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PRE-DETERMINED: THE MARCH 23, 2003 CONSTITUTIONAL REFERENDUM IN CHECHNYA AND ITS RELATIONSHIP TO THE LAW OF SELF-DETERMINATION

Conor Mulcahy*

Abstract: A common debate among legal scholars focuses on the extent to which the international legal principle of self-determination remains relevant in the post-colonial period. Even those commentators who consider it still to be a significant, active concept in public international law disagree over its actual content. While many suggest that peoples entitled to the right of self-determination have a right to secede and form their own state, scholars disagree as to the circumstances under which the right develops. This Note examines the current status of the law of self-determination in the particular context of Chechnya. It describes how, though the law of self-determination would not allow Chechnya to secede from Russia unilaterally, Russian abuses associated with the March 23, 2003 constitutional referendum in Chechnya violated Chechnya’s right to internal self-determination. Thus, the constitution is void under international law.

Introduction

In late 2002, Russian President Vladimir Putin announced that the government would soon hold a referendum on a new Chechen constitution that would give the territory significant powers of self-government, albeit under the sovereign authority of the Russian Federation (Russia). The vote took place on March 23, 2003. Election results showed that the overwhelming majority of eligible voters in Chechnya voted to implement the constitution. Because the referendum took place during Russian military occupation of Chechnya,

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However, many Chechens and members of the international community questioned the validity of the vote.\(^4\) Both the decision by Russia to hold the referendum, and the questionable circumstances in which the vote was held,\(^5\) raised several questions regarding the operation of international law in the domestic sphere.

This Note addresses how the international legal principle of self-determination dictates that the new Chechen constitution is not valid. Part I discusses the historical background of the hostilities between Russia and Chechnya, focusing on the events leading up to the March 23, 2003 vote. Part II explores the law of self-determination and explains its relevance in the non-colonial context. Part III explains how the law, as applied to Chechnya before the March 23 referendum, did not afford any remedy to Chechens seeking independence from Russia. Part IV explains why Russia’s administration of the referendum caused that legal relationship to change.

I. A Bloody History of Rebellion

In order to analyze the legal implications of the March 23 referendum in Chechnya, it is necessary to understand the historical context of the territory’s current dispute with Russia. The Chechens, an indigenous people native to the North Caucasus, have been embroiled in conflict with Russia since the late 18th Century.\(^6\) The bloodshed began in 1783, when Russia attempted to invade the North Caucasus and declare sovereignty over the region.\(^7\) In a long guerrilla war that lasted for over half a century, the Chechens, together with their neighbors, the Ingush, successfully repelled the Russian invaders.\(^8\) Eventually, however, the sheer number of Russian soldiers overwhelmed the residents of the small territories, and in 1859, the Russian government claimed sovereignty over the peoples of the North Caucasus.\(^9\)

Chechen resistance to Russian rule continued into the early 20th Century.\(^10\) After the Russian Revolution broke out in 1917, the Chechens and their neighbors attempted to form an independent

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4 See Chechnya Goes to the Polls, Guardian Unlimited (Mar. 31, 2003), at http://www.guardian.co.uk/chechnya/Story/0,2763,926037,00.html (last visited Nov. 20, 2004).
5 See id.
7 See id.
8 See id.
9 Id.
10 See id.
autonomous republic.\textsuperscript{11} However, the Bolsheviks, the revolutionaries who seized control of the Russian government, soon installed a regime of military occupation and reasserted Russian dominance over the territories.\textsuperscript{12} Continued aversion to the Russian government caused some Chechens to support the invading German army during World War II.\textsuperscript{13} As a result, in 1944, the Soviet authorities ordered the forced deportation of the Chechens and the Ingush to Kazakhstan, where almost one-third of the displaced population died.\textsuperscript{14} Thirteen years later, the Soviet government reestablished the Chechen-Ingush Autonomous Soviet Socialist Republic and allowed the Chechens and Ingush to return to their homeland.\textsuperscript{15}

A resurgence of Chechen resistance occurred in the late 1980s during the waning days of the Soviet empire.\textsuperscript{16} As reform movements swept through Moscow, the Soviet government allowed a Chechen National Congress (CNC) to convene.\textsuperscript{17} The CNC immediately passed a resolution calling for the sovereignty of the Chechen-Ingush Republic.\textsuperscript{18} When the congress reconvened several months later under the leadership of Chechen nationalist Jokhar Dudaev, the CNC became more radical in its separatist goals.\textsuperscript{19} On August 19, 1991, Dudaev took advantage of the Soviet government’s focus on a failed reactionary coup in Moscow and organized protests of civil disobedience in the streets of the Chechen capital, Grozny.\textsuperscript{20} Dudaev amassed a National Guard in a few days and used it to storm the local arm of the Soviet government, the Chechen-Ingush Republic Supreme Soviet, forcing the officials there to sign an “act of abdication.”\textsuperscript{21} Eager to retain order, the Russian authorities dispatched several envoys to Grozny to establish a provisional government.\textsuperscript{22} The Chechens refused to recognize that government and, instead, elected Dudaev

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\textsuperscript{11} \textit{See} Kline, \textit{supra} note 6.

\textsuperscript{12} \textit{See id.}

\textsuperscript{13} \textit{See id.}

\textsuperscript{14} \textit{Id.}

\textsuperscript{15} \textit{Id.}


\textsuperscript{17} \textit{Id.}

\textsuperscript{18} \textit{Id.}

\textsuperscript{19} \textit{See id.}

\textsuperscript{20} \textit{See id.}

\textsuperscript{21} \textit{See Kline, \textit{supra} note 16.}

\textsuperscript{22} \textit{See id.}
\end{flushleft}
president.\textsuperscript{23} He subsequently declared Chechnya to be a sovereign state.\textsuperscript{24} Although Russian president Boris Yeltsin threatened to use military force to reassert Russian power over the territory, the rest of the Russian government would not authorize such action.\textsuperscript{25}

Thus, between November, 1991 and the beginning of 1994, Chechnya was a \textit{de facto} independent state.\textsuperscript{26} Russia refused to recognize Chechnya’s existence (and refused to let any other countries do so either) but otherwise did not meddle in Chechen affairs.\textsuperscript{27} Eventually, though, the Russian government used Chechen discontent with Dudaev’s rule as an opportunity to reassert its sovereignty over Chechnya, by supporting anti-Dudaev opposition forces financially and militarily.\textsuperscript{28} Toward the end of 1994, constant battles between the pro-Dudaev National Guard and the Russian-backed opposition forces raged in the streets of Grozny.\textsuperscript{29} Finally, on December 11, 1994, Yeltsin ordered Russian troops to invade Chechnya.\textsuperscript{30}

The war that transpired during the next two years was horrific and deadly for both sides of the conflict.\textsuperscript{31} The Russian attack caused the Chechen people to unite once again against their common enemy - the invader.\textsuperscript{32} The Chechen rebel army employed guerrilla warfare tactics in their attempt to drive off the Russians, but the constant bombing of Chechen cities by Russian planes devastated the country.\textsuperscript{33} Because Russia also suffered countless casualties in its young and inexperienced army, it eventually attempted to resolve the crisis.\textsuperscript{34} The negotiated peace plan called for Russian help in rebuilding Chechnya’s shattered infrastructure and increased governmental autonomy for the territory.\textsuperscript{35}

\textsuperscript{23} Id.
\textsuperscript{25} See Kline, \textit{supra} note 16.
\textsuperscript{27} Id.
\textsuperscript{28} Id.
\textsuperscript{30} Id.
\textsuperscript{31} See id.
\textsuperscript{32} Id.
\textsuperscript{33} See id.
\textsuperscript{34} See Graham, \textit{supra} note 29.
\textsuperscript{35} See id.
The years immediately following the cessation of hostilities were disastrous for Chechnya.\textsuperscript{36} Plagued by a failing economy, unprecedented unemployment, and an irreconcilably damaged infrastructure, Chechnya became a haven for criminals and lawlessness.\textsuperscript{37} Simultaneously, a fundamentalist interpretation of Islam, known as Wahhabism, became popular among many Chechens.\textsuperscript{38} Constant fighting took place between forces loyal to the new Chechen president, Aslan Maskhadov, and those advocating for a more radical Islamist state.\textsuperscript{39}

Maskhadov soon became frustrated with Moscow’s continued indifference towards Chechnya.\textsuperscript{40} He proclaimed that Russia had defaulted on its promises under the peace treaty and refused to negotiate with Russia without a guarantee of Chechen independence.\textsuperscript{41} Additionally, the leaders of the more radical factions in Chechnya authorized terrorist actions in Russia, hoping to force the government to recognize Chechen sovereignty.\textsuperscript{42}

Constantly under threat of guerrilla attacks and distressed at the inability to access valuable Chechen oil reserves, the Russians reconsidered the possibility of invasion.\textsuperscript{43} When a group of apartments in Moscow were bombed in September of 1999, the Russian government blamed Chechen rebels, although the leaders of the Chechen resistance movement denied responsibility for the action.\textsuperscript{44} The newly-appointed Russian Prime Minister, Vladimir Putin, vowed to crush the Chechen insurgents and, on September 30, 1999, he ordered Russian ground troops into Chechnya.\textsuperscript{45}

Within several weeks, it was evident that the second Chechen war would closely mimic the first.\textsuperscript{46} The warring factions within Chechnya again united against Russia, and the bombing of Grozny and other

\textsuperscript{37} Id.
\textsuperscript{38} Id.
\textsuperscript{39} See id.
\textsuperscript{40} See id.
\textsuperscript{41} See Graham, supra note 36.
\textsuperscript{42} See id.
\textsuperscript{43} See id.
\textsuperscript{44} See id.
\textsuperscript{45} See id.
towns caused an immense amount of destruction and death.\textsuperscript{47} Yet again, the Chechen rebels inflicted mass casualties on the invading Russian army.\textsuperscript{48} Concurrently, Chechens engaged in many terrorist and guerrilla attacks against Russian troops in Chechnya.\textsuperscript{49} However, the Russian army eventually sacked Grozny, and the Russian people elected Putin President of Russia for his tough policies regarding Chechnya.\textsuperscript{50} Putin appointed Islamic cleric Akhmed Kadyrov as chairperson of a new Russian-backed government in the republic and reasserted Russian dominance over the region.\textsuperscript{51}

Over the next two years, sporadic fighting between Chechen guerrillas and the occupying Russian troops continued.\textsuperscript{52} The international community accused the Russian military of terrorizing the civilian population of Chechnya and engaging in numerous human rights abuses, including secret arrests and “disappearances.”\textsuperscript{53} As more information regarding Russian atrocities emerged, Putin’s policies toward the troubled region became increasingly less popular in Russia and in the rest of the world.\textsuperscript{54}

After the September 11, 2001 terrorist attacks, Putin characterized the continuing Russian military actions in Chechnya as his country’s own “war on terrorism.”\textsuperscript{55} Accordingly, Western criticism of Putin’s actions decreased somewhat in 2002.\textsuperscript{56} The Russian government repeatedly claimed that the war in Chechnya was over, but frequent Chechen bombings of Russian targets indicated otherwise.\textsuperscript{57} The most shocking evidence of the war’s continued existence became known to the international community on October 23, 2002, when a group of Chechen

\textsuperscript{47} See id.
\textsuperscript{48} See id.
\textsuperscript{49} See id.
\textsuperscript{50} See id.
\textsuperscript{51} See Graham, \textit{supra} note 46.
\textsuperscript{52} See id.
\textsuperscript{53} See id.
\textsuperscript{56} See id. \textit{But see} Jonathan Fowler, \textit{U.N. Panel Rejects Censure of Russia on Chechnya Abuses}, \textsc{Wash. Post}, Apr. 17, 2003, at A15 (reporting that most of the countries supporting a resolution censuring Russian actions in Chechnya were from the West).
\textsuperscript{57} See Graham, \textit{supra} note 55.
separatists took 700 people hostage at a Moscow theater. The Russian authorities pumped a gas through the theater’s vents to subdue the perpetrators and then raided the theater, but the gas killed over 100 of the hostages in the process. The incident was a gigantic embarrassment for the Putin administration and increased international pressure on the Russian government to find an alternate solution to the problems in Chechnya. Two weeks later, President Putin announced the government’s plan for a Chechen referendum.

Putin set the date of the vote for March 23, 2003. Very soon thereafter, international observers criticized the decision, arguing that the Chechens would be too afraid to vote against the constitution under the watchful eye of the Russian troops who occupied the territory. Notably, the chief negotiator regarding Chechen affairs for the Council of Europe, Lord Judd, resigned in protest when Russia insisted on holding the referendum on the proposed date.

Notwithstanding the critics’ disapproval of the timing of the referendum, the vote took place on March 23 as planned. In a decision that manifested Russia’s interest in the outcome of the referendum, Russia allowed the 36,000 Russian troops stationed in Chechnya to vote. An overwhelming 95.5% of the voters approved the constitution. Although most international bodies refused to send representatives to monitor the elections for fear that they would have to endorse the results, the few international observers who did scrutinize the electoral process found the outcome legitimate. In contrast, Human Rights Watch quickly questioned the validity of the election results:

58 Graham, supra note 3.
59 See id.
60 Id.; see Steele, supra note 1, at 17.
61 See id.
62 Walsh, supra note 2, at 17.
63 See Tom Parfitt, We’ll Not Vote in Your Referendum, Chechens Tell Russia, Daily Telegraph (London), March 16, 2003, at 34.
65 Nick Paton Walsh, supra note 2, at 17.
66 See Parfitt, supra note 63.
67 See Graham, supra note 3.
Official reports on the referendum described overcrowded polling stations, an unprecedentedly [sic] high turnout, and an enthusiastic and hopeful Chechen population demonstrating support for the initiative by dancing and singing in the streets. Reports by journalists and other observers who traveled to Chechnya independently contrasted sharply with this picture and cast doubt on the fairness of the electoral process. They reported only small numbers of voters at polling stations and noted that Grozny, the capital, was almost deserted (although some people in Grozny joined a demonstration against “disappearances”).

Despite the criticism by human rights groups, on April 16, the United Nations High Commission for Human Rights (UNHCHR) refused to adopt a resolution condemning Russian actions in Chechnya, a decision that further supported the validity of the March 23 referendum.

II. THE GREAT DEBATE OVER THE LAW OF SELF-DETERMINATION

International lawyers often refer to the concept of “self-determination of peoples” when discussing the emergence of new states. Although the term is prevalent in a host of international legal instruments, much of the analysis by international legal scholars regarding self-determination has focused on adequately defining it. One multilateral treaty described it as follows: “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 cul-

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tural development.” However, defining exactly what “political status” means and understanding exactly how self-determination functions as a principle of international law is significantly problematic. Therefore, in order to comprehend the law as it applies to places like Chechnya today, it is necessary to examine the development of the doctrine.

Self-determination first took on significant meaning in international legal discourse during the formation of the United Nations (UN) in 1945. Chapter 11 of the UN Charter discussed the need for effective self-government in “non self-governing territories” (NSGTs), namely the colonies that were still in existence after the war. The UN Charter invoked the principle of self-determination in order to legitimize decolonization efforts. At that time, the UN did not intend for the principle to be legally binding; NSGTs needed to get permission from their colonizers in order to become independent. As the law developed, however, the international community began to recognize that NSGTs had an inherent right to self-determination. It is important to note that even after this momentous shift in state practice, the law of self-determination never guaranteed outright independence to NSGTs, but only sanctioned a right for some type of self-governance.

Nevertheless, a significant number of the new states that emerged in the second half of the 20th Century were former colonies. In addition, secession was the end result of the self-determination process for several of the NSGTs. Professor Grant described the reasoning behind this momentous shift in state practice as follows: “[NSGTs] had juridical status independent of their ‘metropolitan’ or ‘parent’ state. Therefore, to break them away from the metropole did not violate the

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73 ICCPR, supra note 72, art. 1, 999 U.N.T.S. at 173.
74 See Hannum, supra note 72, at 773–74.
75 See id.
77 See U.N. Charter art. 73; Grant, supra note 71, at 178.
78 See Grant, supra note 71, at 178.
79 See id. at 177; Hannum, supra note 72, at 775.
80 See Hannum, supra note 72, at 775; see generally Western Sahara, 1975 I.C.J. 12 (Oct. 16) (recognizing the right of NSGTs to self-determination).
82 See Grant, supra note 71, at 182–84.
83 See id.
teritorial integrity of the metropole.”84 Thus, state practice arguably made unilateral secession by an NSGT acceptable under international law.85

Legal scholars disagree significantly about the relevance of self-determination as an international legal concept in the post-colonial period.86 The principal difficulty involved in contemporary interpretation of the doctrine is the inherent tension between a people’s right to determine their own interests and a state’s right to territorial integrity.87 UN General Assembly Resolution 2625 outlines the conflict by affirming the right of a people to determine its own political, social, and economic destiny, but it also warns that the right cannot “be construed as authorizing or encouraging any action that 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 . . . .”88

Despite the resolution’s admonition, some experts believe that states should construe the right of self-determination to allow peoples who share a common cultural and ethnic background to have an inherent right to secede unilaterally from the states that govern them.89 Generally, however, the international legal community does not recognize that such a right exists under current international law.90 Commentators with views on the opposite extreme suggest that self-determination should only apply to colonies, and that to hold otherwise would destroy the venerable concept of territorial integrity.91 However, as Professor Hannum states, “[c]ementing the world’s frontiers forever is an overly conservative position.”92 Moreover, the inter-

84 Id. at 178.
85 See id. at 177. Grant notes, however, that “[s]tatehood since World War II . . . has been achieved through secession only rarely. Statehood through agreement by contrast has been prolific.” Id. at 175.
86 See, e.g., Cass, supra note 81, at 31; Grant, supra note 71, at 179; Hannum, supra note 72, at 776.
87 See Declaration on Friendly Relations, supra note 72, at 124.
88 Id.
89 See Hannum, supra note 72, at 776 (footnote omitted); Charney, supra note 76, at 457 (describing the debate).
90 Hannum, supra note 72, at 776 (“[S]elf-determination defined as the right to create a new state would necessarily imply a right to secession. However, no state, no foreign ministry, and very few disinterested writers or scholars suggest that every people has the right to a state, and they implicitly or explicitly reject a right to secession.”) (footnote omitted).
91 Charney, supra note 76, at 457 (describing the debate).
92 Hannum, supra note 72, at 776.
national support for states formed during the breakup of the former Yugoslavia, and the international community’s repeated call for an independent Palestine, arguably indicate a general *opinio juris* that self-determination can apply outside of the colonial context.93

Many contemporary legal theorists posit that the correct interpretation of self-determination in the post-colonial era lies somewhere in between the extremes.94 These scholars argue that the law of self-determination should allow minority groups to have a significant degree of autonomy within their established state and should sanction unilateral secession only in very limited circumstances.95 This position seems to outline the current state of self-determination in the international legal system.96

When the Canadian Supreme Court wrote its advisory opinion regarding the legality of possible secession by Quebec, it accepted this view as the definitive statement of self-determination law as it exists today.97 In response to the contention that the law allowed Quebec to secede, the Court stated the following:

There is no necessary incompatibility between the maintenance of the territorial integrity of existing states, including Canada, and the right of a “people” to achieve a full measure of self-determination. A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its own internal arrangements, is entitled to the protection under international law of its territorial integrity.98

The Court then outlined two exceptions to that pronouncement.99 It held that, in a non-colonial context, a people has a right to secede under international law if it is “subject to alien subjugation, domina-
tion or exploitation” or is “blocked from the meaningful exercise of its right to self-determination internally.”

III. ANOTHER WAR: THE BATTLE BETWEEN CHECHNYA AND TERRITORIAL INTEGRITY

Relying upon the current state of the law as expressed in the Se-
cession of Quebec opinion, it is quite unlikely that international law
would permit Chechnya to secede unilaterally from Russia.101 Despite
the Chechens’ valid demand for rights as minorities, they are not un-
der the control of a colonial power.102 Unlike NSGTs, Chechnya re-
tains no juridical status of its own, and thus is linked inextricably to
Russia.103 The Chechens would not be able to separate their territory
without disrupting the integrity of Russia’s existing geo-
graphical structure.104 Thus, such actions would necessarily interfere
with Russia’s right to territorial integrity.105

Whether or not the exceptions to the law of self-determination
are relevant to the situation in Chechnya is a more difficult ques-
tion.106 International law may recognize a right to secession if the
Chechens could show that they are victims of genocide, are “subject to
alien subjugation,” or are blocked from internal means of self-
determination.107

The genocide exception does not apply to the situation in
Chechnya.108 The Russian army inflicted heavy casualties upon the
Chechen rebel army and civilian population in both wars, but the
Russians did not do so without provocation.109 Moreover, the wars did
not arise because of an explicit attempt by Russia to destroy the entire
Chechen people.110

On the other hand, one could argue that, because Chechnya was
a de facto independent state from 1991 to 1994, the people of Chech-

100 Id. at 285; see also Hannum, supra note 72, at 776–77 (recognizing an exception for
victims of genocide and for groups that cannot achieve “a minimum level of minority
rights” within the governmental structure of their state).
102 See id. at 285.
103 Cf. Grant, supra note 71, at 178.
104 See Declaration on Friendly Relations, supra note 72, at 124.
105 See id.
108 See Hannum, supra note 72, at 776–77.
109 See Graham, supra note 46.
110 See Hannum, supra note 72, at 776–77.
naya are “subject to alien subjugation, domination or exploitation outside a colonial context” and therefore are allowed to secede.\(^{111}\) However, the lack of the international community’s formal recognition of Chechnya during that time indicates that international law did not sanction the independence that Chechnya enjoyed during that period.\(^ {112}\) Thus, because Chechnya was never actually independent under international law, it is unlikely that the “alien subjugation” exception applies.\(^ {113}\)

The final exception to the general rule promoting the doctrine of territorial integrity arises when “the ability of a people to exercise its right to self-determination internally is somehow being totally frustrated.”\(^ {114}\) Professor Hannum describes the circumstances of this exception’s application as follows:

The . . . exception might arise when a group, community, or region has been systematically excluded from political and economic power or when a minimum level of minority rights or a reasonable demand for self-government has been consistently denied. I want to emphasize that this exception would not apply when a central government refuses to agree to whatever the minority or the region wants. Rather, it would apply only when the central government has been so intransigent that, for example, it refuses to allow the minority to speak its own language, it excludes minority members from participation in the parliament, or it refuses to accede to demands for minimal local or regional power-sharing.\(^ {115}\)

Although Chechens are certainly a minority voice in Russian government, they nevertheless have achieved a limited amount of representation.\(^ {116}\) Russia’s willingness over the past twenty years to sanction the implementation of local governing bodies, such as the CNC, amounts to significant proof of the existence of Chechens’ access to internal self-determination.\(^ {117}\) Although the Chechens may not have enough political support in the federal government to authorize their


\(^{112}\) See Kline, supra note 26. See also Charney, supra note 76, at 463 (“One has the sense that the international community accepted the view that Chechnya should remain a part of Russia.”).


\(^{114}\) Id. at 286.

\(^{115}\) Hannum, supra note 72, at 777.

\(^{116}\) See Kline, supra note 16.

\(^{117}\) See id.
own independence though domestic law, they have the minimum amount of representation necessary to make the internal self-determination exception inoperative.\textsuperscript{118} Thus, because all of the exceptions are irrelevant to the situation in Chechnya, international law would not allow Chechnya to secede unilaterally.\textsuperscript{119}

IV. OPENING THE DOOR TO VALID SELF-DETERMINATION CLAIMS

Because Chechnya has no legal right to secede, the March 23 referendum was unnecessary; Russia had no legal obligation to hold the vote.\textsuperscript{120} As authorized by the UN Charter, Russia is entitled to defend any threat to its territorial integrity, because such is a matter of domestic concern.\textsuperscript{121} If Russia had not held the March 23 referendum, those Chechens seeking independence would have received no help from the law of self-determination.\textsuperscript{122}

However, even though international law did not direct Russia to hold a referendum in Chechnya, President Putin believed that doing so would be politically expedient.\textsuperscript{123} Therefore, against the chagrin of many members of the international community, Chechens (and soldiers of the Russian army who were occupying Chechen territory) went to the polls on March 23 and overwhelmingly approved a new constitution that supported Russian sovereignty over the region.\textsuperscript{124} If the international pundits were correct in identifying the election as a sham, the law of self-determination, previously unhelpful to the Chechens, actually becomes quite relevant to their future.

Although international law generally does not allow for unilateral secession in the non-colonial context, the law supports secession if it takes place through the existing constitutional structure of the state from which the territory wishes to secede.\textsuperscript{125} Thus, if the people of Chechnya were able to garner enough political support in the central government to pass a law allowing for Chechen independence, seces-

\textsuperscript{118} See Hannum, supra note 72, at 777.
\textsuperscript{119} See Declaration on Friendly Relations, supra note 72, at 124.
\textsuperscript{120} See id.
\textsuperscript{121} See U.N. Charter art. 2, para. 7 (“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . ..”); see also Declaration on Friendly Relations, supra note 72, at 124 (making a similar statement).
\textsuperscript{122} See Declaration on Friendly Relations, supra note 72, at 124.
\textsuperscript{123} See Steele, supra note 1, at 17.
\textsuperscript{124} See Walsh, supra note 2, at 17.
\textsuperscript{125} See Reference re Secession of Quebec, [1998] 2 S.C.R. 217, 295 (“Peoples are expected to achieve self-determination within the framework of their existing state.”).
sion in that context would be valid under international law.\textsuperscript{126} Although the March 23 referendum asked the Chechens if they wished to adopt a new constitution, the real issue at hand was whether a majority would surrender any hope for independence in exchange for the promise of stability.\textsuperscript{127} In other words, one could categorize the referendum as the most fundamental type of internal self-determination.\textsuperscript{128}

Admittedly, it is true that the referendum did not ask the Chechens whether they wanted to secede.\textsuperscript{129} However, the referendum did ask whether the Chechens desired to submit to Russian authority by approving the new constitution.\textsuperscript{130} Obviously, a person could not vote to be subject to Russian sovereignty and simultaneously support Chechen independence; the two positions are mutually exclusive.\textsuperscript{131} Thus, the referendum implicitly inquired if the voter supported Chechen independence.\textsuperscript{132}

In theory, by putting the question to a vote, the Russian government allowed the voters to use the existing Russian governmental structure to manifest their wishes.\textsuperscript{133} Consequently, because the referendum implicated internal self-determination issues, which are not subject to the limitations of territorial integrity, Russia forfeited its claims to the protection of the doctrine by holding the referendum.\textsuperscript{134} Still, if the vote had been fair, without Russian governmental influence, Chechens who voted against the constitution would have no remedy at international law.\textsuperscript{135} The will of the majority, properly expressed in a vote within the constitutional framework of the dominant state, is in accord with the fundamental principles of self-determination.\textsuperscript{136}

The problem, however, is that the election was not fair.\textsuperscript{137} With thousands of Russian troops in the streets, and the fear of future “disappearances” on their minds, many Chechens voted for the constitution because they feared that a “no” vote would bring violent reprisals from the Russian army.\textsuperscript{138} In addition, all members of the occupying

\textsuperscript{126} See id.
\textsuperscript{127} See Walsh, supra note 2, at 17.
\textsuperscript{129} See Steele, supra note 1, at 17.
\textsuperscript{130} See id.
\textsuperscript{131} See id.
\textsuperscript{132} See Walsh, supra note 2, at 17.
\textsuperscript{133} See Secession of Quebec, [1998] 2 S.C.R. at 295.
\textsuperscript{134} See id.
\textsuperscript{135} See id.
\textsuperscript{136} See id.
\textsuperscript{137} See Chechnya Goes to the Polls, supra note 4.
\textsuperscript{138} See id.
Russian military could vote.\textsuperscript{139} The few international observers who agreed to monitor the voting process affirmed the results, but many of them came from countries that have a questionable record of election abuses themselves.\textsuperscript{140} Indeed, many of the observers hailed from other former Soviet republics.\textsuperscript{141}

Some anecdotes by reporters illustrate the illegitimacy of the referendum.\textsuperscript{142} A reporter from the British newspaper 	extit{The Guardian} walked into a polling location and cast a vote in favor of the constitution without having to present any identification.\textsuperscript{143} In addition, a journalist witnessed the Russian electoral commission representative at one polling booth write on a piece of paper the number of people who had voted.\textsuperscript{144} Out of 1,085 potential voters, 1,002 had voted by 6 p.m.\textsuperscript{145} However, the actual time was still only 3:45 p.m.\textsuperscript{146} Such practices certainly indicate a tainted election.\textsuperscript{147}

It is evident that the actions of the Russian government and military surrounding the March 23 referendum effectively blocked the Chechen people from meaningful exercise of their right to internal self-determination.\textsuperscript{148} The Russians were under no legal obligation to hold the referendum, but once they sanctioned the vote, they had a good faith duty to let the Chechens freely exercise their right to internal self-determination.\textsuperscript{149} Although it is quite possible that the majority of Chechens would support the establishment of the new constitution, the actions of the Russian government have made it impossible to know what the will of the Chechen majority actually is.\textsuperscript{150} As such, the international community should not accept the legality of the new constitution until the Russian military retreats from Chechnya and the Chechens hold a referendum that is genuinely free and fair.\textsuperscript{151}

\textsuperscript{139} See id.
\textsuperscript{140} Uzzell, \textit{supra} note 68.
\textsuperscript{141} Id.
\textsuperscript{142} See Walsh, \textit{supra} note 2, at 17.
\textsuperscript{143} Id.
\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} Id.
\textsuperscript{147} See Walsh, \textit{supra} note 2, at 17.
\textsuperscript{150} See Walsh, \textit{supra} note 2, at 17.
\textsuperscript{151} See id.
The law of self-determination, in a non-colonial context, is only narrowly operative. However, the people of a territory may secede if their parent country subjects them to genocide or other forms of significant subjugation, or if their parent country denies them the meaningful exercise of internal self-determination. The people of Chechnya do not fall into these categories, and therefore have no right to unilateral secession. However, the March 23 referendum opened the door to internal self-determination claims by Chechnya. The Russian government’s interference with the referendum breached its duties under the law of internal self-determination. Therefore, the constitution supposedly adopted by the Chechens is void.