural injustice* and *injustice of an event* in the legitimacy and appropriateness of a defensive action. Both immediate instances and continual states of injustice are perceived as necessitating some kind of (self)defence and/or retribution.⁵⁷ What is important to see in this regard is that the logic of reciprocity works two ways: it enhances mutual respect for human rights and it mutually dehumanises. To a state, an attempt of secession is a crime. In the eyes of an ethnic group, once subdued and obliged to persist in the confines of a former conqueror, status quo (even if currently 'unintentional')⁵⁸ could be framed as a pertinent offence any moment in time. The offensive other is justifiably dehumanised. Self-defence becomes an imperative. Two violently self-defending parties is in fact the logic in Chechnya and many more troubled places.

Another set of differences in secessionist conflict lies in the nature of violence, which is characteristic of established states and seceding minorities. The right of the state to defend its domestic order and

⁵⁷ Secessionist conflicts can also be seen as the encounters of conflicting conceptions of justice. The justice of a minority group is essentially the justice of equality: "we, as a group, have been created and, having been created, have the rights to survive and be free." The justice of an established state, threatened with dismemberment, can be seen in the framework of several conceptions, but largely it is the justice of equity (or 'viability', or a more enhanced capacity to provide for the basic human needs). Though both conceptions of justice are recognised as legitimate, in a conflict, each other's justice appears unjust and threatening. To the extent that it appears unjust and threatening, it rather lawfully entails defence, if so needed and proportionate - forceful.

⁵⁸ Here, it is important to appreciate the problematic interaction of guilt and intentionality. The contemporary generation of the titular nationality is not held 'guilty' for the fact that their grandfathers pursued expansion. The contemporary generation is believed to be guilty for 'inaction', which is always an action of some sort. In most cases, inaction means continuity, the perpetuation of a state of affairs, the disinclination to change. Accordingly, the 'grandchildren' are charged with continuing unjust affairs thus promoting unjust states.

legislation, if so needed by military force, is recognised, not merely as a *right* but as a *duty*. The latest international law discourse affirms it, while imposing constraints on the exercise of the right (e.g. the requirements of proportionality, non-discrimination, necessity, care for non-political / non-combatant parts of population, etc). In analysing the right of a state government to use force, if the domestic situation requires, it is important to appreciate that in the contemporary world the initiative of violence rarely comes from state governments. The latter is conceivable for three reasons. First, state governments, enjoying the legitimate monopoly over violence in their jurisdiction, appear to be force-averse in the realm of domestic politics. Possibly, out of the awareness that when open coercion and violence begin as the means of domestic policy-making, the ability of exercising the more subtle and thus more effective power, authority, significantly diminishes. It is revealing that even authoritarian regimes invariably sought self-legitimation as ‘peaceful and loving’ by the instruments available in their respective cultures. The second reason may be that internationally recognised governments, as a rule, have less incentive to rely domestically on violence. Crucially positioned on the nets of education and information, they can set independent agendas and delineate the confines of a national group by a variety of ‘soft’ means. The third reason may be that states are capable of punishing injustice and disobedience without the resort to military force, authoritatively supervising a set of appropriate judicial and police institutions.



The situation with ethnic minorities is different. After centuries of structural domination and assimilation, the confines of minority groups are blurred. Opportunities for stating demands and engaging in an

equal dialogue with the centre are limited. Given the current structures of individualised social prestige and impersonal economic competition, fragile minority identities increasingly give in to the cultural hegemony of the stronger, both nationally and internationally. For other reasons, it is also the fear of the gradual extinction of their identity that drives minority representatives to the ideas of greater autonomy and secession. These ideas, however, when presented 'nicely' are unlikely to reach a state capital in any meaningful sense. An 'elephant' does not see an 'ant', nor does it care. To the extent that it neither sees, nor cares, an elephant is unlikely to 'negotiate'. Negotiations at a minimum require 'seeing' and 'caring'. They also require a degree of equality between those who are to negotiate or at least a *perception* of such equality. In other words, our ant has *to grow up*, has to force the elephant to see him, to care of him as of someone who is worth negotiating with. And the questions really are: 1) how can a little, underrepresented minority *grow up* in the eyes of the central government? 2) Is there anything more effective for the purposes of separating into groups, mobilising an in-group against an out-group, and building bargaining power in the relationship with the state centre than brutal violence against the innocent? The latter questions are unfortunate, and it is difficult to think about them and have a joyful heart. But they are to be taken seriously if we are to arrive at any meaningful results in the discussion on the rights to self-determination.⁵⁹

In analysing the right and duty of a state government to 'maintain domestic integrity and order' it is also important to contemplate on the question of genocide. There is a tendency in contemporary political science and international law academia to label any central government resorting to military means in a secessionist conflict as 'committing genocide.' Possibly, there are reasons to the extent that in the ethno-secessionist type of warfare, the distinction between

⁵⁹ With it, the above case comparison should be kept in mind. The link between the demands for ethnic self-determination and violence is not immediate. Not all minority leaders go for freedom at any cost. Some, as Mintimer Shaimiev, attempt accommodationism, inter-ethnic dialogue, and the construction of 'civic' rather than 'ethnic' identity ('Tatarstany rather than 'Tatar). Such attempts are not only applaudable, but could be successful: By 2000 Tatarstan was second to Moscow in the level of general social welfare and its economic capacity appeared to provide the republic with the sufficient bargaining power in the dialogue with the centre.

combatants and non-combatants is frequently blurred.⁶⁰ But conceivably this tendency is also an outcome of something else - of the way the problem of genocide was traditionally framed in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide:

Article II: genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic [...] group as such:

- killing members of the group;
- causing serious bodily and mental harm to the members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

As most other definitions of genocide, it presupposes a party willing *and capable* of destroying an ethnic or racial group. To the extent that it postulates 'capacity', we are inclined to think of *states, governments, majorities* committing genocide and not *minorities*. Accordingly, we charge with genocide politicians in Moscow but not Chechen freedom fighters. Let us look into the matter systematically. It was argued above that majorities in power have less incentive to use violence for they usually possess the means of 'soft power'. It is powerlessness that breeds violence.⁶¹ The responsibility for the first shots often appears to lie on the leaders of a secessionist minority who are willing to take up arms.

When states (in the contemporary world more often than not - 'ruling majorities') do reply to violence with violence, the purposes and targets of their violence seem to be qualitatively different. They appear to be 'political' rather than 'ethnic'. For instance, Yeltsin's 1994 authorised military intervention in Chechnya did not aim at eliminating the Chechen nation. It aimed at Dudaev and his team for the alleged violations of human rights of the non-Chechen and moderate Chechen

⁶⁰ The requirement of a distinction to be made at all times between combatants and non-combatants is long customarily recognized. 1949 Geneva Conventions, Resolution on Respect of for Human Rights in Armed Conflicts (GA Res. 2444), Resolution on the Basic Principles for the Protection of Civilian Population in Armed Conflicts (GA. 2675)

⁶¹ Hannah Arendt, *On Violence*. New York. Harcourt. 1960

population and less so territorial integrity.⁶² Thus, *in intent* the intervention was not ethnically discriminatory. It was political and legal: ‘criminals’ are deterred and punished not for *who they are*, but for *what they do* (of course, in the reality of ethnic warfare who people are and what people do is often inseparable).

The violence of the activists of secessionist minorities, on the contrary, appears to be group specific. It may be so for the very reason that violence can serve its relevant to secessionism functions (i.e. communication and group demarcation) only if it is ethnically discriminatory and politically indiscriminately. If a Russian member of the Chechen Supreme Soviet is killed, the Russian inhabitants in the republic are likely to see it as ‘political’ and distant, and are unlikely to be seriously affected by the incident. But if a couple of apolitical Russians are killed *because they are Russian*, the Russian inhabitants in Chechnya will not wait to flee or engage, as they are often expected, in counter-violence. Thus, if the key elements of genocide are ‘*genos*’ and *intent*, as it is stated in all of the relevant and authoritative definitions and was reaffirmed in the ICJ ruling on Yugoslavia vs. NATO country members, genocide is more characteristic of minority violence than of state military operations.

If we turn to the right of minorities to use force in redressing grievances and pursuing independent statehood, we will find that it is perhaps less firmly established in comparison with the above discussed right of states to maintain domestic order. But the tradition of such right goes back to Grotius. Though generally limiting the right of active resistance within the state to the interest of domestic order, he wrote: “If [...] rulers transgress against the law and the State, not only can they be resisted by force, but in case of necessity they can be punished to death”. Also: “I should rarely dare indiscriminately to condemn either individuals or a minority which at length avail itself of the last resource of necessity.”⁶³

In the 1950s and 60s at the time of rapid decolonization it was generally recognised that dependent peoples are “entitled to fight a war

⁶² Andrei Kolossovsky during his report at the Committee on Elimination of Racial Discrimination stated it explicitly. 29 February 1996

⁶³ As cited in H. Lauterpacht. *An International Bill of the Rights of Man*. Columbia University Press. 1945

of national liberation.”⁶⁴ The 1976 Universal Declaration of the Rights of Peoples, adopted by the participants in an international conference in Algiers and expressing the conviction of a part of the world epistemic and legal community, stated:

Article 6: Every people has the right to break free from any colonial [...] domination.

Article 28: Any people whose fundamental rights are seriously disregarded has the right to enforce them, [...] in the last resort, by the use of force.

In recent years, however, and in view of the frustrating events in Yugoslavia, East Timor and many other places, the right of self-determination is increasingly discussed in detachment from the right to secession and violent rebellion, and more in connection with the respect for human rights and domestic legislation. Fearing the world balkanisation, international legal community is in urgent need to identify legitimate constraints to impose on the pursuit of the right of ethnic self-determination. For these purposes, two distinctions are often made. First, the distinction between the rights of ‘internal’ and ‘external’ self-determination. Second, between ‘colonial’ and ‘indigenous’ peoples. In the framework of the two distinctions, it is often argued that indigenous peoples, currently residing in independent and sovereign states, in contrast with ‘colonial’ peoples of non-self-governing, trust and mandated territories, do not have the legal right to external self-determination, i.e. the right to secession and resort to force.⁶⁵

In an important sense, both distinctions are arbitrary. On what grounds is it possible to justify the ‘degrees of freedom’? Why the United States could have ‘rightfully’ and violently wrestled complete independence from the UK and the American Indians have to be satisfied with a limited autonomy? The distinction between the formerly dependent peoples ‘separated by blue waters’ and ‘indigenous peoples’ of today, accompanied by the shift to the emphasis on individual human rights, is similarly unconvincing. The strategic

⁶⁴ Akehurst’s *Modern Introduction to International Law*. Peter Malanczuk. 7th revised edition. Routledge, 1997. p. 336.

⁶⁵ See for instance, Daniel Thurer. *Self-determination*, *Encyclopaedia of Public International Law*, 1985. pp. 470-472, who argues that the latter reading could be deduced from states’ practices and the body of General Assembly resolutions.

underpinning of the shift in the discussion of the right of self-determination from the domain of decolonization to the domain of individual human rights is apparent: to redirect dependent peoples' emancipation onto the track of individualism. The track of individualism and human rights - apart from its apparent to many moral superiority - is in many ways 'safer' for the existing community of states. It restrains collective, especially 'identity-motivated' violence. 'Individual' violence and breaches of domestic law and order, when such happen, can be labelled as 'crimes' and 'terrorism' and thus more authoritatively managed. Pushed to the extreme, individualism and human rights discourse make anti-status quo revolutions impossible, as revolutions require, by the very nature, a degree of disrespect for human rights and the 'dehumanisation' of those who are currently in power. Of course, one may inquire: why would anyone seek revolutions in a world that is just and is based on the respect for individual and collective rights? Possibly, if the world were just, people would not need revolutions. But in a world of such drastic inequalities and no agreement and sufficient understanding of what is it that is 'just', revolutions can perhaps still serve their main purpose, that is of the self-determination of underrepresented and oppressed human collectives.

As long as the current normative and opportunity structures remain unaltered and international law is as ambiguous as it is, the general trend of emancipation is largely irreversible. Structural injustices will be increasingly brought to light, giving rise to new demands for justice and retribution. The pace and scope of this 'emancipation' can be perhaps partially controlled, but the normative foundations of the attempt to freeze the 'less than 200 states' status-quo are ambiguous. The commonly invoked arguments in favour of such 'freezing', especially those projecting the difficulties of the functioning of the UN and other international organisations and the maintenance of international peace⁶⁶, are unpersuasive. One may think, the *convenience* of the 'violent' (the former colonial powers) and the 'lucky' (the dependent peoples 'separated by salt water') is a poor reason why an ethnic

⁶⁶ Malanczuk, p. 340

minority should give up its generations' cultivated dreams of political independence.

If language is a main attribute of ethnicity and ethnicity is a sufficient condition to independent statehood, we should be prepared to live with thousands of sovereign actors in the international arena. The problem of 'who' of self-determination is further exacerbated by the problem of 'when' of self-determination: i.e. under what circumstances the 'who' of self-determination can forward their claims. The question of 'when' is problematic because there are no objective criteria for delineating the variety of human circumstances in 'gains' and 'losses'. Specifically, was Dudaev motivated by losses (a history of ethnic violence), or was he motivated by something else - economic and personal opportunities? In an important sense, violence and losses are ubiquitous, if so needed, they can be found anywhere. Delegitimation of an authority, in turn, may have less to do with the quality of that authority than with the structure of external opportunities. Statehood, clearly, is associated with a whole set of advantages, economic, political, as well as personal - of state presidency.

With the view of the above, the very emphasis on human 'rights' may be counterproductive. The language of 'rights' is negative: of conflict, violations, offence, defence. Perhaps, it may be more advantageous to concentrate on the language of Human Duties.⁶⁷ It is 'positive'. It implies the comprehension of shared human destiny and interconnectedness. As such, it is likely to generate not dehumanisation and defence, but contribution, responsibility, respect and tolerance, so much lacking in the world. Although, of course, one should not carry on this thesis to the point of denying that the line between 'protecting rights' and 'fulfilling duties' is rather fine. In asserting the rights of their 'entities', Dudaev, Yeltsin and Shaimiev were fulfilling duties, assigned to them by their consciousness, constituencies and circumstances.

⁶⁷ For an interesting account see Johan Galtung. *Human Rights in Another Key Polity* Press, 1994

Conclusion

In the framework of a case study of Tatarstan and Chechnya, it was argued that international law is rich enough to accommodate the three different interpretations of the self-determination principle:

- 1) the right to self-determination as the inalienable and unlimited right of dependent peoples to independent statehood;
- 2) the right to self-determination as the right to internal sovereignty, subject to an established state's territorial integrity;
- 3) the right to self-determination as the right to internal and external sovereignty, subject to the principle of the respect for individual human rights.

In addition to the accommodation of all three interpretations of the self-determination principle, international law has been found to support the rights of self-determination on *both* sides of a secessionist conflict:

- The right of a sovereign state to internal and external self-determination, and
- The right of an ethnic minority to internal (and maybe external) self-determination.

The discussion of the international law guidelines on the use of force has been preliminary, but it does allow suggesting that the overall position of international law on that question is just as ambiguous. Violence as the last resort (in the case of a state, for the maintenance of domestic constitutional order and in the case of a minority, for self-defence against a transgression) appears established. Accordingly, it is suggested that a reason why so many of the self-determination conflicts become violent and persist for decades may lie in fact in the highly contradictory nature of international legal and normative guidelines, which translate into opposite expectations and lead to conflicts on the ground.

In 1991, years before the Chechen war, Dudaev stated (in response to Yeltsin's decree on the State of Emergency in the Checheno-Ingush Republic, following Dudaev's violent dissolution of the elected Checheno-Ingush Parliament):

[..] the President of the RSFSR illegally introduced a state of emergency in the territory of our sovereign republic. [...] The authorities of Russia following the lead of the toppled totalitarian forces and proceeding from imperial interests introduced such state in the territory of

the republic whose sovereignty was announced back in November 1990.

Considering the actions by the President of the RSFSR as contradicting the norms of international law, the Universal Human Rights Declaration, and the resolution of the Parliament of the Chechen Republic of November 2, 1991 "On State Sovereignty of the Chechen Republic", the [new] Parliament of the Chechen Republic hereby resolves that:

1. The Decree of the President of the RSFSR "On Introduction of a State of Emergency in the Chechen-Ingush Republic" of November 7, 1991 be denounced as illegal and not having legal force. [..]
3. All parliaments and peoples of the world be informed about the interference of the Russian authorities in the internal affairs of the sovereign Chechen Republic.

At the end of this research, the above statement is no longer surprising: There are needs and interests to make such statements. There are international legal and normative instruments to draw upon. There are 'parliaments and peoples of the world' to listen...

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