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**THE CHECHEN WAR AND RUSSIA'S TRANSITION TO
DEMOCRACY**

by

Derek M. Lavan

December 1997

Thesis Co-Advisors:

Mikhail Tsyarkin
Bertrand Patenaude

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The Russian government's handling of the crisis in Chechnya has cast a long shadow over the prospects for Russia's successful transition to democracy. The Chechen war has thrown into stark relief the essential authoritarian nature of the Russian state. Russia is weak in several fundamental principles of democracy: rule of law, constitutionalism, a separation of powers, and an effective system of checks-and-balances. Because of the limited powers entrusted to it by the Constitution, the parliament proved unable to influence the government's decisions relative to Chechnya. In the absence of a Russian legal tradition, the Constitutional Court failed to uphold the Constitution and prevent the executive branch from violating the law during the Chechen war. The Russian government is a quasi-autocracy, in which a small circle of ministers and advisors exercise true power. Ultimate, unaccountable authority resides personally with the chief executive, and the key decision-making center of the Russian government is his Security Council. This body is legally unaccountable, and its decisions relative to the Chechen crisis demonstrated a lack of democratic norms. Through a detailed reconstruction of key events and developments during the Chechen crisis, this thesis demonstrates that Russia's transition to democracy is far from complete.

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DEMOCRACY**

Derek M. Lavan
Lieutenant, United States Navy
B.S., Tufts University, 1991

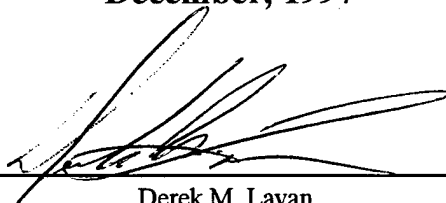
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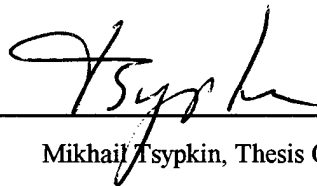
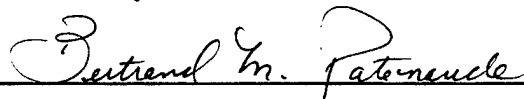
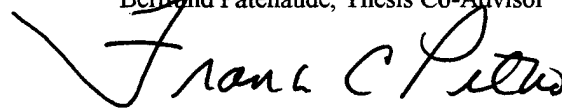
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December, 1997**

Author:


Derek M. Lavan

Approved by:


Mikhail Tsypkin, Thesis Co-Advisor
Bertrand Patenaude, Thesis Co-Advisor
Frank Petho, Chairman

Department of National Security Affairs

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The Russian government's handling of the crisis in Chechnya has cast a long shadow over the prospects for Russia's successful transition to democracy. The Chechen war has thrown into stark relief the essential authoritarian nature of the Russian state. Russia is weak in several fundamental principles of democracy: rule of law, constitutionalism, a separation of powers, and an effective system of checks-and-balances. Because of the limited powers entrusted to it by the Constitution, the parliament proved unable to influence the government's decisions relative to Chechnya. In the absence of a Russian legal tradition, the Constitutional Court failed to uphold the Constitution and prevent the executive branch from violating the law during the Chechen war.

The Russian government is a quasi-autocracy, in which a small circle of ministers and advisors exercise true power. Ultimate, unaccountable authority resides personally with the chief executive, and the key decision-making center of the Russian government is his Security Council. This body is legally unaccountable, and its decisions relative to the Chechen crisis demonstrated a lack of democratic norms. Through a detailed reconstruction of key events and developments during the Chechen crisis, this thesis demonstrates that Russia's transition to democracy is far from complete.

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EXECUTIVE SUMMARY

Introduction:

When the Soviet Union collapsed in 1991, the Russian Federation was born with an inherited system of government that had been created only as a facade for the Communist Party's domination of the Soviet system. Outside the context of the Soviet Union, this political system was doomed to failure, as the Russian executive and legislative branches quickly became consumed with economic and political reform. With the Russian government preoccupied with its own internal struggles, the autonomous republic of Chechnya attempted to emerge as a self-declared independent state. The federal government resisted, but its branches were locked in political combat and could spare little attention to the southern republic.

In late September 1993, the conflict between the Russian government's executive and legislative branches erupted into a fierce armed showdown. A new government emerged which was composed of an imperial executive branch, a hopelessly weak legislature, and a judiciary which, while nominally empowered, was morally constrained by the absence of a sound legal tradition in Russia. From the moment it was created this government has been called a democracy, but subsequent events surrounding the attempted session of Chechnya would prove otherwise.

With overwhelming power now firmly in the grasp of the executive branch, the president and his Security Council turned their attention towards ensuring that Chechnya remained a member of the Russian Federation. Their methods and actions to preserve the

Federation's integrity were ultimately unsuccessful and violated basic democratic norms. In December 1994, Russian federal troops finally invaded the republic. The decision to invade had been made in secret, without parliamentary approval, and in the face of popular disapproval of military action against Chechnya. The constitutionality of this operation was also highly questionable.

The first year of the Chechen war demonstrated the lack of a democratic process within the Russian government. The president exercised autocratic powers and ignored the advice of parliament. Accountable only to the president, the Security Council continued to prosecute the war despite parliament's repeated attempts to stop the bloodshed. The parliament had little institutional power to counterbalance the executive, and the deputies within parliament failed to exert any check against the actions of the executive branch. Finally, the Constitutional Court failed to fulfill its constitutional obligations when it declined to challenge the president's violations of the Russian Constitution.

In December 1995 there were new parliamentary elections in Russia, which offered the first opportunity for the Russian public to directly influence the executive branch. As a result, in the fall of 1995 some of the executive branch's decisions relative to Chechnya were made with the primary goal of enhancing the electoral chances of President Yeltsin's political allies. These specific decisions exemplify the lack of accountability that is a hallmark of a modern democratic society. Overall, the four year crisis between Russia and Chechnya which began in the summer of 1991 dramatically highlights the absence of a democratic decision-making process in the Russian government.

Thesis Statement:

Russia's transition to democracy has failed. The decision-making within the Russian government during the Chechen crisis highlights the absence of truly democratic political institutions in Russia.

There are three key purposes to this thesis. The first is to locate the decision-making centers of the Russian government, specifically in the context of the Russian Constitution and with reference to several essential democratic principles. The second purpose is to determine how these centers made decisions relative to the Chechen crisis. Specifically, did these decision-making processes conform with commonly accepted democratic norms? The third and final purpose is to examine what the operation of the Russian government vis-à-vis the Chechen crisis and war indicates about the status of Russia's transition to democracy.

Conclusions:

The Russian government's handling of the crisis over Chechnya reveals the failure of Russia's transition to democracy. The Russian state is a quasi-autocracy, lacking a real system of checks-and-balances between the branches of government. The executive branch dominates the other two, with decision-making conducted by a small group of ministers and advisors on the President's Security Council. The elected legislature is unable to provide significant input into the state's policy, either through its own legislation or by exerting political pressure on the executive. The judicial branch, lacking in experience and constitutional authority, has even chosen to sanction the violation of the

rule of law.

The existence of a powerful Security Council violates the principle of constitutionalism, since its authority and responsibilities are not defined by the Russian Constitution or any other law. The composition of this council has blurred the separation of powers between the executive and legislative branches. By including the speakers of parliament in this Council, the president has eliminated an essential element of governmental competition and concentrated yet more power in the executive branch.

In order for a state to make a successful transition to democracy, it must have a constitution that provides an adequate system of checks-and balances between the branches and a clearly-defined separation of powers between them. The constitution should provide the framework for the rules and boundaries for the executive, legislative, and judicial branches. All branches must observe the rule of law and adhere to it to guarantee the legal restraints on the different elements of government.

The Russian Constitution is flawed. It needs a clear definition of the Presidential Security Council and a distinct separation of powers between the executive and legislative branches. To realize an effective system of checks-and-balances, the parliament requires significantly increased powers over domestic and foreign policy, which would allow it to counterbalance the executive branch. The executive should observe the rule of law, but more importantly, the Constitutional Court must perform its obligation by ensuring that all elements of the Russian government comply with the Constitution. Russia's political culture must also evolve to the point where members of the legislative and judicial branches are willing to exercise their responsibilities to challenge the actions of the

executive branch. The Chechen crisis and the brutal war it spawned spotlighted the failures of Russia's embryonic democracy and point to the reforms necessary for Russia to achieve a truly democratic system of government

I. INTRODUCTION

On 11 December 1994, the Russian Army invaded the breakaway republic of Chechnya with the declared mission of restoring law and order, and of disarming the "illegal armed formations" forbidden under the Russian Constitution. The President of the Russian Federation, Boris Yeltsin, issued the orders for this invasion without consulting the parliament and against the wishes of a majority of Russia's citizens.¹ Despite the government's official rhetoric about the need to restore order, the most obvious intention of this invasion was to guarantee that the republic would remain part of the Russian Federation. However, there were also other reasons: to advance the interests of specific members of the government and their bureaucratic institutions, and not necessarily for the good of the Russian state. The Chechen crisis that began in the summer of 1991 and the war that erupted in late 1994 highlight the failure of a democratic decision-making process in the Russian government.

Following the collapse of the Soviet Union in December 1991, the government of the Russian Federation struggled with a program of massive economic reforms aimed at freeing the country from the burden of Soviet central planning. This system of government had formed during the last years of the Soviet Union. It had been designed

¹ As indicated by a Russia-wide survey conducted by the Public Opinion Foundation several days after the 11 December invasion. When asked "What is your attitude toward the sending of Russian troops into Chechnya?," 63% gave a negative reply, 21% responded positively, and 16% found it "difficult to answer."

not as a fully functional democratic government but to give a democratic facade to the Soviet system of party domination. As a result of this political system which was doomed to failure, between 1991 and October 1993 the Russian executive and legislative branches battled over economic and political reform.

While the Russian government was consumed with its internal affairs, the Chechen Republic, led by ex-Soviet Air Force general and President Dzhokhar Dudayev, formed as a self-declared independent state. The Russian executive branch attempted to reverse Chechnya's move to independence, but the executive was too overwhelmed with its own battles with parliament to successfully interfere. Unable to effect any changes in Chechnya, President Yeltsin instead concentrated on consolidating his own political power in Russia and simply hoped that the situation with Chechnya would work itself out.

In late September 1993, the conflict between the executive and legislative branches of the Russian government erupted into a fierce armed showdown on 3 October in Moscow. The events immediately leading up to this crisis and its violent resolution were the first clear indications that the president was willing to take any action necessary to maintain the power and authority of the executive branch. In the wake of this crisis, the new government organs and constitution that emerged in December 1993 were composed of an imperious executive branch, a judiciary that on the surface resembles most Western judiciaries, and an intentionally weak legislative branch. Between October and December, without a parliament to challenge the executive, this new Russian Constitution had been drafted to give the executive the powers it would need to remain the dominant branch of

government. In December, the public had been given no other constitution to vote on and had chosen Yeltsin's document by default (although it passed only by a narrow margin).

Now that the balance of power had legally and substantially shifted towards the executive branch, the president and his Security Council, whose responsibilities are not legally defined, plotted to depose the Chechen government and ensure that the republic remained a member of the Russian Federation. The vast majority of these actions were covert, were initially denied by the executive when they became public, and were executed with no parliamentary oversight or authorization. These actions made clear the absence of traditional elements of decision-making for a democratic government.

Unable to remove President Dudayev from power by covert means, in December 1994 Russian Federal troops invaded the republic. The president and his Security Council made this decision in secret, without parliamentary approval, and in the face of popular disapproval of military action against Chechnya. The constitutionality of the presidential order for the invasion and the forces employed was also questionable and was later brought before the Constitutional Court. The complex decision-making leading up to and including the final order to invade the republic highlights the failure of a democratic process in Russia and is a key focal point of this thesis.

The first year of the Chechen war, December 1994 to December 1995, demonstrated the lack of a democratic process within the Russian government. The president exercised somewhat autocratic powers and ignored the advice of parliament. Accountable only to the president, the Security Council continued to prosecute the war

despite parliament's repeated attempts to stop the bloodshed. The deputies within parliament failed to work together and exert a cooperative check against the executive branch. Even if they had, the parliament had little institutional power to counterbalance the executive. Finally, the Constitutional Court revealed its inability to render impartial decisions when it concluded that the executive's actions relative to the Chechen Republic had been "in the spirit" of the Constitution.

In December 1995 there were new parliamentary elections in Russia. These elections were the first opportunity for the Russian public to directly influence the executive branch. If the executive wished its supporters to retain their seats in parliament, it had to quickly appease the public that was opposed to the war. As a result, in the fall of 1995, some of the executive branch's decisions relative to Chechnya were made with the primary goal of enhancing the electoral chances of President Yeltsin's political allies and not in the best interest of the Russian state. These specific decisions exemplify the lack of accountability of the executive branch that would be expected in a modern democratic society.

The transition to democracy of the Russian government is of extreme importance to the United States and its allies. Russia retains one of the world's two largest nuclear arsenals and maintains a significant, albeit dilapidated, conventional military force. Given Russia's past legacy as a major world power, dating back to the 19th Century, it is inevitable that it will secure a major role for herself in world affairs. A stable, democratic Russia will pose less of a threat to Europe, where it has always had a major impact on

stability, and to the Asia-Pacific region. If Russia succeeds in her economic reforms as well as democratic transition, it will be a major trading partner and could provide tremendous economic opportunities for the United States and its allies.² Finally, since Russia is not as yet a democracy, it is important to understand what kind of government it has and how it operates in order to predict how Russia will act and react on the world stage.

There are three key purposes to this thesis. The first is to locate and identify the decision-making centers of the Russian government, specifically in the context of the Russian Constitution and several essential democratic principles. The second purpose is to determine how these centers made decisions relative to the Chechen crisis. Specifically, did these decision-making processes conform with commonly accepted democratic norms? The third and final theme is to examine what these centers and the decision-making operations indicate about Russia's transition to democracy.

² William C. Martel and Theodore C. Hailes, Eds., Russia's Democratic Moment?, (Montgomery, Alabama: Air War College, 1995), 22.

II. ESSENTIAL ELEMENTS OF DEMOCRACY

In order to analyze and understand Russia's transition to democracy, it is necessary to explain what is meant by democracy and what institutions a government must contain to be considered democratic. By "democracy," I am not referring to Aristotle's descriptions of participatory and representative government that reflected the ancient Greek city-states. Instead, I will present a definition of modern liberal democracy, specifically illustrating areas where Russia does not conform to this definition. Some key areas of concern are: rule of law, constitutionalism, separation of powers, and a system of checks-and-balances. Russia suffers from significant shortcomings in each of those four areas.

One important aspect of all democracies throughout history has been responsiveness to the will of the people.³ This may occur in such forms as popular elections, government policy changing in accordance with public opinion polls or demonstrations, or direct referendums. In any case, truly democratic governments will not and cannot act for too long against the wishes of the popular majority. However, throughout the Chechen crisis the Russian government consistently acted against the wishes of the people, except in cases where the government's power would have been directly threatened by alienating the public.

³ James A. Corry and Henry J. Abraham, Elements of Democratic Government (Oxford: Oxford University Press, 1964), 56.

A noted expert on democratic government, Robert Dahl, lists several particular institutions that define modern democratic regimes and make them historically unique from all other regimes, even those labeled as democratic. While most of these institutions concern citizens' rights or the manner of representation, the first one he lists states that "control over government decisions about policy is constitutionally vested in elected officials."⁴ In Russia, many major government decisions are made by the president's Security Council rather than the cabinet, although they are executed on the president's authority. The president appoints most of the Council's members and the functions of this body are not constitutionally defined.

In Elements of Democratic Government, James Corry and Henry Abraham list seven fundamental ideals of democracy: respect for individual personality, individual freedom, belief in rationality, equality, justice, rule by law, and constitutionalism.⁵ The last two ideals, *rule by law* and *constitutionalism*, are notably absent in Russia. The behavior of the Russian government in the Chechen crisis highlights this fault.

By *rule of law* Corry and Abraham mean legal restraints on the power of government. Unlike mere legislation, which are routine changes that address the government's operation, laws are fixed rules that determine a government's actions and have been previously established, as in a constitution. The government must always be subjected to the restraints imposed by these laws, which define what it can and cannot do.⁶

⁴ Robert A. Dahl, Dilemmas of Pluralist Democracy, (New London: Yale University Press, 1982), 10.

⁵ Corry and Abraham, 28.

⁶ Corry and Abraham, 40.

This concept is crucial in a democracy. In fact, the “legitimacy of the modern state is founded predominantly on ‘legal authority’.”⁷ It is the rule of law that serves to constrain any one person or faction from exercising too much unbridled power in a modern democratic state. The Russian executive branch violated this principle of rule of law in many of its actions against the Chechen Republic, such as a November 1994 decree on martial law which Yeltsin intended to go into effect before he notified the Federation Council as required by the Constitution.

Constitutionalism is the ideal that government action is in accordance with a law that has been laid down beforehand, viz.: a constitution. This constitution defines the organs of government, how they operate, and the relationship between the various bodies of government.⁸ In a modern democratic state, constitutionalism must coincide with the concept of rule of law, since the constitution is the primary document that embodies the law. While Russia has a constitution, it is vague in its reference to the powers of some organs and the constitution itself is not always complied with by certain elements of the government.

A clear separation of authority and responsibility between the branches of government must exist in a modern democracy. This separation divides the power of government between different and competing elements. Whether the purposes of this separation is to give power to several units or to divide it in order to weaken certain organs, the primary result is that a concentration of too much political power in any one

⁷ David Held, *Models of Democracy* (Stanford: Stanford University Press, 1987), 151.

⁸ Corry and Abraham, 40.

body is avoided. According to the French philosopher Montesquieu, the guarantee that a government will be the servant to the people and not their master derives from this separation of powers. In some aspects, such as President Yeltsin's decision to include the chairman of the Duma and the speaker of the Federation Council in his Security Council, Russia lacks a clear separation of powers.

Modern democracies have three branches of government: legislative, executive, and judicial. The primary duty of the legislature is to make and revise laws. The executive carries out these laws and through its bureaucracy conducts the daily activities necessary for the government to operate. The judiciary interprets laws and settles disputes over whether specific actions conform to or violate laws.⁹

Because the various powers of governance have been divided among the three branches, a system of checks-and-balances results. This system institutionalizes power in various governmental bodies that can block each other in decision-making. The "checks" allow one body to make its presence and opinion felt by another. Examples of this are: a legislature's ability to impeach a president or members of the cabinet, the executive's ability to dissolve the legislature, presidential veto over legislature, the legislature's ability to override that veto with a significant majority, and the judiciary's authority to interpret the constitutionality of legislation or presidential action. An important feature of democracy is that there is sufficient cooperation and intercourse among the governing organs for a "balance" to result without one becoming too powerful.¹⁰ Without these

⁹ Corry and Abraham, 92.

¹⁰ Roy C. Macridis, Modern Political Regimes (Boston: Little, Brown, & Company, 1986), 44.

checks-and-balances, government can fall victim to specific officials or powerful interest groups who may not have the national interest as their prime motivator.¹¹ Russia's weak system of checks-and-balances was highlighted throughout the Chechen crisis, as elements of the executive branch acted without constraint by the other two branches of government.

A critical aspect of a legislature's influence is in its ability to amend legislation submitted by the executive.¹² This responsibility of controlling or checking the executive is based upon the assumption that, by its broad representative basis, the legislature represents a larger public than the executive.¹³ However, under conditions of rule-by-decree, which Russia experienced during her first year of independence and through parts of the Chechen crisis, the legislature was deprived of this right and responsibility. The system was thrown out of balance because the executive exercised too much power and the legislature could not exert sufficient pressure to counterbalance it.

In democratic regimes, the courts are the guardians of the constitution. "They maintain the limitations the constitution imposes both with regard to the exercise of power and to its substance."¹⁴ It is not simply sufficient to have a constitutional court in place; that court must be able to make rational decisions and impose these decisions upon the other two branches of power. During the Chechen crisis, the Russian Constitutional Court proved itself to be ineffective at impartially interpreting the Russian Constitution.

¹¹ Held, 153.

¹² G.R. Boynton and Chong Lim Kim, Eds., Legislative Systems in Developing Countries (Durham, North Carolina: Duke University Press, 1975), 17.

¹³ Boynton and Kim, 108.

¹⁴ Macridis, 46.

After explaining what a modern democracy is and how Russia shall be judged in the thesis, it is important to note what type of system lies on the opposite end of the political spectrum: authoritarianism. In an authoritarian regime, political power is concentrated in very few government bodies. These bodies are not subject to the same limitations and rules of law that are found in democratic countries.¹⁵ The branches of government do not operate under a system of checks-and-balances. While Russia is not truly an authoritarian system, many of the decisions and actions taken by the executive branch during the Chechen crisis more closely resemble an authoritarian, vice democratic, system.

¹⁵ Macridis, 125.

III. EVOLUTION OF THE RUSSIAN GOVERNMENT DECEMBER 1991 - DECEMBER 1993

A. FROM THE COLLAPSE OF THE SOVIET UNION TO TURMOIL IN RUSSIA

Two distinctly different systems of Russian government dealt with the Chechen crisis between 1991 and 1995. During the first two years of the crisis, until fall 1993, there existed the old government from the Russian Soviet Federated Socialist Republic (SFSR). This system had been created during the dying days of the Soviet Union and proved unable to cope with the problems associated with independent Russia's economic and democratic reforms. It was an inefficient marriage of strong, competing powers, embodied in the executive and legislative branches. This government operated under the constitution of the defunct Soviet Union; it had not been intended as a truly democratic system, only a facade for Communist party control. Without a foundation on the rule of law, a strong constitution, and a system of checks-and-balances, the failure of that government was inevitable.

The second – and current – system of government emerged from the conflict between the executive and legislative branches in the fall of 1993. To understand how this present Russian system of government is organized, and how it acted and made decisions during the Chechen crisis, it is important to perceive its origins. The lessons that President Yeltsin learned from the struggle between the two branches from 1991 until 1993 strongly influenced the new government that Yeltsin shaped in 1993. The

current government represents the victory of an autocratic executive over a parliamentary democracy, although that parliament was dominated by undemocratic forces. The existing constitution is primarily the work of Boris Yeltsin, and is geared towards his preferred style of rule: an extremely powerful executive with ineffective legislative and judicial branches, and a weak system of checks-and-balances.

During the final days of the USSR, political power gradually shifted from the center under Gorbachev and the Party, to the leaders of the fifteen union republics. At the same time, the economies of the Soviet republics began to collapse. In late 1991, President Yeltsin realized that strong measures were necessary to deal with the rapidly growing economic crisis facing Russia. In a speech to the Russian Congress of People's Deputies (CPD), on 28 October 1991, Yeltsin requested the authority to rule by decree for one year to impose crucial economic reforms. Under this proposal, the president would not be restricted by existing legislation and his decrees could overrule any law.

The Russian parliament granted Yeltsin that authority. By its own action the legislature thus became wholly subservient to the executive branch.¹⁶ In that one decision, two key elements of democracy had been circumvented: rule of law and checks-and-balances. Yeltsin could now operate outside legal restraint. He was not bound by any preexisting framework, and there was no counterbalance to the powers of the executive branch. This power allowed him to impose radical economic changes on Russia that he felt were necessary, with very few legal impediments.

¹⁶ Donald Murray, A Democracy of Despots (Boulder: Westview Press, 1995), 156.

To further strengthen the presidency, Yeltsin next subordinated the regional executives to him in two ways. First, he appointed "presidential representatives" in the provinces who, without any popular mandate, owed their positions solely to the president. These representatives were institutionalized and formed an independent vertical power structure under the executive branch. Second, Yeltsin persuaded the CPD to postpone the elections of governors and mayors for one year, allowing the president to appoint them temporarily in the interim.¹⁷ This gave Yeltsin a second, albeit short-term, regional power system under his control.

The system of regional elites who depended on the president for their authority, combined with the presidential rule by decree, allowed Yeltsin a semblance of autocratic power. These two elements were outside the boundaries of the existing constitution, lacked any clear restraints, and the other two branches of government had no institutionalized checks against the executive.

The Soviet Union finally expired in December 1991, ending Gorbachev's and the Communist party's efforts to control Russia through the structure of the USSR. The other fourteen union republics left the Union to pursue their own statehood, leaving the Russian Federation as the inheritor of the old Soviet institutions. As such, Russia continued to operate with the government bequeathed to it by the USSR.

From the beginning of 1992, Yeltsin experienced problems with parliament. The difficult economic reforms enacted by his government were painful and unpopular. Many

¹⁷ Jeffrey W. Hahn, Ed., Democratization in Russia: The Development of Legislative Institutions (New York: M.E. Sharpe, Inc.), 18.

of the parliamentary deputies were former communists and therefore naturally opposed to Yeltsin and his democratic allies. There was frequent bickering between the government and the parliament over the course of reforms.

During the early stages of executive-parliamentary conflict, the president stayed within the boundary of the law and constitution. He limited the use of his extraordinary emergency powers to economic reform. Yeltsin even resisted calls by the reformers to take strong measures against parliamentary interference in those economic reforms. It appeared that he genuinely intended to follow democratic principles. For example, when parliament was engaged in one of its heated debates over the government's reform program, an interviewer with the BBC asked the president how he would act in the future if parliament continued to impede his government. Yeltsin pointedly answered that he was a democrat and would resolve all conflicts through discussion and consultation. He added that he would not want to use "authoritarian methods."¹⁸ However, time would prove that Yeltsin could not tolerate operating under a system of checks-and-balances where someone checked his programs.

In an April 1992 session of the CPD, Yeltsin demanded that his emergency powers (rule by decree) be extended for two to three additional years. He also insisted that Russia needed a "presidential republic."¹⁹ The president felt that he required such authority in order continue with necessary economic and social reforms. In response to Yeltsin's

¹⁸ David Dimbleby, Interview with Russian President Boris Yeltsin on 29 Jan 1992, broadcast by the BBC, 30 January 1992, FBIS.

¹⁹ Murray, 159.

claims, the leaders of the various democratic movements met with him and warned the president of increasing hostility in parliament to his reform programs. There was a just cause for this discontent: in January 1992 alone inflation ran at over 300%, and would rise to 2,500% by the end of the year.²⁰ True enough to the democrats' warnings, the Sixth Congress of People's Deputies passed a vote of no-confidence in the government's reform program. When the government threatened to resign, however, the CPD rescinded its vote. Yet the antagonism between the branches persisted.

Faced with continued parliamentary opposition, Yeltsin decided to expand the elements of the extra-constitutional political system that were loyal and responsive to him personally. He enlarged those regional administrations that were directly subordinate to the presidency. This strengthened the separate vertical power structure whose members had a vested interest in his political survival.²¹

One example of this expansion occurred on 15 October 1992. The Russian Federation president established a "Council of the Heads of the Republics in the Russian Federation," whose purported purpose was to work on political, economic, and social problems. This body consisted of the leaders of all of the Federation's republics, with the exceptions of Dagestan and Chechnya. Rather than create a new apparatus for this council, Yeltsin decided that the staff of the Presidential Security Council would serve it as well. This body was an attempt to circumvent parliament by allowing the president to deal directly with the heads of the republics on nationalities issues. It strengthened the

²⁰ Hahn, 19.

²¹ Dmitri Mikheyev, Russia Transformed (Indianapolis: Hudson Institute, 1996), 99.

executive branch to the detriment of the legislature and could have become a political counterweight to the parliament.²² The creation of this new council quickly aroused the ire of the opposition in the Supreme Soviet and even of Vice President Aleksandr Rutskoi.

This organization benefited both the republics' leaders and the president. The republics' leaders gained the support of the Security Council with its power ministries,²³ which helped them to preserve their power amidst the political and economic turmoil. Yeltsin received more control over the republics through their leaders, who also openly sided with him in an unsuccessful bid to postpone the Seventh Congress of People's Deputies from 1 December 1992 until March or April 1993. This delay would have given Yeltsin and his allies more time to develop and gather support for their new constitution.²⁴ This council of the republics was not covered under the existing constitution, but in May 1993 Yeltsin stated that it would become incorporated in the new constitution as a permanent consultative body. However, it would not survive the fall of 1993.

In December 1992, President Yeltsin and his government, his supporters, and his opponents, began drafting new constitutions. These documents would ordain a new government for the Federation that would not be merely a remnant of the old Soviet system. They incorporated elements of the constitutions of other successful democracies,

²² Valery Vyzhutovich, "On Eve of Congress, Political Deals Abound," Izvestia, 24 Nov 1992, LEXIS-NEXUS.

²³ The "power ministries" are the Federal Security Service, Foreign Intelligence Service, Federal Border Guards, and the Ministries of Defense, Interior, and Civil Defense and Emergencies.

²⁴ Vera Kuznetsova, "Yeltsin Wins Council, Loses Congress Delay Bid," Nezavisimaya gazeta, 16 October 1992, LEXIS-NEXUS.

and included the lessons that they perceived had been learned in Russia over the past year. What these lessons were depended upon one's point of view. Several of the key differences among the various drafts concerned the balance of power that would exist between elements of the executive and legislative branches; the different sides obviously wanted their own interest to have more power.

The Seventh Congress of People's Deputies convened in December. During this session, the parliament was noticeably more anti-Yeltsin and blocked many of his economic reforms. This is not surprising in light of the fact that over 80% of the members of the Congress of People's Deputies and the Supreme Soviet had been Communists when elected and were not supportive of the painful and radical economic changes.

Yeltsin's period of ruling by decree would expire that month. A vote was held to strip the president of his emergency powers, but it fell just short of the required two-thirds majority.²⁵ The decision on holding elections for regional executives, whose one-year appointments were also due to end, was postponed for another year.

The Speaker of the Supreme Soviet, Ruslan Khasbulatov (an ethnic Chechen), led a charge at the Congress to have Prime Minister Yegor Gaidar ousted. Gaidar was a staunch democrat and a radical economic reformer. His plans for long-term economic reform and improvement had caused most of the temporary economic hardships in Russia up until that time. Gaidar had therefore become immensely unpopular. For his part, Yeltsin wanted a popular referendum scheduled which would call for a new constitution.

²⁵ Murray, 167.

He hoped that the new constitution which the people wanted would embody a stronger presidency and a weaker legislature. Yeltsin was under additional pressure to impose a new constitution: under the current system, the Supreme Soviet could change the existing Constitution at will. Neither side was willing to directly concede to the other's wishes. In a compromise, they agreed to hold a public referendum on the performance of the different branches of government in April 1993, with the Supreme Soviet to decide upon the wording of the referendum. This would give the public an input on the future course of Russia's reforms.

Any constructive outcome of the Seventh Congress had been overshadowed by the political conflict. The president became utterly aware that with such strong challenges to his leadership, changes or appeasement were necessary. Shortly after the Congress, Yeltsin attempted to appease his parliamentary rivals by finally replacing Yegor Gaidar as Prime Minister with the moderate Viktor Chernomyrdin. This move had little real effect on the political situation. Both branches continued to demand more power under the draft constitutional structure and the parliament still resisted Yeltsin's economic reforms.

The Eighth Congress of People's Deputies met in March 1993. The parliament tried to cancel the April referendum on the performance of the two branches. The president then used his extraordinary powers, which had been intended for economic purposes, to issue a decree ensuring it would be held. President Yeltsin violated the rule of law with this decree. The events of the previous 14 months leading up to this illustrated an operating system of checks-and-balances and a system of government whose

various branches attempted to operate under the rule of law. The main problem in Russia was that the legislative and executive branches disagreed far more often than they agreed. After issuing the decree, Yeltsin finally lost his patience with what he considered parliamentary interference. To vent his frustration and ire, in a television address Yeltsin declared that the Supreme Soviet could no longer block his presidential decrees or laws. He further announced the imposition of presidential rule in Russia.

Speaker Ruslan Khasbulatov and Vice President Rutskoi immediately and openly denounced Yeltsin's actions. The Constitutional Court quickly agreed to consider the case and naturally decided against Yeltsin's unconstitutional and autocratic proclamation. Faced with a torrent of legal and political hostility, Yeltsin retracted his statements.

The Supreme Soviet then convened an extraordinary Ninth Congress. During this Congress, opposition members of the parliament clamored for the president's impeachment. A vote was held, which Yeltsin barely survived. In response to such an outpouring of parliamentary opposition, he ordered the Supreme Soviet suspended, another action outside the bounds of the Constitution. However, in the face of criticism from even his closest advisors, as well as from Vice President Rutskoi, and from the Chairman of the Constitutional Court Valeri Zorkin, the president rescinded his order.²⁶

This incident served as another lesson for Yeltsin. A system of checks-and-balances might still be acceptable to him, but it would have to be heavily weighted in favor of the executive branch. When faced with a crisis, Yeltsin tried to exercise extraordinary

²⁶ Mikheyev, 108.

powers that violated the rule of law. These actions were unacceptable to the Russian political elite and much of the public; in the future the solution would be to enshrine them in the constitution.

One of Yeltsin's former allies and vice president, Aleksandr Rutskoi, began to openly side with Speaker of the Supreme Soviet Khasbulatov, who was blocking many of the president's actions in parliament. Boris Yeltsin's reaction to Rutskoi's apparent betrayal was to gradually strip the vice president of many of his powers.

On 25 April, the scheduled and much anticipated referendum on the government's performance occurred. Tens of millions of Russians, 64% of all eligible voters, turned out to express their views on the two contesting branches of government. As expressed by the ballots, public opinion supported the president with a 58% vote of confidence.²⁷ A majority of the voters also favored early parliamentary elections, but this point fell short of the required 50% to be legally binding.

In the wake of the April referendum the two sides agreed to hold a Constitutional Convention in June 1993. With the referendum demonstrating a moderate political victory in his battle against the legislature and convinced that he had widespread public support, Yeltsin pushed even harder for a new constitution and faster economic reforms. Yet even as he continued work on a new constitution, the president realized the Supreme Soviet and the CPD would most likely not accept his version. For parliament to allow that

²⁷ David Hearst, "Yeltsin Claims Poll is Vote for Reform...", The Guardian, 28 April 1993, LEXIS-NEXUS.

constitution would have meant voting itself out of existence.²⁸

When the Constitutional Conference convened, various political factions within Russia presented their own drafts for a new constitution. Two of these drafts deserve special attention: President Yeltsin's and the parliament's. The president's version resembled the French Constitution of Charles DeGaulle.²⁹ It outlined a dominant president with the ability to hold referendums, dissolve parliament, and call early elections. In a crisis, the president would be able to declare a state of emergency and rule by decree. Also, he could suspend legislation that he felt was unconstitutional, thereby giving him many of the powers normally reserved for the Constitutional Court. Such a president would have tremendous powers that would preclude an effective system of checks-and-balances. By allowing the president to interpret the constitution, the separation of powers between executive and judiciary would also be blurred.

The parliamentary version called for power to be divided rather evenly between the president, a bicameral legislature, and a strong judiciary. The president would not be able to dissolve parliament, nor would he have any emergency powers. In its essence, this document resembled the American Constitution.³⁰ The Constitutional Conference slowly deliberated on all of the different versions presented to them, and agreed upon a compromise version of the various drafts.

Yeltsin attempted to gain the support of the regional elites for his original version

²⁸ Mikheyev, 108.

²⁹ Murray, 174.

³⁰ Murray, 173.

of the constitution. In September he proposed forming a "Council of the Federation" as an additional advisory body in the executive branch. The president proclaimed this Council would be created immediately and by presidential decree, but his critics quickly challenged the legitimacy of a body formed in such a manner.³¹ Had it been created, the council would have strengthened the president at the expense of the legislature, much as had the Council of the Heads of the Republics. After meeting vehement opposition, Yeltsin reversed his decision to create the council. Months later, at the prompting of Minister of Nationalities Affairs Sergei Shakhrai, Yeltsin resurrected this council. However, he changed its proposed status to that of an upper house of parliament that would include leaders from all of Russia's constituent parts.

B. THE FALL CRISIS OF POWER

His moderate success in the April referendum had emboldened President Yeltsin. One of its major consequences had been to strengthen his conviction "that he enjoyed a popular mandate and that the Russian people would back him in a confrontation with parliament."³² With this perception in mind, the president called for early parliamentary elections. This was despite the fact that the referendum on early elections had failed to pass. Parliament adamantly refused to conduct new elections unless a presidential election

³¹ Sergei Chugayev, "A Strong Move by the President in Petrozavodsk," *Izvestia*, 17 Aug 1993. LEXIS-NEXUS.

³² Hahn, 20.

were held concurrently, which Yeltsin would not consent to.

Throughout the conflicts between the executive and legislature over the past year and a half, Vice President Rutskoi had increasingly sided with the legislature. By September, Yeltsin had tolerated this antagonism long enough and fired Rutskoi. The Supreme Soviet countered by declaring that action unconstitutional, which it was since Rutskoi had been elected. The speaker of the Supreme Soviet again threatened to remove the president from office.

President Yeltsin was not one to tolerate any person or governmental organ infringing upon his rule, and he began to consider taking stronger action against his political rivals. On 12 September, he called a meeting with Minister of Defense General Pavel Grachev, Foreign Minister Andrei Kozyrev, Interior Minister Viktor Yerin, and Security Minister Nikolai Golushko. The president informed them that he had created a draft decree that would dissolve the parliament, and asked for their support. According to Yeltsin's account, the four ministers agreed to endorse him in this course of action, as did Prime Minister Chernomyrdin when he returned from a visit to the United States on the following day.³³

President Yeltsin issued his decree on 21 September, ordering the Congress and Supreme Soviet to dissolve themselves, and he called for new parliamentary elections. Most of the deputies did not back down. Instead, they barricaded themselves in the

³³ James H. Brusstar, and Ellen Jones, The Russian Military's Role in Politics (Washington DC: Institute for National Strategic Studies, National Defense University, January 1995), 24.

parliament building, the "White House," and appealed for public support. Yeltsin then appealed to his minister of defense for the promised military assistance, but it was not immediately forthcoming. Contrary to the earlier promises of aid made by General Grachev, the Defense Ministry Collegium, the leading body of the military, initially resolved to remain neutral in the political crisis. The military may not have wanted to become involved in what it considered a purely political conflict. There may be several reasons for this. First, perhaps it had tolerated enough of such political involvement during the last days of the Soviet Union when turmoil had spread throughout the union republics. Second, from the viewpoint of the Collegium, this was a struggle between two legitimate and constitutional elements of the government. Finally, it has been suggested that the army wanted to see which side the public supported, and would then intervene on the side of the people.³⁴

Approximately one thousand armed men assembled to defend the parliamentary cause, although their numbers gradually dwindled as time wore on. Yeltsin feared that the rebels would gain and maintain control over either a television or radio station, appeal to the public and military to rally to their cause, and start a civil war.³⁵ President Yeltsin's worst prediction came true, when supporters of parliament attacked television and radio stations on the night of 3-4 October, and riots throughout Moscow began jeopardizing the public safety. These riots and the potential danger of widespread civil disorder ultimately swayed the Defense Ministry Collegium to use military force under the president's

³⁴ Brusstar and Jones, 22.

³⁵ Mikheyev, 110.

direction.

Now that the president had Russian troops under his command, he ordered them to attack the rebellious parliament. After some brief exchanges of gunfire and a few volleys from Yeltsin's tanks, Khasbulatov, Rutskoi, and the handful of remaining deputies surrendered. This ended the brief rebellion against Yeltsin's rule. The Russian public tended to blame the parliament more than the president for this crisis, but his aggressive and militant actions ultimately cost Yeltsin the support of many democrats.

Following the showdown with parliament, the president imposed emergency rule and censorship, and forced the Chief Justice of the Constitutional Court to resign. He later suspended the Constitutional Court entirely. However, under pressure from the major Western nations, Yeltsin lifted censorship and reaffirmed parliamentary elections for December 1993.³⁶ He also resolved to present a constitution to the people at the same time for ratification.

C. THE NEW PARLIAMENT AND THE NEW CONSTITUTION

The legislature and judiciary had ceased to exist. Now that his main rivals were out of the way, Yeltsin quickly moved to consolidate his political power. He scheduled the parliamentary elections for 12 December and revised the draft constitution that had originally been agreed upon by the Constitutional Conference during the summer. The

³⁶ Murray, 190.

new version was more in line with Yeltsin's original draft; the events of September and October had only reinforced his belief in the need for his rendition of the constitution. It naturally contained a stronger executive and a weaker legislature and judiciary. The executive also would gain significant powers over the periphery of the Federation, through presidential appointees and the maintenance of separate executive power structures. A perceived benefit to this variation was that the permanent regional organs under the executive branch might prevent the disintegration of the Russian Federation.³⁷

When President Yeltsin announced the date for the impromptu elections, he gave the public only two months' notice. The dozens of small political parties throughout Russia had to scramble to prepare and spread their messages to the people. The Russian people were no doubt wondering what type of government would emerge from the recent violence. At the same time, there was no other body in Russia left to challenge the president's version of the draft constitution, nor present its own alternative, before December. Assuming that Yeltsin's draft constitution would pass, which contained a bicameral legislature, the elections were organized for two houses of parliament.

The results of the 12 December elections shocked observers both within and outside of Russia. Despite the recent political turmoil and the importance of the election in shaping the future of Russian democracy, only 54.8% of Russia's registered voters considered it important enough to cast their ballots.³⁸ The draft constitution passed by

³⁷ Stephen J. Blank, and Earl H. Tilford Jr., Eds., Does Russian Democracy Have a Future? (Carlisle Penn: US Army War College, 1994), 112.

³⁸ Blank and Tilford, 112.

only 52.4%, a narrow margin of the national vote, and it was invalidated in over one-third of Russia's territorial units because of low voter turnout.³⁹

In the parliamentary elections, voters had two separate ballots, one for a party list and another for a particular candidate. In a surprising show of support for Yeltsin's adversaries, 22.79% of the voters chose the radical nationalists of the Liberal Democratic Party (LDP). The next most popular party was the pro-government Russia's Choice with 15.38%, followed by the Russian Federation Communist Party (KPRF) with 12.35%.⁴⁰ Led by Vladimir Zhirinovskiy's LDP, the opposition groups had won more than half of the seats in the lower house, the Duma. Of the 444 deputies elected to the Duma, only 92 were full supporters of the Yeltsin government. However, with the support of the other democratic parties, Yeltsin would be able to rely upon 133 deputies. The only saving grace for the president was the fact that the opposition groups were extremely splintered and unlikely to cooperate with each other too often. In the upper chamber, the Council of the Federation, there were only 56 opposition members out of 172 senators, and the pro-Yeltsin Russia's Choice garnered 50 seats by itself.⁴¹ Yeltsin could therefore expect more support from the upper house of parliament.

The advantage Yeltsin obtained from this election was that "no single faction, or

³⁹ Vladimir Kolesov, "Polarization: Russian Democracy is Becoming Less and Less Representative," Sevodnya, 21 December 1994. FBIS.

⁴⁰ Pyotr Zhuravloyv, "New Russian Deputies are Advised to Quit Their Jobs," Sevodnya, 28 December 1991, LEXIS-NEXUS.

⁴¹ Nikolai Troitsky, "Senators and Duma Members Don't Promise a Quiet Life," Megapolis-Express, 5 January 1992, LEXIS-NEXUS.

even two factions put together, (would) be able to adopt any kind of decision."⁴² This meant that, although President Yeltsin could expect a tough fight on any controversial legislation he tried to pass, he could also expect to operate relatively freely of legislative interference on minor affairs. Despite the fact that he did not have a significant power base in the parliament, the fragmentation of the opposition would allow Yeltsin to take action with little parliamentary oversight or interference. He would use this to his advantage in the future as he operated outside the bounds of the Constitution in his actions against Chechnya.

In these parliamentary elections, the elite units of the army whom Yeltsin had courted during the October 1993 crisis voted overwhelmingly in favor of Zhirinovsky and the LDP. Faced with this obvious lack of support, Yeltsin strengthened the other security services at the expense of the army. He was determined that even if the security forces of the Federation were not loyal to him personally, he would have them all under his control. As a result, immediately after the elections the president subordinated all of the state security apparatuses, 13 agencies covering security, intelligence, and counter-intelligence, to his Security Council.⁴³

⁴² Ibid.

⁴³ The Security Council is composed of: the president, his national security assistant, the council secretary and three deputies, the Prime minister, Federation Council chairman and Duma chairman (both added later), the Defense minister, Interior minister, Civil Defense and Emergencies minister, Foreign minister, director of Federal Security, director of Foreign Intelligence, commander of Border Troops, Finance minister, Justice minister, Atomic Energy minister, plus several commissions appointed by the president.

IV. KEY ASPECTS OF THE RUSSIAN CONSTITUTION RELATIVE TO THE CHECHEN CRISIS

A constitution provides the legal framework for the government. In most cases it delineates specific boundaries for the different branches and organs to operate within. It provides the foundation for the rule of law, the legal restraints placed upon the government. There are several important articles in the Constitution dealing with the operation of the Russian government that contradict the previously defined essential elements of democracy. The executive branch later violated two key articles during the Chechen crisis, which will be discussed below.

The current Russian Constitution clearly represents the political thought of President Yeltsin and incorporates many of the lessons he learned during his two-year conflict with the parliament. Between 1991 and 1993, he had been hampered by the checks-and-balances of the old constitutional system. Far too often for him, parliament had been able to thwart his economic reforms and other actions. On several occasions, Yeltsin had tried to violate the rule of law, but parliament had forced him to operate under the existing legal system. In order for him to rule in the future, the president needed a system that gave a preponderance of legitimate power to the executive branch while allowing the parliament and the courts little ability to serve as a counter.

Yeltsin alone is not to blame for this condition. It is "one of the fundamental impediments to democratic reform in Russia [is] the virtual absence of an understanding

among politicians and citizens alike of the role of checks-and-balances in a democratic government.”⁴⁴ The Constitution was accepted by the people, although by a small margin, and there has not been a serious movement in Russia to amend it.

The Russian Federation is comprised of republics, territories, provinces, federal cities (Moscow and St. Petersburg), and regions. The executive branches of these various units maintain a close relationship with and subordinate to the executive branch of the Federation. Under Article 77, on matters that fall within the jurisdiction of both the Russian Federation and the administrative units, the bodies of executive power will form a unified system of executive power. Article 78 stipulates that bodies of executive power of the members may transfer the exercise of some of their powers to the federal executive bodies.⁴⁵ The twenty-one republics, of which Chechnya is one, have also a special status within the Federation that separates them from the other units: they have their own constitutions. Politically, the various units have significant power through the Council of the Federation. They have two members on the Council, one each from their executive and legislative branches.

Article 10 of the Russian Constitution deals with the separation of powers among the three branches. It declares that state power “shall be exercised on the basis of the separation of the legislative, executive and judiciary branches. The bodies of legislative, executive and judiciary powers shall be independent.”⁴⁶ This concept can be found in

⁴⁴ William C. Martel and Theodore C. Hailes, Eds., Russia's Democratic Moment (Montgomery, Ala.: Air War College), 1995, 12.

⁴⁵ Constitution of the Russian Federation.

⁴⁶ Constitution of the Russian Federation.

almost any democratic constitution, and embodies a key element of democracy. However, in Russia this separation would be blurred during the Chechen crisis when the president brought members of the other two branches into executive organs. It is characteristic of Yeltsin's political style to violate the principle of a separation of powers within government when it will increase his political power.⁴⁷

Article 83 of the Constitution gives the president the authority to form and head the Security Council, but it does not actually address its functions or limits. The article merely states that the Council's powers are limited by federal law. In the summer of 1993, at the insistence of the president, the Constitutional Conference had specifically refused to include any details on the functions or activities of the Security Council.⁴⁸ This was a purposeful decision made to keep the Council unaccountable. As of the end of 1995, there were still no federal laws that defined the jurisdiction of the Security Council.

Yeltsin had initially created this body to recentralize decision making and strengthen the executive branch.⁴⁹ The Council brought together all of the power ministers, most of the other ministers, and several advisory bodies. Over time the Council's powers proved quite impressive. It is also noteworthy that its funding is an executive secret. President Yeltsin and a commission chaired by Deputy Prime Minister

⁴⁷ Aleksandr Belkin, "The System of Defense Decision Making in Russia" (Paper presented at the Conference on Russian Defense Policy, Monterey, Calif., March 1997).

⁴⁸ Tamara Zamyatina, "Subjectively: To Achieve a Balance Between the Interests of the Power-Wielding Departments and those of the Civilian Departments," Rossiiskiy vestnik, 7 March 1995, LEXIS-NEXUS.

⁴⁹ Adeed Dawisha and Karen Dawisha, Eds., The Making of Foreign Policy in Russia and the New States of Eurasia (London: M.E. Sharpe, 1995), 55.

Anatoli Chubais control all government spending decisions that are not directly assigned to parliament under the Constitution. Since Yeltsin created the Constitution, the Security Council obviously fell under this category.⁵⁰

The Security Council operated throughout the Chechen crisis as the primary decision-making center of the Russian government. It was purely a tool of the executive branch that operated unchecked by any other government or political organ. The Council's existence did not conform to the principle of constitutionalism, because the Russian Constitution did not define how it would operate, what its legal boundaries would be, nor how it would relate to other, constitutional bodies of government. At least the Council's operations could not violate the rule of law, because there were no such laws to regulate its operations!

The President is authorized under Article 88 to introduce either martial law or a state of emergency throughout the Federation or in specific locations. The Constitution specifically requires him to inform the parliament and gain concurrence:

Under the circumstances and procedures envisaged by the Federal Constitutional Law, the President of the Russian Federation shall impose a state of emergency on the territory of the Russian Federation or in areas thereof with immediate notification of the Federation Council and the State Duma.⁵¹

In accordance with Article 102, the Council of the Federation must then confirm the president's decrees on the introduction of martial law or the introduction of a state of

⁵⁰ Stephen J. Blank, Russian Defense Legislation and Russian Democracy. (Carlisle, Penn: Strategic Studies Institute, US Army War College, 1995), 31.

⁵¹ Constitution of the Russian Federation.

emergency. During the Chechen crisis, President Yeltsin attempted to introduce a state of emergency in Chechnya. He violated the rule of law by implementing a state of emergency and then exercising powers that were only authorized under such a condition *well before* the Federation Council had decided on his decree.

Presidential decrees are covered under Article 90 of the Constitution, which simply states:

1. The President of the Russian Federation shall issue decrees and executive orders.
2. The decrees and orders of the President of the Russian Federation shall be binding throughout the territory of the Russian Federation.
3. The decrees and orders of the President of the Russian Federation may not contravene the Constitution of the Russian Federation or federal laws.⁵²

This article essentially gives the president the ability to rule by decree, provided his decrees are in accordance with the Constitution or federal law. As such, if the power is abused it can upset the balance of power within a democratic government by concentrating too much authority in one branch. As long as the decrees do not violate the Constitution or the law, the parliament can exercise no direct check against the president. This hinders an effective system of checks-and-balances. Throughout the Chechen crisis, indeed throughout his entire presidency since the end of the Soviet Union, when faced with parliamentary opposition to his plans President Yeltsin resorted to issuing decrees.

It is no mistake that under the Russian Constitution the parliament is weak and unable to balance the executive branch. Legislatures are “the single most

⁵² Ibid.

important representative institution in a democratic system.”⁵³ They are a vital element for a democracy in that they transform the desires of the people into government action. In the Chechen crisis, because of the few powers given to it under the Constitution, the Russian parliament was unable to exercise any action on behalf of itself or the people it represented.

The Constitution that was presented to the voters in December 1993 was the presidential version. Foreign Minister Andrei Kozyrev confirmed that this was the “Yeltsin constitution [T]he president has taken the initiative and played the leading role in the elaboration of the constitution.”⁵⁴ This statement leaves no doubt as to the purpose of the Constitution. Since it was written and promoted by the president, it establishes a system that reflects his style of rule: personal and autocratic, with very little counterbalance from the other two branches of government. It is “thanks to the Constitution of December 1993, [that] Boris Yeltsin wields more power than almost any democratically elected president in the world.”⁵⁵ He would use this power to circumvent parliament whenever it disagreed with him, especially on matters related to Chechnya.

⁵³ Hahn, 5.

⁵⁴ Interview with Foreign Minister Andrei Kozyrev, Moscow Ostankino Television First Channel Network, 15 Dec 1993, FBIS.

⁵⁵ “After Chechnya,” The Economist, 14 January 1995, LEXIS-NEXUS.

V. BRIEF HISTORY OF CHECHEN-RUSSIAN RELATIONS UNTIL 1991

A. FROM THE TSARS TO GORBACHEV

The Chechens were a mountain people who originally lived in the Caucasus Mountain chain and moved down to the plains north of the mountains as nomads and farmers. From this early time, the Chechens have always been fierce and proud people who have valued their independence. In the 16th century, migrants from Daghestan first introduced Islam but the religion failed to take root. Later, in the early 18th century, Naqshbandiya Sufi missionaries spread from Persia into the North Caucasus, and proved extremely successful at converting the population of this region to the Muslim faith.

In the early 1780's, tsarist Russia expanded into the Caucasus and in 1783 imperial troops began the conquest of Chechnya and the surrounding regions. The indigenous people fought against the Russians, and the initial phase of resistance lasted until 1791. By the 19th century most of the Transcaucasus was firmly under Russian control. In 1824, a local leader, the Imam Shamil, led a successful uprising and proclaimed a holy war against the Russians. After his early victories, Shamil's influence spread and united most of the North Caucasus area into a single political entity. However, superior Russian numbers eventually overcame Shamil's fighters and by 1859 the destructive and relentless wars of independence came to an end. Following the final Russian victory, many Chechen villagers were forced to leave their lands to make room for Russian serf settlers, and

thousands more voluntarily left to escape Russian domination. During the next half-century, the Caucasus would remain a relatively quiet region of the empire.

After the February 1917 revolution in St. Petersburg, many people in the Caucasus began calling for independence from the disintegrating Russian Empire. In 1919, Dagestan, Chechnya, Ossetia and Kabarda became "The North Caucasian Emirate," that later cooperated with the Red Army during the Russian Civil War. This cooperation resulted from the Bolshevik pretense that they would guarantee the continued independence of the emirate. Then the Red Army defeated its last internal rival, Baron General Wrangel's White Army, in November 1920. After consolidating its power, in September 1921 the Soviet Communist Party abolished the emirate and absorbed it into the Soviet Union. In December 1936, Josef Stalin broke up the districts of the former emirate and the Chechen and Ingush regions became the Chechen-Ingush Autonomous Republic.

Under Stalin's ruthless regime, the Chechens suffered from collectivization, religious suppression, and the deportation or execution of their political leadership and intelligentsia. In World War II, for a brief period the area was the front line in the battle between German and Soviet forces. Following the war, all of the Ingush, Chechen, and other non-Russian peoples of the region were deported to Central Asia and Siberia under the charge of Nazi collaboration. Their territory was given to other ethnic groups, including large numbers of Russians, and every effort was made to eliminate all traces of the Chechen people. The Chechens eventually returned to their homeland in the mid-

1950's as part of Khrushchev's program to correct the errors of Stalinization. Despite the brutality of the Soviet Union, in this last century the Chechen population has seen a significant increase. It has risen from 318,000 in 1926 to 957,000 in 1989, according to Soviet censuses. Of the 957,000 Chechens reported worldwide in 1994, 77% or 776,000 lived within Chechnya itself.

B. FRUITS OF PERESTROIKA

Mikhail Gorbachev's perestroika brought about new unrest in Chechnya. In 1989 Doku Zavgayev became the first Chechen ever elected to the post of First Secretary of the Communist Party in the Chechen-Ingush ASSR. As the Soviet Union began to disintegrate, various political groups formed in the republic, with the largest and most influential being the Chechen National Congress (CNC). On 23 November 1990, the CNC elected retired Soviet Major General Dhokar Dudayev as chairman of its Executive Committee. The Executive Committee immediately began calling for the sovereignty of the Chechen-Ingush Republic as one of the CNC's main platforms. Led by CNC deputies, on 27 November 1990 the Supreme Soviet of the Chechen-Ingush Republic officially declared its sovereignty. At the time, this move appeared purely symbolic. The Communist government in Moscow expected the effects of these events to be short-lived and did not consider it vital to take action in light of the other, more dramatic events transpiring across the dying Soviet Union.

In the spring of 1991, Dudayev and his followers gained firm control of the CNC and looked towards independence from the USSR and the Russian Federation. On 9 June, he publicly declared that "the Soviet Union and its instruments of colonial oppression . . . had robbed the Chechen nation of its 'religion, language, education, science, culture, natural resources, ideology, mass media, leadership cadres, and rights to freedom and life.'"⁵⁶ Led by the CNC, an initial movement in the Chechen-Ingush ASSR for independence from Russia received widespread support throughout the republic, primarily because it would free the republic from the unpopular Communist system. By the next year, however, the Soviet Union had collapsed. When Chechnya finally and officially declared its independence from Russia and separated from the Ingush in 1992, not all Chechens favored statehood. A large number of them merely preferred autonomy within the Russian Federation. The crisis in Chechnya itself between 1991 and October 1994 was largely a civil conflict between various factions and clans with only minimal Russian support for some of the anti-Dudayev groups.

During the August 1991 Soviet coup, Secretary Zavgayev waited to see how events in Moscow would unfold, but Dudayev and the CNC immediately declared for Boris Yeltsin and his democratic allies. This gained the CNC support from both the majority of the Chechen people and the Russian pro-democracy forces. Following the failure of the Communist coup, mass public protests called for Zavgayev's resignation and a transfer of legal power to the CNC. Echoing pro-democratic events across the USSR,

⁵⁶ Edward Kline, "The Conflict in Chechnya," Briefing paper for the Andrei Sakharov Foundation, 1996.

new elections in the Chechen-Ingush ASSR were planned and on 15 September 1991 the Chechen-Ingush parliament officially dissolved itself and scheduled new elections. Only one week before the 1991 Chechen elections the government of the Russian Federation finally decided to act. President Yeltsin issued an ultimatum calling on General Dudayev to disband the republic's troops that were loyal to him personally, which Yeltsin called Dudayev's "illegal armed formations." However, at that time there was no serious thought of using Russian military forces to coerce the Chechen leader to comply. It was not until after Dudayev had won in the poorly organized elections on 27 October that the Russian government even began considering taking any strong action against the independence movement of the republic and its president.

VI. RELATIONS BETWEEN CHECHNYA AND RUSSIA FROM OCTOBER 1991 TO OCTOBER 1994

A. THE DRIFT FROM RUSSIA AND YELTSIN'S INABILITY TO ACT

On 2 November 1991, newly-elected President Dzhokar Dudayev declared his country's independence from the Russian SFSR. In general, the Chechen people rallied behind this move; Dudayev's speeches directed against Russia and the Soviet Union inspired the republic. Five days later Russian President Boris Yeltsin issued a decree that established a state of emergency to protect "constitutional order" within what Russia still considered its Chechen-Ingush Republic. There were three key parts to this decree: it imposed a state of emergency in the republic, sought to remove President Dudayev from office, and attempted to place the republic under the control of one of Yeltsin's allies, Akhmet Arsanov. Dudayev ignored Yeltsin's decree of 7 November and called for the people of the republic to rise up in a holy war against Russian tyranny.

The Russian parliament viewed the president's decree through the lens of the Soviet era. The anti-Communists in the Supreme Soviet still had bitter memories of the somewhat recent and violent Soviet suppression of political unrest in Tbilisi, Baku, Vilnius, and Riga.⁵⁷ What followed next in Chechnya merely conformed to this pattern of

⁵⁷ Emil A. Payin and Jeremy R. Azrael, Eds., U.S. and Russian Policymaking with Respect to the Use of Force, CF-129-CRES, RAND Research Paper, 1996, 5.

behavior. In accordance with Yeltsin's decree, Soviet and Russian Federation Interior Ministry troops landed at the airfield outside of Grozny, where they met armed resistance. Although there was no actual fighting, the parliament realized that if the situation continued there could be bloodshed in the republic. That was a predicament it was determined to avoid.

Under the existing Constitution, the parliament was required to ratify a presidential decree on a state of emergency. At the time Yeltsin did not have a very secure power base in the Supreme Soviet and the deputies were generally opposed to his actions in the republic. On 11 November, the Russian parliament voted to rescind Yeltsin's decree and forced the government into negotiations with the Chechen leadership. This was an important incident in which the existing system of checks-and-balances functioned properly. In this case the executive branch complied with the rule of law and followed the constitutional prerogative of the parliament. As a result of this incident, which was a political embarrassment, President Yeltsin learned the advantage of a system of government in which the legislature could not easily contradict his emergency decrees. Such a system would be reflected in the later Constitution.

President Yeltsin immediately attempted to shift the blame for his unpopular decree. He accused Arsanov of persuading him to issue it based on misinformation. Two days after the Russian parliament rejected his state of emergency decree, the president fired Arsanov based on his alleged involvement in the "disinformation campaign" that had

led to the unpopular state of emergency decree.⁵⁸

Arsanov was the personal representative of the Russian president in Checheno-Ingushetia and as such he certainly would have been a strong influence on the president's decision. He was also most likely the formal sponsor of the decree.⁵⁹ Arsanov had sent Yeltsin a telegram on 6 November describing Dudayev's pro-independence actions and asking that a state of emergency be declared in Chechnya. However, the decree that came the next day could most likely not have been drafted overnight; there had to have been some prior planning within the executive branch prior to Arsanov's telegram. It is probable that Arsanov was simply used as a scapegoat to protect Yeltsin from the political fallout stemming from the unpopularity of the decree.

The Chechen-Ingush Republic continued to assert that it was no longer an autonomous republic within the Federation, even after the Soviet Union expired. In March 1992, the republic's government refused to sign the Federation Treaty that would have bound it to Russia as a constituent republic. Dudayev's government would, however, consent to being a member of the Commonwealth of Independent States, since this would have validated the republic's independence from Russia.

The Ingush desired to remain a part of the Russian Federation, and the Chechens and Ingush split. The Ingush created a republic that was an autonomous unit within the Russian Federation. Moscow insisted that Chechnya was part of Russia and labeled it merely as a "breakaway republic." Nevertheless, the Russian Federation was still

⁵⁸ "The Representative Power," Political Russia Today (Moscow, 1993), 20, FBIS.

⁵⁹ Payin and Azrael.

consumed with the political and economic turmoil that resulted from the disintegration of the Soviet Union only three months earlier. It lacked the political or military tools necessary to coerce the Chechen government, and President Yeltsin was fully aware that the parliament would restrict any overtly hostile actions he might take against the republic. The most logical option for the Russian executive at the time was to hope that the revolutionary fervor would die off and the Chechens would eventually desire to return to the Federation.

There were several reasons for Yeltsin's government to chose this weak policy. The first, as mentioned before, was that many factions in the parliament, including the democrats, opposed using military force (even as the democrats ignored recent changes in Chechnya, whereby the legitimate government had gradually been replaced by criminal elements loyal to Dudayev). Second, the Chechen reaction to Yeltsin's state of emergency decree, as shown by the armed Chechens who met the Russian and Soviet troops at the Grozny airport, indicated that an intervention initially conceived as a small-scale police action had the potential to lead to a larger conflict. Third, Yeltsin and his supporters in the Russian parliament believed that as the failures of the Dudayev government became more obvious and economic conditions in the republic worsened, the Chechens themselves would remove their president from power. Although Dudayev did lose support as the Chechen economy collapsed, events would prove that he could still gather an enormous power base when faced with an external threat.

Dudayev's regime quickly revealed itself to be corrupt and inefficient. At the end

of March 1992, a Chechen opposition group coalesced. This group demanded the dissolution of the existing Chechen parliament, President Dudayev's resignation, and new elections. Faced with an organized opposition and to distract people's attention from the failures of his own regime, Dudayev tried shifting their attention to the external threat allegedly posed by Russia. In response to Dudayev's ravings and anti-Russian proclamations, Russia instituted an economic blockade of Chechnya that wreaked havoc upon the Chechen economy. This economic damage was further compounded by mismanagement and corruption within the republic's government. For example, Chechnya sold millions of barrels of oil owned by the state, with the proceeds going into the personal coffers of Dudayev and his cronies, rather than being directed towards the tattered Chechen economy.

In June of 1992, as the conflict between President Yeltsin and the Supreme Soviet worsened, the Russian government was still unable to execute a rational policy towards Chechnya. Due to the rising tensions between Russia and Chechnya, Yeltsin issued orders to withdraw all Russian military personnel and their dependents from the republic. To facilitate their rapid evacuation and avoid any conflict with Chechen authorities, the majority of the Russian units' military equipment was left behind. This included a large number of tanks, armored combat vehicles, small arms, and aircraft, much of which would later be used against Russian forces. Given the greatly reduced strength of the units withdrawing from Chechnya, most of the heavy weapons could not have been removed from the republic without a major military operation. This probably would have led to an

armed conflict with Chechen forces and casualties on both sides. Such an event would have created a tremendous uproar back in Russia and fueled Yeltsin's opponents in the Supreme Soviet, perhaps giving them enough momentum to successfully impeach the president. As a result, the president was unwilling to risk a conflict and withdrew the Russian personnel peacefully, without their weapons.⁶⁰

B. THE RISE OF A CHECHEN OPPOSITION

The Chechen parliament was no longer able to tolerate Dudayev's autocratic tendencies, either. Led by anti-Dudayev deputies, it scheduled a referendum for 5 June 1993, asking the public to rate the performance of both the president and the parliament. Dudayev prevented the referendum by attacking the headquarters of the opposition groups and using troops to disperse anti-government demonstrations. He also accused Russia of being the real source of all the recent turmoil in Chechnya. Dudayev then consolidated his political power, unrest within the republic diminished, and the conflict between Russia and Chechnya abated for several months.

In December 1993, the reorganized Chechen opposition groups joined together. They formed a Provisional Council of the Chechen Republic (PCCR) under the leadership of Umar Avturkhanov. Some members of the PCCR proposed that Chechnya should

⁶⁰ Pavel Felgengauer, "The Chechen Campaign" (Paper presented at the Conference on the War in Chechnya, Monterey, Calif., July 1996), 5.

once again become a Russian republic (while Moscow continued to assert that Chechnya still was a Russian republic), yet others supported independent statehood. They were all united in their desire to remove Dudayev and his cronies from office. Unfortunately, the Provisional Council proved ineffective at achieving any political aims.

Russia conducted regional elections in early 1994, in which the democratic parties fared even worse than in the December parliamentary elections. The major pro-democracy parties were almost unable to get any deputies elected to any local representative bodies.⁶¹ This was just one more sign that popular support in Russia was reverting away from the democrats and towards the communists and nationalists. It was also another indication to the Russian executive branch that it would face difficulties in conducting its policies towards Chechnya because it lacked a strong power base. One way to avoid being checked would be to operate outside the bounds of the law, a course of action it later took.

For the Yeltsin government, the thrashing its allies received in the election was a clear signal that it needed to do something quickly and dramatically to regain the public confidence. These election results may have been a strong influence on Yeltsin's decision to commit Federal forces in Chechnya that fall and winter in an attempt to turn the opinion of the electorate. In fact, some considered that the action in Chechnya was essential to the political preservation of Yeltsin and his ruling elite, including the power ministers. The 1993 parliamentary and 1994 regional elections prompted the executive branch to take

⁶¹ Vladimir Lysenko, "The Democrats are Being Defeated," Nezavisimaya gazeta, 2 December 1994. LEXIS-NEXUS.

stronger action against Chechnya.

The Russian executive sought to create a policy that would deal with Dudayev's opponents, while at the same time avoid giving the Dudayev regime the appearance of legitimacy. Sergei Shakhrai, the Chairman of the Russian State Committee on Ethnic Policy and First Deputy Prime Minister, launched this plan. Shakhrai had a long record of opposition to any settlement with Chechnya short of its acceptance as a constituent republic within the Russian Federation. The previous year he had declared that the Russian leadership was "prepared to use force to defend its 'priority interests' in the Caucasus."⁶² This caused considerable consternation within Chechnya, but, as the Russian leadership really was not prepared to do anything of the sort, it had no serious consequences. In February 1994, Shakhrai inserted a section into the Annual Presidential Address to the Russian Parliament that specifically dealt with the illegitimate nature of the Dudayev regime. It called for new and free elections within the republic, and denied the possibility of Chechnya's independence from the Federation.⁶³

Shakhrai was one of the strongest advocates in the Russian government for taking measures to isolate and delegitimize Dudayev. Dudayev had previously demanded that Chechen independence be recognized as a precondition to any negotiations with the Russian government to end the mounting crisis. Minister Shakhrai encouraged the Russian government not to accept the republic's independence, which was an easy task at

⁶² Timur Muzayev, "Grozny Expects Invasion by Russian Troops," Nezavisimaya gazeta, 15 January 1993, LEXIS-NEXUS.

⁶³ Payin and Azrael, 7.

the time, considering that few Russians were willing to lose another part of Russia.

Shakhrai convinced Yeltsin to refuse to enter into any negotiations with Dudayev, thereby perpetuating the crisis.

In a March 1994 interview, Emil Payin, the head of the Presidential Council on Nationalities Policy, and Sergei Shakhrai, the First Deputy Prime Minister who had also become Minister of Nationalities Affairs, both gave the impression that the Russian government should continue as a great power and protector of Russians living not only within the Federation but throughout the Near Abroad. Payin advocated that, under the Constitution, Russia should protect the approximately 100,000 ethnic Russians living on Russian soil in Chechnya. He called for democratic elections in Chechnya with the participation of all ethnic, social, and political groups, including the opposition. At the same time, he spoke against the "impermissibility of an armed solution to the problem, which would be madness. . . ." ⁶⁴ Over the next several years, Payin would be seen as an advocate of a peaceful solution in Chechnya. Despite his position as head of the Presidential Council on Nationalities Policy, he was frequently ignored by Yeltsin and the other members of the Security Council. In fact, on the eve of the invasion, the president would refuse even to listen to Payin's arguments.

In the same interview, Shakhrai agreed with Payin by calling on Russia to protect all Russians living in the Near Abroad. He added that Russia should become the "legal

⁶⁴ Tamara Zamyatina, "Shakhrai: Only Federalism Can Keep Russia Whole..." Sevodnya, 25 February 1994, LEXIS-NEXUS.

successor of the USSR in international law."⁶⁵ Shakhrai clearly maintained a great power attitude. He was also one of the first proponents of employing covert intervention to aid the opposition groups in Chechnya, and later of using actual Russian military force to settle the republic's status.

With moderate advisors like Payin, who believed in keeping Chechnya within the Federation, and aggressive nationalists such as the influential Shakhrai, the Yeltsin administration was determined to oust President Dudayev and retain Chechnya. However, the executive branch did not have a strong enough power base in the parliament to legally implement a vigorous strategy against the republic. In order to execute its programs against Chechnya, the executive would have to operate covertly, outside the boundaries of the law and Constitution.

C. RUSSIA BECOMES INVOLVED WITH THE CHECHEN OPPOSITION

By the spring of 1994, the Chechen opposition groups began requesting the support of the Russian president in their efforts to overthrow the Dudayev government. Deputy Prime Minister Shakhrai quickly saw the advantage of this and became the leading promoter. The actual plan to assist the opposition was organized by General Aleksandr Kotenkov, Deputy Nationalities Minister and a senior member of Shakhrai's political

⁶⁵ Ibid.

group: the Party of Russian Unity and Accord.⁶⁶ The Russian executive quickly realized that dealing with the opposition leaders could offer significant prospects for the future. This was similar to their tactics in 1993 in Abkhazia, where they had supported the rebels to exert pressure on the Georgian government.

Parliament was not informed of the decision to assist the Chechen opposition. Granted, under the Russian Constitution, neither chamber of parliament has any direct responsibility for foreign or domestic policy. However, it is a common feature of democracies for the executive branch to inform the parliament of its policies, since the parliament must approve legislation dealing with such policies. When this covert aid became known, the president personally disavowed that he had authorized it. Despite his statements denying knowledge or involvement, President Yeltsin certainly must have given his approval of such a major and politically sensitive operation.⁶⁷ He simply did not want parliament or the public to know of his responsibility.

The fragile coalition opposed to Dudayev suddenly split, but what emerged no longer resembled peaceful dissenters. There were three major differences between these new opposition groups and those that had originally banded together to form the PCCR: these were armed, willing to use force, and unable to unite in a common cause. The Russian executive covertly supported these opposition groups primarily on the assumption that whichever group gained power would be pro-Russian.

The first opposition faction was Avturkhanov's *Marsho* (Freedom) based in the

⁶⁶ Felgengauer, "The Chechen Campaign," 7.

⁶⁷ Ibid., 7.

Nadtarechnyi region. Avturkhanov quickly became the most favored by the Russian executive branch. He had been the mayor of the Nadtarechny region of Chechnya, which had remained loyal to Russia, he had never followed the directives of the Dudayev government, and he had offered shelter to other leading anti-government groups. *Marsho* received the most support from Russia, but a drawback was that its popularity was limited to the clans within the Nadtarechnyi region. Beslan Gantemirov headed the second group in Urus Martan. Most of Gantemirov's supporters were members of his own Chankhoi clan. The third and smallest of these groups, *Niiso* (Justice), was led by Ruslan Labazanov based in Argun. Labazanov was a former criminal and had been the chief of Dudayev's bodyguard. Finally, the former Speaker of the Supreme Soviet, Ruslan Khasbulatov, led the last major group out of Tolstoi-Yurt. These four factions engaged each other in several skirmishes, but managed to direct most of their attention against Dudayev's forces. Their actions led to a virtual civil war in the republic.

According to an anonymous Kremlin source quoted by *Sevodnya's* defense expert, Pavel Felgengauer, the eruption of civil war in Chechnya was because a "group of high-ranking Moscow politicians (had) decided to actively participate in the solution to the Chechen problem without bothering with legal formalities."⁶⁸ Another of Felgengauer's unnamed government sources claimed that the Russian involvement in the civil war came at the instigation of Sergei Shakhrai. Shakhrai, now merely a Deputy Prime Minister without portfolio, had allegedly given orders to search for volunteers to fight for the

⁶⁸ Pavel Felgengauer, "Conspiracy: Russian Unity Creeps Into Chechnya," *Sevodnya*, 30 August 1994, LEXIS-NEXUS.

PCCR from among units of the Interior Ministry and Ministry of Defense stationed in the North Caucasus Military District (NCMD).⁶⁹ This was intended to avoid directly involving the Russian executive branch in an action that could -- and, as it turned out -- did prove highly unpopular.

The executive branch continued to plan actions in Chechnya that would circumvent the law in order to achieve its objective of overthrowing President Dudayev. For example, a column of Russian military communications vehicles deployed to the Nadterechny District. When the press and parliament immediately questioned this disposition, the Yeltsin government refuted all accusations that these vehicles would support any military actions. However, this rapid challenge prompted serious discussion within the executive branch on how to continue aid to the anti-Dudayev forces despite parliamentary opposition.

One possible solution would have involved proclaiming a fallacious situation in the republic in order to implement a convenient law. The Ministry for Emergency Situations has the authority to declare a state of emergency, but only during a natural disaster. The Russian executive therefore seriously discussed establishing a quarantine throughout Chechnya as a result of a spread of cholera, which did not actually exist.⁷⁰ Yeltsin and his Security Council probably realized that such a conveniently-timed epidemic would not be accepted and that is what convinced them not to choose such a course of action.

⁶⁹ Ibid.

⁷⁰ Natalya Gorodetskaya, "Two More Districts go over to Rule by the Provisional Council," Sevodnya, 1 September 1994, LEXIS-NEXUS.

However, the fact that it did receive so much of their attention indicates how far the members of the executive were willing to violate the rule of law to exercise their will.

At the same time, President Yeltsin was publicly keeping himself out of the controversy over events in Chechnya. He failed to make any comment either for or against the alleged Russian support of the Chechen opposition groups. This fit his pattern of leadership: if an operation failed, he had no visible ties to the failure and could politically distance himself from it. If it succeeded, then as president he could simply step in and garner some of the credit. Yeltsin's official statements were designed to reflect public opinion, which was 89% against supporting the forces opposing Dudayev and 49% against any Russian interference in Chechnya at all.⁷¹ In mid-August, the president declared that "forcible intervention in Chechnya is impermissible,"⁷² which he merely said to satisfy the Russian public and which did not coincide with the policies of his government.

On 1 September 1994, a small clash erupted near the village of Goity in the Ums-Martan District, between local forces loyal to Dudayev and those of opposition leader Beslan Gantemirov. The next day, opposition forces launched an assault to gain control of the capital city, Grozny. There were rampant accusations that Russian helicopters assisted the rebels by attacking three pro-Dudayev settlements, and that twelve Russian tanks engaged Chechen government forces in combat. Defense Minister General Grachev

⁷¹ Poll conducted by Sevodnya, 13 August 1994, LEXIS-NEXUS.

⁷² "Yeltsin Opposes Intervention by Force," Nezavisimaya gazeta, 12 August 1994, LEXIS-NEXUS.

immediately denied these accusations, and an official spokesman for the Ministry of Defense later repeated the official denial.

Several days later, in the face of mounting eyewitness proof, it was revealed that Russian helicopters had actually participated in these attacks. Certainly, Russian military pilots would not have committed themselves to combat operations without authorization. The orders had to have come from somewhere, and this would most likely have been a senior member of the defense ministry. If Grachev were not behind the decision, he certainly should have known about it. Yet this fit the executive's pattern of covert involvement that would be denied regardless of the evidence. Yeltsin's administration had its plans and policy and was not about to be checked by the parliament or the people. Fortunately for the president and his defense minister, events moved fast enough that little attention was paid to this episode of Russian involvement.

The Russian President's Analytical Center issued a report "On the Political Situation in the Chechen Republic." This report called for assisting those Chechen leaders who had remained obedient to Russia and economically rebuilding those parts of Chechnya that were still loyal to Russia. They hoped that by seeing the improved conditions resulting from restored ties to Russia, the rest of Chechnya would rebel against Dudayev's regime and come back to the Federation. This report also specifically advocated against providing Dudayev's opposition with any form of military assistance. Unfortunately, "this proposal was not considered by the senior Russian political leadership

at the time."⁷³ Instead, the view of the hawks within the administration prevailed.

In October 1994, Labazov and Gantemirov enjoyed some success against Dudayev's forces. Their brief and minor victories created a false impression of the Chechen president's weakness. At the same time, Yeltsin's former political rival, Ruslan Khasbulatov, was creating a significant power base in Chechnya. Khasbulatov's strongest supporters were those who desired a peaceful solution. Yeltsin could not tolerate his former rival gaining strength; this was a factor that drove him to increase covert support for Avturkhanov. Khasbulatov was essentially sidelined due to his previous conflict with Yeltsin, despite the considerable support the former speaker had among the Chechen people.⁷⁴ If any one faction were to emerge over Dudayev, the Russian government would ensure that it was one of "its" factions.

At about this time many saw a "war party" finally coalesce within the government. This party reportedly included the heads of the power ministries, the head of the Presidential Bodyguard General Aleksandr Korzhakov, and the Secretary of the Security Council Oleg Lobov. The war party was attempting to reassert Russia as a great power, not only concerning Chechnya but on the world stage. For example, Lobov had already advocated bringing the economy under the control of the Security Council, which he imagined would allow them to ensure that the military remained strong in spite of the pressing needs of the rest of the country. Fortunately, the parliament resisted handing

⁷³ Payin and Azrael, 10.

⁷⁴ Comments made by Dr. Anatol Lieven at a Hearing before the Commission on Security and Cooperation in Europe, 104th Cong., 2nd sess., 6 March 1996, CSCE 104-2-10, p. 9.

over this responsibility as budgetary control was the only real power the legislature had in Russia.

The problem with the war party, and the Security Council in general, was that it was politically isolated. Most of the parliament did not want Russian involvement in the Chechen civil war and would be opposed to Russian intervention. The power of the hawks on the Security Council stemmed from their undue influence with the Russian president and also, in the case of the power ministers, from the institutions they personally controlled. This power proved more than enough to counter the weak attempts of other elements of the government to find a peaceful solution. For example, Prime Minister Chernomyrdin would attempt to intervene in the conflict in January 1995, by declaring a unilateral cease-fire in Grozny. Within two hours after the cease-fire went into effect, Russian forces would recommence their bombardment of the city.

The situation in Chechnya deteriorated rapidly during the fall of 1994. The Yeltsin administration repeatedly called on Dudayev to disband his "illegal armed formations," but the Chechen president would never commit such an act of political suicide. The Russian parliament continued to press for peace in Chechnya and dialogue between the Russian and Chechen governments. However, the views of the Security Council's war party would prevail.

VII. NOVEMBER - DECEMBER 1994

A. ABORTIVE ATTEMPTS TO OVERTHROW DUDAYEV

Despite parliament's interference with the government's Chechen policy, Russia did have legitimate interests in restoring order in Chechnya. It could not resign itself to alleged criminals freely crossing into Russia, cross-border smuggling, and a Chechen Division of the Russian Central Bank whose policies hampered Russia's banking system. Unlike Georgia, the Baltic States, and the rest of the union republics of the Soviet Union, Chechnya had been an autonomous republic within the Russian Federation of the USSR. After the union's collapse and the rise of the Russian state, Moscow could not tolerate a rebellious republic. Russians considered Chechnya to be part of Russia and feared that giving Chechnya freedom could start a domino effect among other ethnic republics. Thus, the government's policy towards Chechnya would be to pacify it.

The "war party" within the Security Council urged the president to take forceful action against the republic. On 7 November 1994, President Yeltsin gave Dudayev an ultimatum to disarm his military units within 48 hours. The deadline passed, but Yeltsin extended it. Since it seemed to the Chechen president that there was no force behind Yeltsin's words, he continued to ignore the demand.

Finally, Yeltsin decided to enforce his ultimatum. On 26 November 1994, Russian

infantry and armor were employed in combat operations within the Chechen capital of Grozny in conjunction with an assault by anti-Dudayev Chechen forces. The infantry failed to provide adequate support, and the Russian tanks were decimated within the narrow confines of the city. The Russian/opposition attack on Dudayev's forces in Grozny was a complete fiasco. According to Dudayev, in that one brief battle sixty-seven Russian tanks and armored vehicles had been destroyed.⁷⁵

When word of this botched attack was first made public, both the Minister of Defense and the head of the Federal Security Service categorically denied any Russian involvement in the operation. They insisted that it had been fought between Chechen forces only. It was not until the Chechen government released the names of those Russians who were killed or taken prisoner that the two power ministers confessed to the government's complicity. The only plausible reason why they would have denied knowledge that federal troops had been ordered into Grozny was to protect either their own or the executive branch's involvement in that miscarried operation.

During a closed session of the Security Council on 29 November, the decision was reached to send a large number of federal troops into the breakaway republic to end the crisis once and for all. At that same Security Council meeting, General Grachev was appointed to lead a group to settle the Chechen conflict. This group included only other power ministers and no representative of any other branch of the government. This was

⁷⁵ Timothy L. Thomas, The Caucasus Conflict and Russian Security: The Russian Armed Forces Confront Chechnya (Foreign Military Studies Office: Ft Leavenworth, Kansas, 1996), 33.

confirmed in the 7 December edition of *Red Star*, the newspaper of the Russian Armed Forces. After that Security Council meeting, Yeltsin made a public address calling for both Dudayev and the opposition groups to lay down their arms, observe a cease-fire, and release all prisoners of war within two days. These demands were specifically made without the overt threat of force behind them, but "there is no doubt that Kremlin leaders knew that Dudayev would reject this ultimatum"⁷⁶ and provide the government with the excuse it needed to commit large-scale military forces. Yeltsin had already decided to settle the Chechen problem through the use of force, and the purpose of this latest ultimatum was to prepare the ground for that operation.

The president's decision had been made without consultation with anyone outside of the Security Council and its administration. Notably absent from this decision-making was the parliament, although the Constitution does not require the president to confer with the legislature on issues of foreign or domestic policy. Here, the executive's exclusive right to use force against Chechnya, an example of the lack of checks-and-balances within the Russian system, proved costly. The parliament's deputies had denounced the armed intervention in November and continued to call for a peaceful solution. Had parliament been a part of the decision-making process, it is possible that Russian forces would not have invaded the republic in December.

To execute his plan, President Yeltsin issued decree #2137s on 30 November 1994, "On Measures to Restore Constitutional Legality and Law and Order in the

⁷⁶ Emil A. Payin and Jeremy R. Azrael, Eds., U.S. and Russian Policymaking with Respect to the Use of Force, CF-129-CRES, RAND Research Paper, 1996, 11.

Chechen Republic." The purpose of this decree was to implement a state of emergency in the republic, which the president intended to use as a cover for the employment of federal troops. This decree was blatantly unconstitutional for two reasons. First, it states that "the decree goes into effect the moment it is signed,"⁷⁷ which directly contradicts the Constitution. The Russian Constitution requires the president to immediately notify both the Duma and the Council of the Federation of a state of emergency before it can go into effect. That constitutional clause should have guaranteed that the legislature was part of the decision-making process.

It is possible that President Yeltsin did try to meet the intent of the Constitution, since he informed both the Speakers of the Duma, Ivan Rybkin, and of the Council of the Federation, Vladimir Shumeiko. However, it is doubtful that he believed he was actually complying with the Constitution by informing only the two speakers. Also, the "s" at the end of the decree's number signifies that it is classified. The pro-Yeltsin Shumeiko may have intentionally kept the decree from his deputies, because it might have been a state secret, and on the grounds that he had previously claimed that "the rules do not say that the Chairman must ensure the chamber's right to information."⁷⁸ If the latter is true, then the chairman of a house of parliament intentionally excluded the legislature from deciding an issue of vital state importance.

Second, there was the unconstitutionality of using armed forces within the

⁷⁷ Veronika Kutsyllo, "Meeting of the Council of the Federation: Vladimir Shumeiko: I'm not Your Information Center," Kommersant-Daily, 14 April 1995. FBIS.

⁷⁸ Ibid.

Federation's borders. Except to repel foreign invaders, the use of the regular army on Russian territory is only authorized under a state of emergency and *specifically* to handle natural or technological disasters. Under a state of emergency, only Interior Ministry MVD troops could legally be used. Given the military capabilities of the Chechen forces in terms of heavy artillery and tanks, the MVD alone would have been outgunned.

Because of its obvious unconstitutionality, decree #2137s never actually went into effect. The president still needed to find a way to deploy regular troops into the republic to dispose of President Dudayev. Given the broad powers under the Constitution which allowed him to rule by decree, Yeltsin resorted to yet another presidential decree.

"On Measures to Halt the Activity of Illegal Armed Formations on the Territory of the Chechen Republic and in the Zone of the Ossetian-Ingush Conflict" was issued on 9 December. Citing the Russian Constitution, Yeltsin ordered:

1. That the Government of the Russian Federation be entrusted in accordance with points "d" and "e" of Article 114 of the Constitution of the Russian Federation⁷⁹ with the use of all the means available to the state to guarantee national security, legality, the rights and freedoms of citizens, the preservation of public order, and the fight against crime and with the disarmament of all illegal armed formations.
2. That the present edict goes into effect on the day of its publication.⁸⁰

This decree was meant to replace #2137s of 30 November, which had not been

⁷⁹ Article 114 states: "1. The Government of the Russian Federation shall: . . . d) manage federal property; e) adopt measures to ensure the country's defense, state security and the implementation of the foreign policy of the Russian Federation"

⁸⁰ Thomas, 9, quoting the "Edict of the President of the Russian Federation on Measures to Stop the Actions of Illegal Armed Formations..." from Krasnaya Zvezda, 14 December 1994.

implemented. This new decree purposefully labeled Chechnya as an "armed conflict zone." President Yeltsin decided upon that term so he could legally use regular military forces in the republic.

Eight members of the President's Council, a diverse advisory body, asked the president to convene an emergency session of that council to discuss the Chechen crisis. In the face of rapidly mounting tension, they wanted to analyze the crisis and find a way to resolve it short of military force. President Yeltsin denied this request because he had already made his decision on using military force and needed no further advice.⁸¹

B. INVASION

On 11 December, Russian Federal forces invaded Chechnya. The initial invasion force consisted of three columns of 200 tanks and armored vehicles each, with a total of 40,000 troops. These columns converged on Grozny from the east, west, and northwest, in what was expected to be a quick and easy operation. The Russians never anticipated the massive Chechen resistance, which slowed the Russian rate of advance and weakened the morale of the troops before they even entered major combat.

Grossly overconfident, Russia failed to use any of its elite forces, which during the course of the war would prove to be the only units actually combat-ready. Faced with a Chechen resistance which they were unable to overcome due to their lack of preparedness,

⁸¹ Payin and Azrael, 11.

Russian forces ineffectively relied on heavy artillery and aerial bombing to fight the small pockets of opposition. This led to significant collateral damage and indiscriminate civilian killings, which ultimately turned many Russians against the war.

On 26 December, Yeltsin convened the Security Council to discuss the situation in Chechnya. He announced that the first phase of the operation was ending, which meant the restoration of constitutional legality and order. Yeltsin added that the military's role would soon end and that the second phase, the creation of administrative bodies in the republic, would soon begin.⁸²

During that meeting, he appointed Nationalities Minister Yegorov and Federal Counterintelligence Director Stepashin to head a special negotiating team. Their purpose was to arrange for the end of Chechen resistance and the surrender of the separatists' weapons. This team was intended to meet with President Dudayev and the Chechen leadership, alongside an advisory group from the Russian parliament which would have no real power.

The next day, President Yeltsin made his first televised address to the Russian people concerning the intervention. His stated reasons for invading were:

- The Chechen presidential elections had been held under conditions of martial law and not in all parts of the Chechen-Ingush Republic [which no longer existed as a single entity].
- The Chechen government was not recognized by either the Russian Federation or the rest of the world governments.
- The Chechen regime was unlawful and had violated the Russian Constitution.
- There were no lawful authorities in Chechnya, only armed forces loyal to

⁸² Dr. M. A. Smith, A Chronology of the Chechen Conflict, (Conflict Studies Research Centre: Sandhurst, England, July 1996).

Dudayev.⁸³

This speech was intended to gain public and parliamentary support for the invasion. As discussed below, this was only a facade for the Russian executive branch. During these early stages of the war, Yeltsin neither needed nor cared about the support of anyone but the power ministers in exercising his will against Chechnya.

In the face of significant damage to the republic's infrastructure and hundreds of military and civilian casualties, President Dudayev asked for a cease-fire on 30 December. This request was ignored by the Russian government. On 31 December, Russian forces launched an unsupported armored assault on Grozny. As with the forces of the often-denied intervention of the previous month, these troops suffered heavy casualties and were forced to withdraw. The Russians retaliated for this humiliating defeat by pounding the city of Grozny with artillery and airpower. Despite this use of massive firepower, they would be unable to capture their objective, the presidential palace, until 19 January 1995.

C. THE DECISION-MAKING BEHIND THE INVASION

Why did President Yeltsin and his Security Council decide on immediate and direct military intervention to end the Chechen crisis, especially after the public and parliamentary opposition to the previous attempts to use force in November 1991 and

⁸³ Thomas, 5. Quoting ITAR-TASS, 27 December 1994, as reported in FBIS-SOV-94-248, 27 December 1994.

November 1994? From a purely military viewpoint, there was no compelling reason for choosing December 1994 for an invasion of Chechnya. As subsequent events would prove, the army was completely unprepared for significant combat operations. Due to a lack of funding, the Russian Army had not conducted any major training exercises for the previous two years. The military units that were sent into Chechnya were undermanned and had never operated together before. The winter weather, with fog and low cloud cover, impeded close air support. The Chechen forces posed no military threat to Russia. Rather, the decision to invade was made by various members of the Security Council who were seeking primarily to advance their own personal and bureaucratic interests.

One reason commonly offered for the December invasion was the need to secure the republic for Caspian Sea oil pipelines, which were then bringing in large infusions of Western money. The enormous oil reserves under the Caspian Sea and in Central Asia are estimated at 25 billion barrels, similar to those of Kuwait, and larger than those of Alaska and the North Sea combined.⁸⁴ The security and control of the oil pipeline which runs from Baku, through Grozny, and on to the Black Sea port of Novorossiysk, would be essential to exploit this oil. Several influential Russian industrialists and bankers who were interested in exploiting Azeri oil had been pressuring the government to restore order in Chechnya.⁸⁵ During the period of Chechen independence, from 1991-1994, Chechnya had also exported hundreds of millions of dollars worth of crude and refined petroleum

⁸⁴ Dr. Ariel Cohen, The New Great Game: Oil Politics in the Caucasus and Central Asia, (Heritage Foundation: <http://www.heritage.org>, 25 January 1996).

⁸⁵ Pavel Felgengauer, "The Chechen Campaign," (Paper presented at the Conference on the War in Chechnya, Monterey, Calif., July 1996), 7.

products without Russia receiving its share of the proceeds. The city of Grozny itself had petroleum refineries rated at processing 12 million tons of petroleum products annually, another valuable asset for Russia.⁸⁶ Oil was not the reason Russia went to war, however.

Concerning the pipeline, by December 1994 there was a new section of piping that was almost complete, which would bypass the Chechen Republic by going through North Dagestan. This would have eliminated any pressing need to secure the Chechen pipeline. In addition, many senior government officials who represented the oil and gas industries were in favor of negotiations with the republic instead of military intervention. The Prime Minister, Viktor Chernomyrdin, who had strong ties to Russia's energy sector, was one of the strongest proponents for a peaceful solution. At the time he did not have enough power and influence within the government to affect the president's decision and avert the invasion.

Defense Minister Grachev had three reasons for desiring a war in Chechnya. The first motive for Grachev's support of what was expected to be a quick and easy war would have been to get more money for the defense budget. The Duma had repeatedly slashed Grachev's budget requests for fear of ruining the country's weak economy. Former Prime Minister Yegor Gaidar implied that since the Russian defense industry had been unable to get significant funding for 1995, the Chechen War might have been partly at its urging.⁸⁷ The defense industry may have exerted sufficient political pressure on General Grachev to convince him that a war would garner more money for the military budget.

⁸⁶ "Things not so Good with Oil Either," Rossiyskaya Gazeta, 28 Dec 1994. FBIS.

⁸⁷ Thomas, 16.

A second reason was that a quick and glorious war may have been the best means for Grachev to make a case that he was the best possible defense minister Russian could have.⁸⁸ This was especially important since, according to then-Foreign Minister Andrei Kozyrev, Grachev had ensured the Security Council that "after the 26th [of November 1994] there won't be any Dudayev in Grozny."⁸⁹ His expectations for the November operations had failed and now the Minister of Defense had to redeem himself politically.

The final reason why Grachev would have advocated a war in Chechnya was unrelated to the political situation between Moscow and Chechnya: the renegotiation of the Conventional Forces in Europe (CFE) flank limits with NATO.⁹⁰ One week before the invasion began, the Russian General Staff held a press conference in which it stressed the need to revise the CFE limits because of the geopolitical changes on Russia's southern flank. The General Staff felt that this was justified because the treaty had been signed by the Soviet Union and the Warsaw Pact, not the Russian Federation. A Cacaasian war could therefore be justification for stationing more troops along Russia's southwestern border with its Muslim neighbors.

According to Pavel Felgengauer, defense correspondent for the Russian newspaper *Sevodnya*, the invasion of Chechnya may have been an effort to forestall a parliamentary investigation into the Russian executive branch's involvement in five failed coup attempts

⁸⁸ Thomas, 7.

⁸⁹ Comments made by Sergei Kovalev at a Hearing before the Commission on Security and Cooperation in Europe, 104th Cong., 2nd sess., 6 March 1996, CSCE 104-2-10, p 21.

⁹⁰ Stephen J. Blank, and Earl H. Tilford Jr., Eds., Does Russian Democracy Have a Future? (Carlisle Penn: US Army War College, 1994), 15.

in Chechnya. Clandestine Russian involvement, which had been kept secret from the parliament, could be directly linked to Yeltsin and the Security Council. "Only a full-scale operation in Chechnya could prevent an investigation of the previous covert missions."⁹¹ This assumption would prove correct: once the war began, the Russian parliament and the press ignored the previous stages of the crisis, and concentrated on the more dramatic developing events.

By December 1994, President Yeltsin had politically allied himself with the "state-builders," with their nationalist attitudes, and had driven off many of the liberals who had previously formed his power base. His former liberal allies had distanced themselves, and some had even completely abandoned him to form their own rival parties, which posed a serious political challenge.⁹² Most of the major political parties, including Russia's Choice, Yabloko, and the KPRF, but excluding the ultra-nationalist LDP, were opposed to military action against Chechnya. Because he had lost the backing of most of the democrats and reformers, Yeltsin had to rely upon the advice and support of the hardliners in the power ministries who urged war.

It is extremely likely that President Yeltsin was looking for a quick victory in Chechnya to boost his own mediocre reelection campaign which would start in less than a year. Because he had eliminated any strong parliamentary opposition the previous year, he had been forced to accept full responsibility for the condition of the country. Between the

⁹¹ Pavel Felgengauer, "The Chechen Campaign," (Paper presented at the Conference on the War in Chechnya, Monterey, Calif., July 1996), 6.

⁹² Payin and Azrael, 11.

lack of significant economic improvement in Russia and the worsening tensions with Chechnya, Yeltsin's popularity had plummeted. On the eve of the invasion, possibly as little as 25% of the Russian public supported him.⁹³

President Yeltsin also wanted to appear strong and decisive. After the failure of the previous covert attempts to overthrow the government in Chechnya, the president appeared weak. An invasion would therefore serve two political purposes. First, it would show his presidential resolve in not backing down in the face of Dudayev's opposition. Second, it would cover up the mistake he had made on 26 November, when he had sent a token military force into a debacle.⁹⁴

The decision-making group for operations in Chechnya was very limited. The actual decision to invade Chechnya was not made by the executive and legislative branches together, nor did the executive branch even consult with the parliament. The executive branch intentionally excluded the legislature from a major policy decision that had a tremendous impact on Russia. "The Russian decision-maker for the Chechen intervention was the Russian Security Council. It began as and has remained the political command and control element of the operations."⁹⁵ Another executive advisory body, the moderate Presidential Council, was not included in the discussion. Nor was the President's Analytical Center, whose involvement would have meant letting non-executive branch

⁹³ Anatol Lieven, "Be Ready for Yeltsin's Demise," The Times, 29 Dec 1994, LEXIS-NEXUS.

⁹⁴ Comments made by Sergei Kovalev at a Hearing before the Commission on Security and Cooperation in Europe, 104th Cong., 2nd sess., 6 March 1996, CSCE 104-2-10, p. 22.

⁹⁵ Thomas, 11.

parties know what was transpiring and bringing in dissenting opinions.

Even the staffs of the members of the Security Council who supported the invasion were kept in the dark. In the Ministry of Defense, the General Staff and deputy ministers were not consulted for planning the Chechen operations. The poor planning and execution of the campaign suggested that it lacked professional military guidance. Also, Deputy Defense Minister Boris Gromov admitted that the operation had been planned behind the backs of the staffs of the Ministry of Defense and the Interior Ministry. He claimed that:

Over the past two and a half years (of the existence of the Russian Ministry of Defense, May 1992-January 1995) the work of the Collegium (of the Ministry of Defense) has become a formality The crucial decisions affecting the future of the nation are increasingly being made by a limited number of officials The decision on using the armed forces in Chechnya was also made secretly and was not discussed by the board.⁹⁶

It is likely that Grachev was so confident of a rapid, decisive campaign that he felt there was little need to discuss the campaign with his subordinates.

The Minister of Nationalities Affairs, Nikolai Yegorov, kept the decision to invade to himself as well. It was such a secret within the ministry that Yegorov's deputy left for talks with the Chechen leadership in early December 1994, despite the fact that the invasion was scheduled to begin before the date that the talks would actually begin.

According to Foreign Minister Andrei Kozyrev, in an interview with Duma Deputy

⁹⁶ Alexander A. Belkin, "War in Chechnya: The Impact on Civil-Military Relations in Russia," (Paper presented at the Conference on the War in Chechnya, Monterey, Calif., July 1996), 12, Quoting A. Zhilin, "Chechnya Plans Kept From Deputy Defense Minister," Moscow News, 13-19 January 1995. Brackets part of original.

Sergei Kovalev, the Security Council's decision to invade was swayed by experts who promised a quick and almost bloodless victory in Chechnya.⁹⁷ Although Kozyrev did not give any names, first among those was probably Minister Grachev, who had earlier claimed that Grozny could be captured by a single regiment. It is surprising that the Council could have believed this after the failure of the 26 November operation, which should have proved that a campaign against Dudayev would not be as easy as the council expected.

Even at the Security Council meeting where the decision to invade was finally approved, it was a forgone conclusion before the meeting began. Justice Minister Yuri Kalmykov later resigned under strong pressure from the president because of his opposition to the war. In an interview with *Komsomolskaya pravda* after his high-profile resignation, Kalmykov explained the events of that meeting. As soon as the meeting was opened, he said, a vote on the invasion was held. Kalmykov proposed that the Council should first discuss the matter, but was twice told by the president himself that they would vote first. Everyone voted in favor of invasion, even those who in subsequent discussions preferred other options.

In the interview, Kalmykov avoided explaining why, even though he was opposed to the invasion, he voted in favor of it. He bowed out by claiming, "I had to agree – well, this was the most important point, let's go ahead And I voted in favor."⁹⁸

⁹⁷ Comments made by Sergei Kovalev at a Hearing before the Commission on Security and Cooperation in Europe, 104th Cong., 2nd sess., 6 March 1996, CSCE 104-2-10, p. 21.

⁹⁸ Aleksandr Gamov, "Security Council Votes First and Discusses Later. . ." Komsomolskaya pravda, 20 December 1994. LEXIS-NEXUS.

Sevodnya's military correspondent, Pavel Felgengauer, had expected National Security Advisor Yuri Baturin also to vote against the invasion. Baturin had been in favor of negotiations instead of military force, but it appears that even he would not go against the majority or especially the president.⁹⁹

Due to the secretive nature of the Security Council meetings, who was actually involved in the original decision to invade Chechnya may remain a secret, but it probably at least included General Grachev, General Yerin, and Yeltsin's close personal friend General Aleksandr Korzhakov, the head of the Presidential Security Service and a presidential appointee with no legal authority for any policy decisions. Some press reports indicate that Korzhakov had already created his own team of analysts to consider ending the Chechen situation by force, which would have negated needing the input of the moderate Presidential Analytical Center. Also, other reports argue that the general had been a strong influence in replacing the increasingly conciliatory Sergei Shakhrai with the rather aggressive Nikolai Yegorov as Minister of Nationalities.¹⁰⁰ Korzhakov's influence with the president had been well-known throughout Russia even before December 1994. This personal relationship with Yeltsin had helped him to gain the post of head of the presidential bodyguard. Sergei Filatov, Yeltsin's Chief of Staff, felt that Korzhakov had too much power and had been pressuring the government on policy decisions which were well beyond his responsibilities.¹⁰¹

⁹⁹ Sophie Shihab, "Who's Calling the Shots in Russia?" Le Monde, 25 December 1994, LEXIS-NEXUS.

¹⁰⁰ Payin and Azrael, 11.

¹⁰¹ Donald Murray, A Democracy of Despots (Boulder: Westview Press, 1995), 218.

Regardless of why various members of the Security Council and other advisors would have chosen the military option, the ultimate decision to invade Chechnya could only have been sanctioned by President Yeltsin, and he must bear full responsibility. It was the Russian president who signed the decrees and made the final decision to invade. He chose to do so without consulting parliament, and by stretching his legal powers to set domestic policy and issue decrees under the Constitution. The events of November and December 1994 were ordained by the Russian executive without any sort of check or balance by the legislature.

VIII. EVENTS BETWEEN JANUARY-DECEMBER 1995

A. PARLIAMENT ATTEMPTS TO INTERVENE

Once the war started, the Russian parliament simply became an observer. Due to its lack of power under the Constitution, there were few actions the parliament could take to influence the course of events. The Constitution gave the president the responsibility for determining the guidelines for domestic policy; all the parliament could do was to try to limit the military operation's budget, debate the issues surrounding the war, and create investigative committees with no real authority. The day after the invasion began, the leaders of the Duma's various factions expressed their opinions. Of the major political parties, only the ultra-nationalist LDP expressed its support for continued military operations rather than a peaceful solution.¹⁰² The Duma was clearly opposed to the invasion, yet the next year would show that under the Russian system of government, that opposition could not translate into significant political power. The legislative branch was simply unable to check the executive.

As it happened, the Duma could not even exercise control over the Chechen war through its budgetary powers. The final stage of the budgetary process in the parliament had occurred in late December 1994, after the invasion had begun. Some of the Duma

¹⁰² Pavel Kuznetsov and Ivan Novikov, "Parliamentary Groups give Chechnya Stand," ITAR-TASS, 12 December 1994, LEXIS-NEXUS.

factions had tried to end the war by banning any additional military funding, but the government had countered by stating that the operation could be supported by reallocating funds in the already-approved portions of the budget. Even though the Yeltsin government had underestimated the cost of the war in December 1994, through early 1995 it still had sufficient unassigned funds to cover the military operations.

Amidst the rising outcry in parliament and the press, the government attempted to appease its critics. On 6 January 1995, the Security Council met to discuss the Chechen crisis. After the meeting, the government (prematurely) announced that the war was almost over and MVD troops would start replacing regular army units in Chechnya. This policy of claiming victory, withdrawing regular troops, and replacing them with interior forces would recur whenever it was politically expedient for the president.

Yeltsin next sent Nationalities Minister Nikolai Yegorov to Chechnya as his extraordinary representative in the republic to coordinate the elements of the power ministries (defense, interior, and counterintelligence or FSB) in Chechnya. These elements became subordinated to Yegorov by presidential decree. Despite Yegorov's authority, the power ministries and even field commanders ignored his directives, removing command and control from the political leadership of the Russian government and exercising it on the battlefield themselves. For example, President Yeltsin ordered an end to aerial bombing of civilian targets, yet despite this the Russian Air Force continued to bomb Chechen villages. On 9 January, Prime Minister Chernomyrdin proclaimed a two-day cease-fire, which was generally observed by both sides. This cease-fire was to allow the

removal of the dead and wounded from Grozny, and the prime minister hoped it would be extended and eventually lead to a peaceful settlement. However, as soon as the truce expired at 8 a.m. on 12 January, Russian artillery opened fire on the city. Civilian and military casualties continued to mount.

On 13 January, the Duma resolved “to consider it necessary for the president and the government to take exhaustive measures to end combat operations in Chechnya’.”¹⁰³ This was the first significant attempt by parliament to become involved in the Chechen conflict. Despite the symbolism of parliament expressing a strong opinion against the government’s actions in Chechnya, this resolution had no effect on the executive branch. It had no legal force and the Constitution did not require the government to act on it or even address the parliament’s concerns. The executive branch was free to continue its policy towards Chechnya unhindered.

At the same meeting, the Duma sought new legislation which would increase its power vis-à-vis the executive branch, thus compensating for the Constitution’s flaws. The Duma ordered its Committee on Legislation to submit draft amendments to the Constitution which would “expand the monitoring functions” of parliament, specifically because the parliament had been excluded from the decision-making concerning the invasion. The Duma also ordered that committee to accelerate the drafting of a law which

¹⁰³ Olga Gerasimenko, "Does War Mean End of Yeltsin-Democracy Link?" Komsomolskaya pravda, 29 December 1994, LEXIS-NEXUS.

would clearly limit the powers of the Security Council.¹⁰⁴ The deputies perceived the ambiguous nature of the Security Council as another defect in the Russian Constitution.

The Duma next established an investigative commission to look into the causes and consequences of the Chechen crisis. The composition of this commission was diverse, including members of 11 different political parties to represent a variety of concerns. The commission was very weak: government officials even had the right to refuse to talk with it. Since the only abilities to check the power of the president and the government that are provided to the Duma by the Constitution are budgetary in nature, it was inevitable that an investigative commission would have little real power. Its sole accomplishment was to serve as a forum for the parliament to discuss the Chechen war. Faced with even this minor challenge from the legislative branch, President Yeltsin requested that the Duma disband the commission, on the grounds that it was "unconstitutional." Since Article 101 of the Constitution does allow the State Duma to form committees and commissions, the deputies resisted and eventually the president withdrew his demand.¹⁰⁵

Even the normally pro-Yeltsin Council of the Federation decided to challenge the unbridled power of the executive branch. The same day that the Duma passed its resolution, the upper house of parliament adopted a law on defense which would require the president to submit to the Council any decree which would use Russian Federal Armed

¹⁰⁴ Pyotr Zhuravlyov and Sergei Parkhomenko, "The Results of the Duma's Debates Will Make no Impression on the Kremlin," Sevodnya, 14 January 1995, 1, Current Digest of the Post-Soviet Press.

¹⁰⁵ Lyubov Tsukanova, "Federal Assembly Could do Little, but has Done even Less," Rossiyskiye Vesti, 28 December 1994, LEXIS-NEXUS.

Forces for other than repelling external attacks. The Council would then have to approve such a decree before regular forces could be employed.¹⁰⁶ Like the Duma, the Federal Assembly had also realized the need for a more effective system of checks-and-balances between the branches, at least concerning something as important as the use of military force.

Towards the end of January 1995, the Council of the Federation considered further measures to impose its will against the executive branch. It scheduled a forum on the war, and requested that the government ministers attend so they could answer the Council's questions. On the day the Council convened with the intention of opening discussions on the war in Chechnya, only one government official attended the session: the acting prosecutor general, someone not even connected with the war. Offended by the government's attitude, several senators proposed a motion to break up until the government sent representatives to explain the events in Chechnya and listen to the Council's viewpoints. This motion failed to pass. Without legal authority under the Constitution to back up its position, the Council could not act as an effective counterforce to the executive branch.

One argument as to why the Council of the Federation could not be a truly independent body that counterbalanced the executive is that the majority of its members simply did not want to openly contradict the president. Since their authority derived from

¹⁰⁶ Under Article 102 of the Constitution, Ministry of Defense forces are authorized against external threats when approved by the Council of the Federation. There is no mention in the Constitution for any use of the regular armed forces on the territory of the Russian Federation.

the executive branches of the various administrative units within the Federation, which were tied to the federal executive, many of the senators owed their posts to President Yeltsin. Since its creation, the Council had a legislative record that was pro-Yeltsin. On previous issues of national security (unrelated to Chechnya), there had usually been little debate and the Council had readily accepted the government's policies. An example of this was the ratification of the START II Treaty, which had led one observer to remark that "the Federation Council is dependent on Yeltsin and will do what he tells them."¹⁰⁷

Throughout the Chechen war, the Council of the Federation proved unable to take any significant action to interfere with the executive branch's policies.

Some of the senior leaders of the Council did try to make that body an effective legislative instrument and counterbalance to the executive. They called for a vote of no confidence in the prime minister and the power ministers, impeachment proceedings against the president, and changes to the Constitution which would give the legislative branch more power. Viktor Stepanov, President of the Karelin Republic, rationally called for making the Cabinet accountable to parliament. Yuri Chernichenko, Chairman of the Peasant's Party of Russia, demanded the complete elimination of the Security Council,¹⁰⁸ which was accountable to no one but the president. These proposed measures were attempts to assert the influence of the upper house of parliament and make it a true balance to the executive branch. Unfortunately, these would not become law since not

¹⁰⁷ Comments made by Deputy to the State Duma, Dr. Alexei Arbatov, at the Conference on Russian Defense Issues, Monterey, Calif., 25 March 1997.

¹⁰⁸ Veronika Kutsyllo, "Regions' Heads Feel Threatened by Chechen War," Kommersant-Daily, 19 January 1995, LEXIS-NEXUS.

enough senators could agree to openly challenge the president.

By this time there had already been many comparisons made between the Security Council and the old Politburo. The Security Council had become the preeminent decision-making body in Russia and was accountable only to the president. At the end of January 1995, the speakers of both houses of parliament, Ivan Rybkin and Vladimir Shumeiko, became permanent members of the Security Council. This brought the leaders of the legislative branch into the executive, combining them in one ill-defined body. The heads of the legislative branch, which should have served as a check against the executive branch, were now a part of it. This act clearly violated the principle of a separation of powers between the branches of government. But this was not seen as a serious issue by most observers within Russia, because the legislature had actually never had the will or the legal ability to exercise much influence over the executive branch. In fact, while "the executive branch's action in Chechnya never won the approval of either the State Duma or the Council of the Federation"¹⁰⁹ during the entire Chechen campaign, they had never been a serious impediment to the government's policies.

At the end of January, the Duma resolved to submit a draft change to the Constitution to the Council of the Federation. This draft was similar to a law on defense that the Council of the Federation had approved earlier that month. The amendment would require the upper house's approval prior to the government employing the Russian Armed Forces on Russian territory for any operation other than to repel foreign

¹⁰⁹ Vadim Makarenko, "Drawing Conclusions from the Chechen Experience," Rossiiskiy vestnik, 30 November 1996, LEXIS-NEXUS.

aggression.

Strong executive power had been a hallmark of Russian government dating back through seventy-four years of communism and three centuries of tsarism. In the words of one reporter, the difficult task of creating a governmental system in Russia which is both strong and democratic "is complicated many times over by present-day Russian reality, when both objective conditions and the mood in society and circles of power lean toward a preference of strength."¹¹⁰ President Yeltsin elaborated on that point in an address to the Federation Council when he explained that "resolute and sometimes tough measures"¹¹¹ were necessary for the country.

The current balance of power between the executive and legislative branches simply follows Russian tradition. The first Russian parliament, a unicameral Duma, was created in 1905. It quickly became a tool of Tsar Nicholas II and failed to challenge his autocratic rule. Throughout the Soviet era, the parliament was merely a democratic showpiece which blindly approved all legislation presented to it by the leaders of the Communist party. In the modern Russian state, the parliament as an institution has not yet fully learned its responsibility to challenge and counter-balance the executive branch. Throughout the Chechen crisis, neither the Duma nor the Council of the Federation could ever muster enough fortitude to make themselves effective checks against the executive. They allowed the flawed policies of the Yeltsin Constitution to proliferate.

¹¹⁰ Nikita Vaynonen, "Power Must be Strong and Democratic," Rossiyskie Vesti, 21 February 1995, LEXIS-NEXUS.

¹¹¹ Speech to Federation Council on 21 February 1995. FBIS.

B. BRIEF SUCCESS OF THE GROUND CAMPAIGN FOR GROZNY AND RUSSIAN PUBLIC OPINION

Many senior military leaders were strongly opposed to the war. Some of the more outspoken critics were Deputy Defense Minister General Gromov, the former Soviet commander in Afghanistan; General Lebed, commander of the 14th Army in Transdneister; and General Vorobyev, deputy commander of the Russian ground forces.¹¹² After the initial failures in Chechnya, the Yeltsin government purged the six senior commanders in charge of operations there. When Grachev offered command of the North Caucasus Military District to Colonel General Vorobyev, he refused and Grachev was forced to temporarily assume direct command himself. Finally Lieutenant General Anatoly Kvashin was placed in charge of the Russian forces in Chechnya (he was later promoted to Colonel General and became commander of the NCMD in the spring of 1995). The military hierarchy clearly was not supportive of this war. Field commanders had confessed that they had been on the verge of refusing to obey the "ridiculous orders" of the Ministry of Defense and the government.¹¹³ At the same time, the Russian General Staff had been noticeably absent from the operations. The General Staff was supposed to be the operational element of the Security Council, but to keep the operation secret and protect their involvement, the key members of the Security Council had excluded the General

¹¹² John Lloyd, "Yeltsin tries to Quiet the Chorus of Criticism," Financial Times, 28 December 1994, LEXIS-NEXUS.

¹¹³ Pavel Felgengauer, "The Chechen Campaign," (Paper presented at the Conference on the War in Chechnya, Monterey, Calif., July 1996), 14.

Staff.

Bowing to mounting anti-war pressure from the parliament and the Russian public, President Yeltsin authorized another ill-conceived attempt to regain credibility. To promote the idea that the conflict was winding down and Russian forces were only mopping up small pockets of resistance, the Ministry of Internal Affairs again began replacing regular Russian Army units in Chechnya with MVD troops. In the opinion of senior army officers at Eastern District Headquarters, the decision to replace regular forces with MVD regiments at that stage of the war was “‘fantasy of the worst kind’.”¹¹⁴ The battlefield conditions did not warrant replacing heavily-armed and armored forces with paramilitary policemen. This was a political decision made to improve the government’s image and was not sound military judgment.

Public opinion polls clearly indicated that the Russian public did not support the war, and that the president had lost a great deal of its respect. In February 1995, the All-Russia Center for the Study of Public Opinion (ARCSPO) had conducted a survey of urban residents throughout Russia. Fifty-eight percent rated the president’s performance as generally unsatisfactory, compared to only 9% who gave him a positive rating. Sixty-five percent of those surveyed viewed his achievements towards Chechnya negatively; only 4% approved. Shortly after the invasion, in another ARCSPO poll, 48% thought that President Yeltsin “was making decisions without taking the people’s will into account and without heeding the opinion of authoritative advisers or experts.” By February 1995 this

¹¹⁴ Quoted in Oleg Kryuchek, “Minister Yerin is Sending ‘Cannon Fodder’ to Chechnya,” Sevodnya, 20 January 1995, LEXIS-NEXUS.

number had risen to 57%. Finally, 78% of those surveyed supported an immediate cessation of hostilities in Chechnya, regardless of whether or not Russian forces achieved their objectives.¹¹⁵ These polls were most likely a strong influence on Yeltsin's decision to prematurely replace regular troops with MVD forces.

By 5 February, despite heavy losses, Russian forces had captured the city of Grozny and forced the withdrawal of the capital's Chechen fighters. Following this pyrrhic victory, a cease-fire was signed between the two sides. During the brief respite, General Kvashin was replaced as commander of the joint grouping of federal forces in Chechnya by the commander of the MVD forces, Colonel General Anatoli Kulikov. General Kulikov then met with the Chechen Chief of Staff, Aslan Maskhadov, to open negotiations on ending the crisis. Dr. Felgengauer attests that this lull in the fighting was for purely political purposes, so that President Yeltsin could present his "State of the Country" message to parliament in mid-February and claim that the war was over.¹¹⁶ Even if true, it also gave the troops a much-needed respite after two months of heavy and continuous fighting. However, the cease-fire was short-lived and by mid-March it was broken, as Russia troops advanced on the cities of Gudermes and Shali.

In April 1995, commenting on the culpability for losses in the Chechen War, Presidential Chief of Staff Sergei Filatov exonerated the president. He said "the president

¹¹⁵ Lev Gudkov, All-Russia Center for the Study of Public Opinion Survey Results, Sevodnya, 23 February 1995, 3, Current Digest of the Post-Soviet Press.

¹¹⁶ Pavel Felgengauer, "The Chechen Campaign," (Paper presented at the Conference on the War in Chechnya, Monterey, Calif., July 1996), 18.

made a political decision" and bore no responsibility for "tactical losses."¹¹⁷ Filatov implied that the blame rested on those who had advised and misled Yeltsin. This included Minister Grachev, who had claimed that the Chechen capital could be pacified by a single airborne regiment. However, Grachev would retain his post for another year. The war would continue to be waged by the same people on the Security Council who were free from any counterbalance from or accountability to the parliament.

On 13 April, *Ekho Moskv*y radio reported that the Federation Council would be sending to the Constitutional Court two presidential decrees which had been used to start the war in Chechnya. On 28 April, the Constitutional Court officially received the request from the Council of the Federation to rule on the constitutionality of the executive branch's actions in Chechnya. This was similar to an earlier request the Court had received from the Duma. Everyone thought that the Court would soon have to decide on the constitutionality of the government's policy towards Chechnya, but the ruling would be delayed until July.

C. BUDENNOVSK AND ITS POLITICAL IMPLICATIONS

On 14 June 1995, under the leadership of Shamil Basayev, one-hundred Chechen soldiers raided Stavropol Krai in southern Russia and seized over one-thousand hostages

¹¹⁷ See Vadim Dubnov, "The Most Symbolic Minister," New Times, April 1995.

at a hospital in the town of Budennovsk. The drama in southern Russia unfolded on national television and the president wanted to appear strong and decisive. President Yeltsin ordered two attempts to free the hostages, including one led by the elite "Alfa" *spetsnaz* commando group, but both attempts failed. The Budennovsk hostage crisis marked a turning point in the Russian government. Up until this crisis, the hawks around the president, especially the power ministers, had been the most influential political players in determining government policy. During this crisis, though, Yeltsin was out of the country at the G7 summit in Halifax, Canada, and could not take direct control over the situation. Prime Minister Chernomyrdin had to step into the immediate leadership role.

For years, Yeltsin had been the only true leader in Russian politics. This hostage crisis allowed Chernomyrdin to exert his influence. His conciliatory gestures were helped by the fact that both attempts to free the hostages by force had been bloodily repulsed. Chernomyrdin was more of a dove than most members of the government and he had always distanced himself from the unpopular events in Chechnya. His involvement may have strengthened the position of the moderates within the government, and it turned the focus of the Budennovsk crisis from a military to a political solution.¹¹⁸

In exchange for releasing the hostages, Shamil Basayev and his followers were allowed safe passage back to Chechnya and the prime minister promised future dialogue to end the war. Chernomyrdin exposed himself to future criticism through his peaceful settlement of Budennovsk when he negotiated with Shamil Basayev. It made him look

¹¹⁸ Galina Kovalskaya, "Old Lessons of the New Tragedy," New Times, February 1996.

like an effective and responsible politician, but if there were future hostage crises (such as at Kizlyar the following year), he could be seen as partly to blame because he had not taken harsh action.¹¹⁹ Yet this was his first real test and he succeeded. It was also the first time that government policy for the Chechen war had been shaped by someone other than the hard-liners on the Security Council.

On 21 June, the Duma passed a vote of no-confidence in the government, specifically because of its poor handling of the Budennovsk crisis. In such a case, the Constitution presents two options. The president may abide by the Duma's resolution and dismiss the government. Or, he may ignore the Duma's ruling. If the Duma were to pass a second vote of no-confidence within three months, the president would then have to choose between dissolving the government or the State Duma. Such a constitution does not give the legislature significant influence over the executive branch, because in its attempts to act as an effective check, the parliament can find itself dissolved. In this case, President Yeltsin refused to dismiss the government. Instead he began considering measures to disband the Duma. However, in the face of political pressure from members of parliament, including normally-loyal factions, the president fired the interior minister, nationalities minister, and the director of the FSB. Several Duma deputies attempted another vote of no confidence on 1 July, but fortunately for the parliament it failed.

¹¹⁹ Ibid.

D. THE DUMA COMMISSION ON CHECHNYA: WEAK AND IGNORED

Before leaving for its two month summer vacation on 21 July 1995, the Duma finally discussed the results of its seven-month commission on the crisis in Chechnya. As an indication of how little influence it expected the commission's findings to have on the government, the Duma's agenda limited the report to only five minutes. The commission's chairman did not run over his allotted time. He instead advised the deputies to read the report for themselves.

The commission's report laid the basic responsibility on the president who, in its opinion, "failed to fulfill his constitutional obligations with respect to ensuring the state integrity of Russia and protecting Chechnya's population from infringements on human and civil rights and liberties."¹²⁰ It also accused him of failing to exercise effective leadership of the army as the commander in chief. Those commission members who signed the report -- which excluded members of Russia's Choice, the Party of Russian Unity and Accord, and Stability, all of which supported President Yeltsin but not the war specifically -- called for establishing a special commission on removing the president from office. The report also accused Minister of Defense Grachev of incompetence in that he failed to ensure the proper functioning of the army, as well as for arming Dudayev's troops. Once the commission had briefly reported on its conclusions and issued the report, it faded from sight. The parliament's commission had no effect on the government

¹²⁰ Yevgeny Yuryev, "Chechnya: Would Russians Like to See it Secede?" Kommersant Daily, 22 July 1995, LEXIS-NEXUS.

or its policies.

The same month, Yeltsin appointed Anatoly Kulikov as Minister of Internal Affairs. He replaced Viktor Yerin, who had increasingly been blamed for the failures in Chechnya and was sacked after the Budennovsk crisis. Reliable and obedient to the Kremlin, Kulikov had significant experience dealing with civil unrest. He had seen service from Nagorny Karabakh to Transdnestr. Most recently, he had been commander of MVD forces in Chechnya.

At Yeltsin's direction, Prime Minister Chernomyrdin agreed to enter into peace talks with the Chechen leadership. The prime minister insisted that he would not deal with Dudayev, only with other members of the Chechen resistance groups. Peace talks between Russia and Chechnya commenced in the city of Grozny, as the combat dwindled to only occasional skirmishes scattered around the republic. At the peace conference, Chechnya continued to insist on independence, while Russia would only offer sovereignty within the Russian Federation. Through his mediators, Dudayev countered by offering to resign as president if Russia would accept Chechen independence. The peace talks temporarily broke down over the issue of independence versus sovereignty, but the two sides managed to continue the momentum towards an end to the conflict.

E. THE CONSTITUTIONAL COURT DECIDES IN FAVOR OF THE PRESIDENT AT THE EXPENSE OF DEMOCRACY

At the end of July 1995, the Constitutional Court finally ruled on President Yeltsin's actions in Chechnya, specifically his decrees of 30 November and 9 December 1994. This was in response to the earlier challenges presented by both houses of parliament. The legislature had questioned the "unlawful use of the Armed Forces of the Russian Federation" and "other measures and actions stipulated in the decrees of the President of the Russian Federation and the resolution of the Government" as being "legally possible only within the framework of a regime of a state of emergency or a state of martial law,"¹²¹ which it claimed did not exist at the time. The parliament contended that it had not been notified before the state of emergency went into effect, as required by the Constitution, and that therefore the president had not abided by the rule of law.

Former Justice Minister Kalmykov, who had resigned because of the war, agreed with the deputies that the president did not have the right to use either the Army or MVD for internal problems except under an official state of emergency.¹²² The parliament's accusations also included the mass violations of civil and constitutional rights of Russian citizens as a result of the war in Chechnya. It appeared to most observers that the Court would have to find in favor of the parliament, and the rule of law as stipulated by the

¹²¹ "Russian Federation Constitutional Court's Ruling..." Official Kremlin International News Broadcast, FBIS.

¹²² Aleksandr Gamov, "Security Council Votes First and Discusses Later. . ." Komsomolskaya pravda, 20 December 1994. LEXIS-NEXUS.

Constitution. But this was not to be.

After deliberation, the Court concluded that the presidential decree authorizing the use of federal troops in Chechnya "did not give the government any powers that did not stem from the Russian Federation Constitution."¹²³ The Constitution did in fact stipulate certain situations which would allow the executive branch, specifically the president, to employ federal troops. The only problem the Court found was that the manner in which Yeltsin's actions were taken was not strictly in accordance with the Constitution.

The Court agreed that the state of emergency had not been implemented properly. However, it found that the president's subsequent actions in Chechnya did follow from powers granted to him by the Constitution (although these powers required a state of emergency to be in existence at the time). The fact that the president violated the Constitution in executing his policy was apparently only a minor detail to the justices.

The Constitutional Court is the least defined and weakest branch of the present Russian government.¹²⁴ Because of the legacy of Soviet and tsarist rule, with no pattern of an efficient or equitable judiciary, Russia suffers from the lack of a legal tradition. That the judicial branch would fail in its constitutional obligations to uphold the rule of law and act as a counter to one of the other two branches should therefore not come as a surprise.

In order to have gotten the Court to reconsider the petition or to consider a differently-worded petition, the Duma would have to have ended its summer vacation

¹²³ Sergei Parkhomenko, "Constitutional Court Rules for Yeltsin on Chechnya," *Sevodnya*, 9 August 1995, LEXIS-NEXUS.

¹²⁴ William C. Martel and Theodore C. Hailes, Eds., *Russia's Democratic Moment?* (Air War College: Montgomery, Alabama, 1995), 41.

early and reconvened. The Duma's deputies were not willing to make that sacrifice, because they knew the outcome would most likely be the same.

F. NEGOTIATIONS AND CONFLICT

Despite random outbreaks of fighting between Chechen and Russian forces, the two governments worked towards a peaceful solution throughout the late summer. Once it returned from recess, the Duma presented the president with a draft law which would have provided a temporary settlement to the Chechen crisis. The president rejected the draft law, but he did take other measures to end the crisis.

In late August, Security Council Secretary Oleg Lobov was appointed President Yeltsin's new personal representative in Chechnya. Much like Yegorov had been back in January, Lobov was given extraordinary powers in the republic. He was placed in command of all Russian military and security forces, as well as any civilian authorities in Chechnya. Lobov was also elevated by the president to the rank of first deputy prime minister, which gave him the right to issue official orders without the approval of the prime minister. At the same time, Lobov retained his powerful post as Secretary of the Security Council. This appointment was not necessarily a bad one for the government, since many of the previous Russian failures had been due to a lack of coordination between various state organs. However, the new position gave Lobov powers that could only be constrained by Yeltsin himself. More importantly, this appointment and Lobov's

new powers could not be challenged by the parliament. It was another sign of the autocratic nature of the Russian presidency.

Most of the major Chechen political groups called for a restructuring of the republic's government. They accepted that Chechnya would have to remain part of the Russian Federation, at least temporarily, and called for elections to both local and national parliaments to coincide with the State Duma's December elections. In the wake of this decision, fighting tapered off and several Chechen resistance groups began disarming. Shamil Basayev, the mastermind behind Budennovsk, refused to surrender, however, and his army continued to fight Russian troops.

Chechen independence day was 6 September, and Russian forces prepared for an attack. It came the next day, as Chechen fighters launched an assault on Russian forces in and around the city of Argun. Two weeks after the fighting at Argun started, the former Communist leader of Chechen-Ingushetia, Doku Zavgayev, announced that new elections should be scheduled by the disbanded Supreme Soviet of Chechen-Ingushetia. Obviously hoping he would be able to return to power, Zavgayev demanded that Dudayev and his allies be excluded from electoral candidacy.

Yeltsin appointed Doku Zavgayev as the interim head of the Chechen state, in the belief that this would restore legitimate authority to the republic's government. Amidst criticism that the president could not appoint a viceroy for the republic, Zavgayev's press office reported that he was not the head of the republic, only the head of the government. His purpose would be to represent Chechnya in Russia's state bodies of power, and he

would have the authority to appoint and remove executive officers in the republic.

Despite the continued efforts being made towards holding elections in the republic, Chechen fighters continued to battle Russian regular and interior ministry forces. Many Chechen groups did not support the peaceful settlement which was being brokered by Oleg Lobov, representing President Yeltsin, and Ruslan Khasbulatov and the Chechen Chief of Staff Aslan Maskhadov. Throughout these negotiations, the Russian parliament was noticeably absent. The Constitution assigned the primary role in both foreign and domestic policy to the president, and the executive branch had repeatedly ignored the parliament's attempts to interfere in Chechen. The parliament had most likely decided not to attempt another futile effort at affecting state policy.

In early November, Yeltsin officially proclaimed that Chechen elections would coincide with the State Duma elections on 17 December. He also agreed that Russia would grant Chechnya a "special status" within the Federation, but discussions on that issue would take place after the Chechen elections. Deputy prime minister Sergei Shakhrai was directed to draft the status treaty. Chechen opposition groups demanded that the issues should be settled before the elections. After meeting with Zavgayev, in early December, Secretary Lobov signed an agreement in principle on the relationship between Russia and Chechnya.

IX. THE DECEMBER 1995 PARLIAMENTARY ELECTIONS: THE PUBLIC'S REACTION TO CHECHNYA

In late 1995, it did not appear that Yeltsin's followers would perform well in the upcoming parliamentary elections. As late as 11 December 1995, six days before parliamentary elections, *Radio Russia* reported a poll of residents of Moscow and St. Petersburg which specifically addressed the war and its reflection on the Yeltsin government. Eighty-one percent of those surveyed were opposed to the government's original decision to send troops into the republic and the continuing Russian campaign. When asked what they thought of the development of events since the introduction of federal forces in December 1994, 92% of those polled felt that the situation had evolved very unfavorably for Russia.

The Russian public was clearly outraged by the tragedy of the Chechen war. The poor performance of the once-vaunted Russian Army obviously tainted their perspective, but the public had other reasons for its opposition. From the beginning of the war, the majority of Russians preferred a peaceful settlement to the Chechen crisis. The president's decision to invade the republic had been made without the advise or consent of the parliament. Throughout the previous year, opinion polls and rallies had expressed the populace's desire for an end to the conflict, yet the government had continued to prosecute the war.

The outbreak of war and the handling of the campaign in Chechnya had clearly

diminished President Yeltsin's popularity within Russia.¹²⁵ To help bolster support for those parties loyal to him, immediately preceding the 17 December Duma elections Yeltsin proclaimed victory in Chechnya and withdrew many of the regular army troops in a high-profile move.¹²⁶ This withdrawal occurred at the same time that Dudayev's forces captured several civilian and military installations in the Urus-Martan district, and fresh fighting erupted in the city of Gudermes. The war was far from over, but Yeltsin withdrew regular army units purely to aid the electoral chances of his allies in the parliament. This was yet another example of the executive branch creating a state policy solely for domestic political gain.

As shown by the voting pattern for the Duma, public opinion in Russia was still not pro-reform. While Zhirinovsky's LDP was not the popular vehicle for showing the public's distaste for the status quo as it had been in 1993, the KPRF was the clear winner in the parliamentary elections. The communists won the largest number of seats, earning 157 out of 540 available seats. The two reform parties, Yabloko and Democratic Choice, garnered 11% and 60 seats between the two. The government's party, Prime Minister Chernomyrdin's Our Home is Russia, received barely 9.7% and 52 seats.¹²⁷ By allying themselves with the Agrarians and the LDP against the government, the communist bloc

¹²⁵ Comments made by Dr. Anatol Lieven at a Hearing before the Commission on Security and Cooperation in Europe, 104th Cong., 2nd sess., 6 March 1996, CSCE 104-2-10, p. 9.

¹²⁶ Comments made by Dr. Pavel Felgenhauer at the Conference on Russian Defense Issues, Monterey, Calif., 25 March 1997.

¹²⁷ Paul B. Henze, The Russian Duma Elections of December 1995. Rand Study Paper, 1996, 2.

could command 45-49% of the Duma against 25% for the government and its allies. In short, "the outcome of the election was a vote of no confidence in the present leadership,"¹²⁸ meaning President Yeltsin.

It is true that in December 1995, most Russians were more concerned with economic matters than anything else and had been swayed by the Communists' promise of a more stable economic situation. Yet the Chechen war played a major role in the defeat of Yeltsin's supporters in parliament. His "ineptitude in permitting the invasion in the first place and his persistence in countenancing a continuing brutal effort by the Russian army to crush Chechen resistance has contributed substantially to his lack of popularity in the country."¹²⁹ The election was the only effective way for the public to influence the president and convince him of its opposition to the war.

The election results were a staggering show of public disgust with the government. Despite the overt display of the will of the people, there were no major changes in the government. Although his party had substantially lost the elections, the prime minister did not even offer to resign. Yeltsin's government simply decided to once again ignore the Russian public by operating in the same manner and with the same players.

In Chechnya, Doku Zavgayev allegedly won the republic's presidential election. He received somewhere between 64.5% and 76% of the votes, depending on the source. His election was immediately denounced by all of the Chechen opposition groups, from the combative Dudayev to the conciliatory Khasbulatov. Despite the previous

¹²⁸ Ibid., 2.

¹²⁹ Ibid., 5.

negotiations, and the changes brought about by the Chechen and Russian elections, the war would continue for another eight months.

X. CONCLUSIONS

The three-year crisis between Russia and Chechnya and the subsequent war reveal the failure of Russia's transition to democracy. The Russian state revealed itself to be a quasi-autocracy, lacking a real system of checks-and-balances between the branches of government. The executive branch was dominant over the other two, and within it decision-making was conducted by a small group of ministers and advisors on the President's Security Council. The elected legislature could provide no significant input into the state's policy towards Chechnya, either through its own legislation or by exerting political pressure on the executive. The judicial branch, lacking in experience and weak on constitutional authority, chose to sanction the president's violation of the rule of law.

The Chechen crisis showed that there is too much power vested in the executive branch. There are two key reasons for this, both stemming from Russian political culture. The first is a flawed Constitution, which allows for an imperial executive branch. Through his Constitution, President Yeltsin had deprived parliament of any legislative controls over the military and security forces, with the exception of its influence on the annual budgetary process. After the battle between Yeltsin and the Congress of People's Deputies in October 1993, and especially during the actual war, the parliament could never influence any of the policies or operations in Chechnya; the policy was dictated by the executive branch alone.

The second reason why the executive branch ran unchecked throughout the

Chechen crisis is that there is a lack of political will on the part of both the Russian parliament and the Constitutional Court. The explanation for this can be found in Russian political culture. For the past eight centuries, Russia has been ruled by autocrats: singly by the Tsars, or oligarchically in the case of the Soviet Politburo. Only in this century has there been a parliament or a court with any ability to challenge the executive. Since, institutionally as well as in practice, the executive has always been dominant, the other two branches have rarely challenged its actions or questioned its motives.

During the Chechen crisis, the parliamentary deputies seldom had the political will to contest the president's actions. Notable exceptions were the initial debates aimed at terminating the war in its infancy, the Duma committee created to investigate the causes of the war (which was essentially a powerless mouthpiece for the opposition) and the constitutional challenge that the parliament presented to the Court. Nor could the Constitutional Court muster the political resolution to oppose the executive. Its sole opportunity to serve as an independent arbiter of the Constitution occurred when the parliament disputed the constitutionality of the president's state of emergency decree and the use of federal troops in the Chechen republic. However, the Court failed to contradict the president and excused his actions by stating that even if the manner in which President Yeltsin exercised his power was unconstitutional, the powers he used were still authorized under the Constitution.

The decision-making that took place concerning Chechnya involved little input from anyone outside of the President's Security Council. The lack of control by other

governmental bodies and the lack of influence of dissenting opinions are symptoms of the fact that "Yeltsin has surrounded himself with a very small circle of advisers, the so-called hardliners ... with the defense minister and various other power ministers playing a primary role."¹³⁰ Russia's entire Chechen policy was created and executed solely by this handful of men on the Security Council, most of whom were presidential appointees. The existence of such a powerful body violated the spirit of constitutionalism. Its authority and responsibilities were not defined by the Russian Constitution or any other law, and it was unaccountable to anyone but the president.

The composition of the Security Council blurred the separation of powers between the executive and legislative branches. The Council's composition is not defined by law, but under the Constitution it is clearly an organ of the executive branch. President Yeltsin appointed the speakers of both houses of parliament to this Council, thereby bringing the leaders of the legislature into the executive branch's premier decision-making body. Thus, by coopting the leadership of the legislative branch, the president eliminated an element of governmental competition and concentrated yet more power in the executive branch.

The Russian president alone has the authority to employ the federal armed forces. Nonetheless, President Yeltsin violated the rule of law by sending troops to Chechnya by issuing a decree in a manner contrary to the Constitution. His decision to invade Chechnya and other of his actions "exposed his regime's failure to create either a 'rule of

¹³⁰ CNN Interview with Stephen Foye, Coordinator of Russian and Eurasian Studies Program, Center for Strategic and International Studies, January 1996.

law state,' a reliable policy process, and a way to control Russia's armed forces."¹³¹ The Chechen crisis disclosed the failure of Russia's supposedly democratic government to abide by its own Constitution.

In order for a state to be considered a genuine democracy, it must have a constitution that provides an adequate system of checks-and balances between the branches and a clearly-defined separation of powers between them. The constitution should provide the framework for the rules and boundaries for the executive, legislative, and judicial branches.¹³² Under such a system, all branches must observe the rule of law and adhere to it to insure the legal restraints on the different elements of government.

The Russian Constitution is flawed. It needs a clear definition of the Presidential Security Council and a distinct separation of powers between the executive and legislative branches. To realize an effective system of checks-and-balances, the parliament requires significantly increased powers over domestic and foreign policy, which will allow it to counterbalance the executive branch. The executive should observe the rule of law, but more importantly, the Constitutional Court must meet its obligation by ensuring that all elements of the Russian government comply with the Constitution. Russia's political culture must also evolve to the point where the legislative and judicial branches are willing to exercise their responsibility to challenge the actions of the executive branch. The Chechen crisis and the brutal war it spawned spotlight the failures of Russia's embryonic

¹³¹ Stephen J. Blank, and Earl H. Tilford Jr., Eds., Does Russian Democracy Have a Future? (Carlisle Penn: US Army War College, 1994), 6.

¹³² Juan J. Linz, "Transition to Democracy," Washington Quarterly, 13, no 3 (Summer 1990): 157.

democracy and point to the reforms necessary for Russia to achieve a truly democratic system of government.

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