

THE EUROPEAN COURT OF HUMAN RIGHTS: CHECHNYA'S LAST CHANCE?

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INTRODUCTION

Since 1994, the wars between the Russian military and Chechen nationalist forces have resulted in "butchery and savagery on a scale and intensity recalling World War II."¹ An estimated 100,000 persons may have been killed so far, the vast majority being civilians.² In relation to other international crises, the conflict in Chechnya has been largely muted in the press, and the international community's reaction has been to marginalize the conflict as an "internal matter" of Russian affairs.³ In January 2003, for the first time, the Strasbourg-based European Court of Human Rights (ECHR or the Court) declared six petitions alleging the commission of human rights violations by Russian forces in Chechnya admissible. This Article examines the Court and its human rights case law as a potentially significant mechanism for the enforcement of human rights

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1. Barry Renfrew, *Chechnya*, in *CRIMES OF WAR: WHAT THE PUBLIC SHOULD KNOW* 68, 68 (Roy Gutman & David Rieff eds. 1999).

2. Numerous estimations about the death toll in Chechnya exist, but due to the circumstances of the war, they have been difficult to verify. In the first half year of the war alone, Knezy and Sedlickas state that "about 40,000" people were killed. STASYS KNEZYS & ROMANAS SEDLICKAS, *THE WAR IN CHECHNYA* 179 (1999). In a congressional hearing approximately six months into the war in 1995, Senator Alfonse D'Amato declared Chechnya a "mass grave for at least 25,000 people." *Hearing on Chechnya: Hearing Before the Comm'n on Sec. and Cooperation in Eur.*, 104th Cong. 29 (1995) (statement of Sen. Alfonse D'Amato, Co-Chairman, Comm'n on Sec. and Cooperation in Eur.). By the end of the first period of war alone, in 1996, the oft-cited figure of approximately 100,000 deaths was provided in a variety of international news sources. E.g., David Filipov, *Talks at Stake in Chechen Vote Today*, *BOSTON GLOBE*, Jan. 27, 1997, at A2 (estimating "[t]he war cost between 30,000 and 100,000 lives, most of them civilians"); Leonid Radzikhovskiy, *Chechnya's First Defeat*, *RUSSIAN PRESS DIG.*, Aug. 26, 1997 (asserting that the Chechen war of 1994-96 "claimed 100,000 lives"), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File; Robin Shepherd, *Chechen Woman Kills 18 in Bus Suicide Bombing*, *TIMES* (London), June 6, 2003 (describing a suicide bomb attack near Chechnya and asserting that "the attack highlights the intractable nature of a conflict that has raged for almost a decade and claimed more than 100,000 lives"), available at 2003 WL 62040832; Martin Sieff, *Mystery, Rumor Surround Moscow Bombings*, *UNITED PRESS INT'L*, Sept. 16, 1999, (asserting that the 1994-96 period of war "cost 100,000 lives"), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File.

3. See *infra* notes 120-23, 205-13 and accompanying text discussing the international community's reaction to the wars in Chechnya.

and redress in a war that has generated minimal interest on the international stage.

Part I of this Article provides a brief historical background to the current situation in Chechnya. It outlines a descriptive history of Chechnya and its experiences through the Tsarist and modern eras until its declaration of independence following the dissolution of the Soviet Union. Part II outlines documented reports of alleged human rights violations committed by Russian forces in Chechnya since 1994. Reported violations include the commission of (A) torture of persons, including rape; (B) forced "disappearances" of civilians; and (C) presumed extrajudicial killings of civilians by Russian forces. Part III provides a descriptive outline of the ECHR based in Strasbourg. It examines the Court and its role as the Council of Europe's judicial body charged with upholding the European Convention for the Protection of Human Rights and Fundamental Freedoms. Part IV reviews (A) the lack of an effective international response to human rights violations in Chechnya; and (B) the claims in *Khashiyev v. Russia* and *Akayeva v. Russia*, the first cases deemed admissible by the Court charging Russian forces with committing human rights violations in Grozny in 2000.

Part V of this Article proceeds to examine previous ECHR case law involving facts and claims applicable to the human rights situation in Chechnya. Many, but not all of these cases, stem from military operations conducted by Turkish forces against Kurdish separatists in the early-mid 1990s. Particular aspects of the Court's holdings examined in these cases include its treatment of (A) the obligation imposed by Article 2 of the European Human Rights Convention to investigate deaths of individuals resulting from the alleged use of fatal force by government agents; (B) the obligation imposed by Article 3 of the European Convention to protect individuals held in government custody; (C) principles involving the exhaustion of domestic remedies for redress and the availability of an effective domestic remedy for aggrieved parties seeking investigation of alleged human rights violations; and (D) the development of Court case law involving the establishment of presumptions of custody and death in "forced disappearance" cases. Part VI concludes this Article with a review of how the ECHR may treat claims of human rights abuses evolving from the conflict in Chechnya. This development will hopefully provide some form of justice for Chechen victims of war crimes committed by Russian forces and deter ongoing abuses in the Republic of Chechnya.

I. HISTORICAL BACKGROUND

Chechnya⁴ is positioned within and to the north of the Caucasus mountain range between the Caspian and Black seas, in an extremely diverse region with multiple ethnicities and linguistic groups.⁵ Greater Chechen society has historically been organized into extended clans following patrilineal lines tied to particular geographic locations.⁶ Clans traditionally formed the basis of group identification patterns and served as the primary political, land-holding, and economic unit.⁷ Historical tribal allegiances and affiliation to land geographically isolated or separated from surrounding ethnic groups have created very strong indigenous loyalties and a disdain for the imposition of outside authority.⁸

Chechen religious identity has developed over centuries. Eastern Christian churches have strong ties to the Caucasus region—which remain in Armenia and Georgia.⁹ Islamic areas further north in contemporary Chechnya and other enclaves have origins dating back to the initial expanse of Islam to the region by Arabs in the eighth century.¹⁰ Evidence exists suggesting that some inhabitants of present-day Chechnya were at one point nominally Christian during the Middle Ages,¹¹ suggesting that the North

4. "Chechnya" is derived from the Russian word for the village in which "Chechnyans" were first encountered by the Russians. MOSHE GAMMER, *MUSLIM RESISTANCE TO THE TSAR: SHAMIL AND THE CONQUEST OF CHECHNIA AND DAGHESTAN* 18 (1994). The self-proclaimed name for the Russian Chechen Republic is the Republic of Ichkeria, which is named after the ancestral tribe of its first independently elected leader General Jokhar Dudayev. See JOHN B. DUNLOP, *RUSSIA CONFRONTS CHECHNYA: ROOTS OF A SEPARATIST CONFLICT* 20 (1998). The Chechens have historically referred to themselves as "Nochchi." KNEZYS & SEDLICKAS, *supra* note 2, at 9.

5. See SEBASTIAN SMITH, *ALLAH'S MOUNTAINS: POLITICS AND WAR IN THE RUSSIAN CAUCASUS* 7 (1998) (noting that among the region's estimated population of five million people, there may be between forty to a hundred different groups).

6. GAMMER, *supra* note 4, at 19–20 (discussing a "nomadic-patriarchal" social organization common to the Chechens and other groups inhabiting the Caucasus); KNEZYS & SEDLICKAS, *supra* note 2, at 10 (discussing Chechen social organization and estimating that some 165–170 Chechen clans remain in modern times).

7. See ANNA ZELKINA, *IN QUEST FOR GOD AND FREEDOM: THE SUFI RESPONSE TO THE RUSSIAN ADVANCE IN THE NORTH CAUCASUS* 14–18 (2000) (discussing general principles of social organization in the North Caucasus region, including the *Vaynakh*—the ethnic group from which modern day Chechens originate).

8. GAMMER, *supra* note 4, at 21 (noting a strong historical aversion to "any authority external to the tribe or clan" among North Caucasus groups).

9. See KNEZYS & SEDLICKAS, *supra* note 2, at 12 (noting the traditions of Christianity in the Caucasus region).

10. See ZELKINA, *supra* note 7, at 26–28 (discussing the first wave of Islamic influence in the Caucasus region beginning in the eighth century).

11. Ross Marlay, *Chechen*, in *AN ETHNOHISTORICAL DICTIONARY OF THE RUSSIAN AND SOVIET EMPIRES* 146, 146–47 (James S. Olson ed., 1994) (stating that "remains of medieval stone churches indicated that some Chechens were once Christians"); ZELKINA, *supra* note 7, at 28–29 (noting

Caucasus, and Chechnya, were focal points for successive encounters between Christianity and Islam. In Chechnya, Sunni Islam gradually became the dominant religion.¹² For many centuries, however, hybrid practices developed in the area reflecting the process of Islamization and a continuing persistence of practices stemming from Christianity or other religious beliefs.¹³ It was not until major military encounters between Russian expansionist forces and the Chechens, and other peoples of the region, began occurring in the eighteenth and nineteenth centuries, that Sunni Islam developed and consolidated in a more orthodox fashion. This development of religious identity served as an expression of group resistance to Russian rule.¹⁴

the gradual process of Islamization in the area, and clash with Christianity and other religions, including Judaism and Zoroastrianism); see also THOMAS M. BARRETT, *AT THE EDGE OF EMPIRE: THE TEREK COSSACKS AND THE NORTH CAUCASUS FRONTIER, 1700-1860*, at 180-82 (1999) (describing mixtures of belief among various ethnic groups in the North Caucasus and the Cossack settlers who located there).

12. See ZELKINA, *supra* note 7, at 28-29 (outlining Islamic expansion in the area).

13. See DUNLOP, *supra* note 4, at 3 (asserting that a "mixed Islamic-animist" hybrid existed in Chechnya until the nineteenth century); ZELKINA, *supra* note 7, at 29 (noting how thirteenth century Muslim tombstones featured Christian names); *id.* at 33-35 (outlining accounts of varied religious practices in the North Caucasus and estimates of when Islamic influence expanded); *id.* at 37-39 (noting a syntheses of Islam and animist beliefs in the North Caucasus before the nineteenth century).

14. In one observer's commentary, the consolidation of Islam in the area was a reaction to Russian military intervention and its attempt to exert influence through proxy rule:

Thus the religious revival in Daghestan coincided with the Russian conquest; the infidel neighbour became the foreign oppressor, and to the desire for spiritual reformation was added the yet stronger desire for temporal liberty. The Russians, moreover, made the cardinal mistake of confirming and supporting with their moral prestige, and by force of arms when necessary, those native rulers who, in reliance on such backing, oppressed more than ever their unhappy subjects. . . . The law of Muhammad, on the other hand, proclaimed equality for all Mussulmans, rich and poor alike; the new teaching was therefore essentially popular, and from this time onward Muridism was a political movement

JOHN F. BADDELEY, *THE RUSSIAN CONQUEST OF THE CAUCASUS* 237 (Russell & Russell eds., 1969) (1908). Strict adherence to orthodox Islamic law was prominent during the mid-nineteenth century under the Chechen military and religious leader Shamil. See GAMMER, *supra* note 4, at 232-38 (discussing the religious dimension to Shamil's Chechen nation and its relationship to the resistance against Russian forces).

The particular form of Islam in which the early Chechen, anti-Russian movement took form around, was a variant of Islamic Sufism called the *Naqshbandiyya*. See *id.* at 39-40 (discussing the Central Asian origins of the *Naqshbandiyya-Khalidiyya*); ANATOL LIEVEN, *CHECHNYA: TOMBSTONE OF RUSSIAN POWER* 360-62 (1999) (discussing variants of Sufism and associations with political movements as well as the *Naqshbandiyya* in Chechnya). The *Naqshbandiyya* movement in Chechnya took root largely under the influence of Mansour at the end of the eighteenth century. See ZELKINA, *supra* note 7, at 58-63.

Russian encroachment into the Caucasus likely began as part of a gradual migration by Cossacks into the area.¹⁵ Although Cossack movement into the Caucasus may have initially been without intentional design, the Tsars of Russia would eventually seize upon their gradual settlement in the northern plains of Chechnya and other parts of the region as part of a strategy to extend their geographic sphere of influence.¹⁶ For Russia, maintaining a hold on the Caucasus was important to consolidate access to the Caspian and Black Seas and southern trade routes, and served as a physical buffer against the rival Ottoman and Persian Empires.¹⁷ In the early eighteenth century, Peter the Great launched a major invasion through the area to push back Persian influence and secure coastland around the Caspian Sea.¹⁸ Catherine the Great continued a policy directed at expanding Russian settlements in the area and establishing military control of the Caucasus.¹⁹ A religious dimension also existed in Russian expansionist policy. Tsarist intervention in the region was welcomed by Christian Georgia, surrounded to the south, east, and northeast by Islamic

15. See BADDELEY, *supra* note 14, at 3–5 (positing the origins of the Cossacks and their role in establishing settlements south of Russia, serving as a “vanguard” for gradual expansion of the Russian empire); LIEVEN, *supra* note 14, at 304–06 (discussing the Cossacks and early encounters with Chechens).

16. See LIEVEN, *supra* note 14, at 305 (noting the service of Cossacks with the Russian Army and their expansion into Chechnya).

17. See SMITH, *supra* note 5, at 36 (outlining early Russian initiatives into the Caucasus in the sixteenth century); ZELKINA, *supra* note 7, at 52–53 (discussing the geopolitical importance of the North Caucasus for Russia and other nations).

18. BADDELEY, *supra* note 14, at 23–31 (describing Peter the Great's campaign against the Persians); ZELKINA, *supra* note 7, at 52–55 (outlining Russian military operations in the North Caucasus against both Persia and the Ottoman Turks). Disputes between Iran and Russia still persist in regards to Caspian Sea-area oil. See Kamyar Mehdiyou, *International Law and the Dispute over Ownership of Oil and Gas Resources in the Caspian Sea*, 94 AM. J. INT'L L. 179, 179–88 (2000) (outlining the positions of Iran, Russia, Azerbaijan, and other nations on Caspian Sea rights); Faraz Sanei, *The Caspian Sea Legal Regime, Pipeline Diplomacy, and the Prospects for Iran's Isolation from the Oil and Gas Frenzy: Reconciling Tehran's Legal Options with its Geopolitical Realities*, 34 VAND. J. TRANSNAT'L L. 681, 763–70 (2001) (discussing Soviet and Iranian treaties on commercial rights in regards to Caspian Sea oil). As Smith notes, an early Russian interest in consolidating a Persian route through the Caucasus and around the Caspian Sea was to secure access to India. SMITH, *supra* note 5, at 36. Fear of Russian encroachment towards India eventually led to British-Russian tensions throughout Central Asia, often referred to as “the Great Game.” See Wendy Palace, *Afghanistan and the Great Game*, 33 ASIAN AFF. 64, 64–67 (2002) (discussing British interests in Afghanistan and its fear of Russian control). British-Russian tensions also led to direct conflict in the Crimean War in 1854, and at one point the British attempted to work with the Chechen independence leader Shamil against their common enemy. See GAMMER, *supra* note 4, at 272–73.

19. See BADDELEY, *supra* note 14, at 32–33 (noting Catherine the Great's policy on the Caucasus and the establishment of a Russian fort at Mozdok); BARRETT, *supra* note 11, at 38–40 (discussing the strategy of converting and settling the North Caucasus area during Catherine the Great's reign).

Turkey, Chechnya, and present-day Shiite Azerbaijan.²⁰ An ideology of religious conflict manifested, as the Russians actively sought to convert Muslims to Christianity in the region and banned Islamic practices in areas where they had authoritative power.²¹ In this context, Russian conquest of the Islamic Caucasus would occur "only when the Cross [was] set up on the mountains and in the valleys and when temples for Christ the Saviour replaced the mosques."²² In turn, perhaps the first moderate-sized anti-Russian rebel movement was led by a Chechen Sheik who declared an Islamic holy war against the Russians in the latter part of the eighteenth century.²³

Large-scale Russian campaigns into the Caucasus, which ultimately resulted in Chechnya's conquest, began in the early nineteenth century once Russia was able to turn its attention from its war against Napoleon back to its southern border.²⁴ In 1816 the Russians appointed a governor for Georgia and the Caucasus who intended to bring the region into the larger empire and subjugate non-Russian nationalist aspirations.²⁵ Extreme brutality was used—the perceived otherness of the Chechen and Muslim peoples in the region contributed to a Russian ideology justifying the use of military force to establish control and influence in an area populated by what they perceived as an alien group.²⁶ The Russians also employed a policy of appointing native proxy governors in local communities, who at times used their authority to appropriate wealth for personal gain and otherwise abuse their administrative powers.²⁷

20. See DUNLOP, *supra* note 4, at 13 (noting how Georgia's incorporation into Russia created an imperative based on religious affiliation to protect it from its surrounding Muslim nations).

21. See GAMMER, *supra* note 4, at 44 ("[T]he Russian policy was indeed anti-Muslim. The repeated efforts to spread (Orthodox) Christianity among the mountaineers would alone suffice to demonstrate this face of Russian policy. These were reinforced by measures restricting Muslim religious practice, the one to cause the greatest uproar being the prohibition to perform the *hajj* . . .").

22. *Id.* (citing a Russian source).

23. SMITH, *supra* note 5, at 38–39 (discussing Sheik Mansur and his campaign against the Russians); ZELKINA, *supra* note 7, at 58–68 (discussing Sheik Mansur and his influence on future iterations of Chechen anti-Russian movements).

24. LIEVEN, *supra* note 14, at 306 (outlining the beginning of Russia's Caucasus policy in the nineteenth century following the defeat of Napoleon).

25. See GAMMER, *supra* note 4, at 29–32 (discussing the strategic plans of Aleksei Ermolov, Governor and Chief Administrator of Georgia and the Caucasus).

26. See *id.* at 34–35 (citing Ermolov as saying "[g]entleness, in the eyes of Asiatics . . . is a sign of weakness, and out of pure humanity I am inexorably severe"); SMITH, *supra* note 5, at 42–43 (discussing Ermolov's policy to either pacify or annihilate villages in the region). The historical legacy of Ermolov's policies has been profound. Several alleged attempts were made to destroy his statue in Grozny since 1969, and it was finally destroyed in 1991 after the Chechens declared independence from the Russian Republic. LIEVEN, *supra* note 14, at 307.

27. See DUNLOP, *supra* note 4, at 25 (noting the system of appointing inspectors or "*pristavy*" whose "arbitrary acts served to enrage the Chechens").

These policies contributed to the eventual appearance of an Islamic holy man, Shamil, who cultivated enough popular support to declare another holy war against the Russians in the 1830s.²⁸ This movement unified several Islamic peoples in the region into a military force that successfully employed guerrilla war tactics against the Russian army.²⁹ Shamil's initial military triumphs were so successful he was celebrated in the anti-Russian British press as "the Lion of Dagestan"³⁰ and memorialized in Leo Tolstoy's works.³¹ Eventually, the Russians began employing a large-scale depopulation policy designed to empty Chechnya's northern plains, push Chechens to the south, and consolidate Russian controlled territory.³² Without substantial support from the British, Turks, or Iranians,³³ the Russians finally deployed tens of thousands of soldiers freed from duty following the end of the Crimean War into the Caucasus.³⁴ Military victory was achieved, and an estimated 600,000–1,000,000 Islamic peoples in the Caucasus were deported and replaced by Russian settlers.³⁵ The forced migration was particularly painful for the Circassians. Of 24,700 Circassians forced into Turkey, the Russians estimated 19,000 died of diseases.³⁶

28. SMITH, *supra* note 5, at 43 (noting Shamil's appointment as Imam in 1834).

29. *Id.* at 43–44; LIEVEN, *supra* note 14, at 308 (citing accounts of house-to-house fighting between Shamil's forces and the Russians); ZELKINA, *supra* note 7, at 181–88 (outlining the military encounters between Shamil and the Russians).

30. SMITH, *supra* note 5, at 44.

31. Tolstoy continually refers to Shamil in *Hadji Murád*, based on the real defection of one of Shamil's soldiers to the Russians. LEO TOLSTOY, *Hadji Murád*, in 2 COLLECTED SHORTER FICTION 605, 605–738 (Louise Maude et al. trans., 2001). Tolstoy himself served in the Russian Army in the Caucasus during the 1850s and also served in the Crimean War. He is regarded as being critical of Russian imperialism in the region. Of the Cossack settlers in the Caucasus, he wrote:

[T]his petty population of Christians, barricaded in a little corner of the world, surrounded by semi-civilized Mahometan tribes and by soldiers, regards itself as having attained the highest degree of culture, looks on the Cossack as alone worthy of the name of man, and affects to despise every one [sic] else.

LYOF N. TOLSTOI, *The Cossacks*, in THE COSSACKS, SEVASTOPOL, THE INVADERS AND OTHER STORIES 1, 20 (Thomas Y. Crowell Co. 1899).

32. See DUNLOP, *supra* note 4, at 27–28 (outlining Ermolov's mass deportation policy in the 1840s and '50s).

33. GAMMER, *supra* note 4, at 257–63 (outlining the relationship between Shamil and other nations and the lack of support for any military intervention in the Caucasus).

34. *Id.* at 277 ("[B]y the summer of 1856 the decision was reached to use the 200,000-man army in the Caucasus to crush Shamil and then subdue the Circassians while the impact caused by the peace treaty of Paris lasted.")

35. DUNLOP, *supra* note 4, at 29–30 (outlining estimates of Chechens and Circassians believed to have been forced to Turkey as a result of Russian ethnic cleansing policy).

36. *Id.* at 30. According to the Unrepresented Nations and Peoples Organisation in The Netherlands, there are presently three million Circassians living in fifty nations, and only ten percent of people in Circassia are ethnic Circassians. UNREPRESENTED NATIONS AND PEOPLES ORG., CIRCASSIA, at <http://www.unpo.org/members/circassia.htm> (last visited Dec. 2, 2003).

Continuous, smaller uprisings among the Chechens took place following the Tsarist conquest after the Crimean War.³⁷ In the disarray accompanying the end of World War I and the communist revolution, Chechens and other groups declared the formation of an independent state—the “North Caucasus state” or “Mountain Republic”—which was recognized by Germany, Austria-Hungary, and Turkey.³⁸ The Red Army forcibly occupied Chechnya and Dagestan,³⁹ and the communists promised the creation of a largely autonomous Soviet Mountain Republic for Chechnya and other areas, blending Soviet and Islamic or indigenous themes.⁴⁰ However, when the communists instead began implementing the collectivization policies in the region, the Chechens and others in the Caucasus rose again in rebellion, and a *jihad* was declared but put down by the Red Army.⁴¹ Eventually, a Chechen-Ingush Autonomous Soviet Socialist Republic (ASSR) was created in 1936.⁴² The formation of the Chechen-Ingush ASSR, administrative decisions made by the communist leadership in regards to manipulating borders, and other internal policies facilitated a strategic Russification policy.⁴³ For instance, the communist leadership banned written Arabic and travel to Mecca and restricted other religious practices.⁴⁴

Developments during World War II, with Nazi Germany's invasion of the Soviet Union, set the stage for another extremely brutal mass deportation of Chechens in subsequent years. In the wake of Stalin's

37. GAMMER, *supra* note 4, at 293–94 (noting uprisings in 1863 and 1877–78).

38. DUNLOP, *supra* note 4, at 36–37 (discussing developments during the Russian revolution and the creation of an independent nation in which Arabic and Turkish would be used).

39. *Id.* at 42.

40. *Id.* at 42–43 (discussing the creation of the Soviet Mountain Republic which had “a Soviet emblem on its banner but it had a *shariat* constitution”).

41. *See id.* at 49–51 (discussing the collectivization period during the 1930s and subsequent revolt).

42. *Id.* at 46.

43. *Id.* at 46–49 (discussing the communist “divide and rule” policy in which borders of soviets were constantly altered in order to dilute concentrations of particular ethnic groups within administrative regions). As noted by Conquest:

What happened in all these cases was that local unity was halted and the administration of each area was linked direct to Moscow, so that there could be no question of any joint opposition on party or governmental level against the proposals of the Soviet Government, and no development of local solidarity in any way. Moreover local cultural unities were broken up where they existed. The idea of a unified Turkic language in Central Asia was greatly discouraged and each local dialect was differentiated as far as possible from that of its neighbours, while at the same time being Russianized.

ROBERT CONQUEST, *THE NATION KILLERS: THE SOVIET DEPORTATION OF NATIONALITIES* 37 (1970).

44. DUNLOP, *supra* note 4, at 46–49 (discussing how the Latin alphabet was mandated, and most religious schools were closed).

collectivization policies, the Germans hoped to exploit anti-party sentiments, particularly among non-Russians, during their invasion of the Soviet Union as they headed south to capture the oilfields of Azerbaijan.⁴⁵ Despite German propaganda and strong antagonism to Russian and/or Soviet policies after decades of mistreatment, few Chechens took up arms against the Soviets.⁴⁶ On the contrary, during the German invasion thousands of Chechens joined the Red Army voluntarily, some even obtaining the status of general.⁴⁷

Yet with the war ongoing, the communist leadership had already decided to deport the Chechens from the region en masse. Prior to the German invasion of the Soviet Union, there was a concern among Red Army leadership that "the population of northern Caucasus would prove a handicap in case of war and recommended that 'special measures' be taken."⁴⁸ The communist party thus decided to deport the entire Chechen population to Central Asia, as well as Ingush, Crimean Tatars, Karachai, Kalmyks, and other Caucasus or Black Sea peoples.⁴⁹

Mass deportation was, of course, a commonly used policy by Soviet authorities. Three million people or more are estimated to have been forcibly relocated throughout the Soviet Union from the 1930s to 1950s.⁵⁰ Close to half a million Chechens and Ingush were forcibly deported in

45. *Id.* at 58 ("Certainly, the Chechens and other mountaineers had reason enough to detest the Soviet regime, and the Germans cunningly targeted these resentments, promising the mountaineers, for example, full religious freedom and the opening of mosques, [and] the abolition of collective farms . . .").

46. *Id.* at 59 (noting that "perhaps less than a hundred" Chechens fought with the Germans).

47. *Id.* at 60-61.

In October 1942, Chechens joined the thousands of volunteers who poured out to help erect defensive barriers around the city of Grozny, which was directly threatened by the German advance. . . .

Because they could not speak Russian and were forced to eat pork, as well as suffering other indignities, many Chechens chose to desert from the Red Army. In March of 1942, the drafting of Chechens and Ingush into the military was discontinued. Five months later, however, in August 1942, a decision was made to mobilize them on a voluntary basis. . . .

According to archival documents of the USSR NKVD, 17,413 men joined the Red Army as a result of these three voluntary mobilizations. . . . During the time that they were permitted to serve in the Red Army, a number of Chechens distinguished themselves by their bravery. . . .

Id. But see CONQUEST, *supra* note 43, at 100 (noting that the pro-Soviet fighters were not supported by the indigenous populations of the region).

48. CONQUEST, *supra* note 43, at 99.

49. *Id.* at 99-100 (discussing the decision to deport Chechens from the region, and listing the ethnic groups deported and the general dates that the operations commenced).

50. DUNLOP, *supra* note 4, at 61 (discussing the policy of deportation and alleged reasons justifying the forced relocation of peoples).

1944, virtually the entire population of the area at that time.⁵¹ The operation was planned secretly and was accomplished in a very short amount of time.⁵² Soviet NKVD agents committed numerous atrocities during the deportation.⁵³ Many forced onto overcrowded trains died from infectious diseases, and the sick were intentionally denied medicine.⁵⁴ The Chechen-Ingush ASSR was officially removed as an administrative unit a month after the operation began.⁵⁵ After arrival in the Kazakh and Kirgiz SSR's, thousands more died from starvation and disease.⁵⁶ Historians have estimated that during, or as a result of, the post-World War II deportation, twenty percent or more of the North Caucasus population died, possibly including close to one half of all Chechen people.⁵⁷ Following Stalin's death and Khrushchev's attack on party crimes under his rule, the Chechen-Ingush ASSR was recreated in 1957,⁵⁸ and Chechens were allowed to return to their homeland.⁵⁹

Coexisting with these historical grievances, a variety of contemporary issues existed that contributed to Chechen antagonism towards Soviet authority. Unemployment among Chechens in the late 1980s and early 1990s was estimated to be as high as a quarter or more of the working age

51. LIEVEN, *supra* note 14, at 319.

According to the most credible figures, 478,479 Chechens and Ingush were loaded on to trains in February 1944; when Khrushchev publicly revealed what had happened, 400,478 were later officially reported as having been deported—which is a strong suggestion that the other 78,000 died en route or soon after they were unloaded, freezing and starving, in the Kazakh steppe. Thousands never made it to the trains at all. In half a dozen mountain villages, from where it was difficult to move the population in mid-winter, the NKVD troops herded them into mosques and barns and killed them all. Patients in hospitals were also killed.

Id. The NKVD or People's Commissariat of Internal Affairs was the Soviet secret police, the precursor of the KGB. See William Flemming, *The Deportation of the Chechen and Ingush Peoples: A Critical Examination*, in *RUSSIA AND CHECHNIA: THE PERMANENT CRISIS: ESSAYS ON RUSSO-CHECHEN RELATIONS* 65 (Ben Fowkes ed., 1998).

52. See DUNLOP, *supra* note 4, at 63–65 (noting the secrecy and speed of the operation, and the tactics used to deceive the local populace from the Soviet plans).

53. *Id.* at 65 (recounting how the population of one village was ordered burned alive, as well as other atrocities).

54. See *id.* at 68 (describing conditions aboard the “death trains” and the outbreak of typhus during the train journey from the Caucasus to Central Asia).

55. See CONQUEST, *supra* note 43, at 144 (quoting Khrushchev's Secret Speech of Feb. 1956 to the 20th Party Congress wherein he noted that the Chechen-Ingush ASSR was “liquidated” in March 1944). For another examination of the mass deportation, see Flemming, *supra* note 52, at 65–86.

56. DUNLOP, *supra* note 4, at 68–69 (describing living conditions for the resettled Chechens in Central Asia).

57. *Id.* at 70.

58. CONQUEST, *supra* note 43, at 145 (noting the recreation of the Chechen-Ingush ASSR by a decree of the Presidium of the Supreme Soviet).

59. See LIEVEN, *supra* note 14, at 321–22 (describing accounts on the deportation and return of the Chechens to Chechnya, where many Russians had been resettled).

population.⁶⁰ Many Chechens left to work as migrant laborers in Russia or other republics, and some turned to criminal activities.⁶¹ There were also striking disparities in the health services offered to ethnic Russians living in Chechnya, and to Chechens themselves.⁶²

The events leading to the formal declaration of independence and ensuing war were intertwined with the wider development of affairs occurring throughout the Soviet Union, beginning with Chairman Gorbachev's declaration of the new *perestroika* and *glasnost* policies in 1987.⁶³ The Lithuanian legislature's formal proclamation of its independence in March 1990 initiated the literal dissolution of the Soviet Union.⁶⁴ In the struggle for power between Gorbachev and Yeltsin prior to the 1991 coup, advocating for greater autonomy and/or independence for republics within the Soviet Union and Russia was frequently employed as a means to gather political support. Yeltsin had to "disassociate the Russian Federation from any subordination to the Soviet Union's government. . . . [S]upport from the Russian Federation's Autonomous Republics had suddenly become very important."⁶⁵ A Soviet law on the "delimitation of authorities between the USSR and federative subjects," on April 26, 1990, made autonomous republics of Russia administrative

60. DUNLOP, *supra* note 4, at 85-86 (citing statistics on the "labor surplus" in the rural sector of the Republic's economy).

61. *Id.* at 86 (citing statistics on Chechens living outside of the Chechen-Ingush Republic). The "Chechen mafia" has gained notoriety throughout Russia and the Commonwealth of Independent States. See Tarik Abdel-Monem, *Foreign Nationals in the United States Witness Security Program: A Remedy for Every Wrong?*, 40 AM. CRIM. L. REV. 1235, 1247 (2003) (noting the proliferation of organized crime in the Commonwealth of Independent States). Russian policy towards Chechnya emphasizes the purported existence of "Chechen mafia-type extremism" as part-justification for its operations in the Republic. See Vladimir Mikheyev, *How to Bring Peace to Grozny*, RUSDATA DIALINE-RUSSIAN PRESS DIGEST, Sept. 28, 2001, at 1, available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File. As asserted by Ben Fowkes, the "claim that the invasion of Chechnia was an effective way of fighting the criminal underworld also had good propaganda value." Ben Fowkes, *Introduction to RUSSIA AND CHECHNIA: THE PERMANENT CRISIS: ESSAYS ON RUSSO-CHECHEN RELATIONS* 1, 18 (Ben Fowkes ed., 1998).

62. See DUNLOP, *supra* note 4, at 87 (comparing statistics for the number of hospital beds and physicians available for Russian areas of Chechnya and non-Russian areas).

63. See EDGAR O'BALLANCE, *WARS IN THE CAUCASUS, 1990-1995*, at 2-4 (1997) (describing the implementation of policy reforms beginning under Gorbachev in the late 1980s). O'Ballance provides a concise history of the Gorbachev reforms, Yeltsin's rise in power, and dissolution of the Soviet Union. See generally *id.* at 1-21.

64. See *id.* at 5 (detailing the break between the Lithuanian Republic and the Soviet Union on March 11, 1990). The independence movement in the Baltic nations served to inspire Chechens such as General Jokhar Dudayev, Chechnya's first President. While serving in the Soviet Air Force, Dudayev was based in Estonia, and was sympathetic to the Estonian national movement. DUNLOP, *supra* note 4, at 98. In 1989, Dudayev allegedly allowed the Estonian flag to be raised while commanding a Soviet air force base in Estonia. O'BALLANCE, *supra* note 63, at 165.

65. KNEZYS & SEDLICKAS, *supra* note 2, at 15.

subjects of the Soviet Union. Yeltsin then declared the sovereignty of Russia.⁶⁶

Concurrent with these developments, Chechens began organizing a forum to promote an agenda for independence. A National Congress for Chechen peoples was established in November 1990, which elected General Jokhar Dudayev as Chairman.⁶⁷ Dudayev was an ethnic Chechen who had risen through the ranks of the Soviet Air Force to command long-range bombers armed with nuclear weapons, and eventually obtained the status of general.⁶⁸ In the summer of 1991, with events moving at a very fast and uncertain pace throughout the Soviet Union, Dudayev declared that the Supreme Soviet of the Chechen-Ingush ASSR was no longer legitimate.⁶⁹ During and immediately following the attempted communist coup in Moscow in August,⁷⁰ Dudayev openly voiced support for Yeltsin and denounced the coup—a gamble—but a decision that would later increase his public stature and moral authority once it became apparent the coup would fail.⁷¹ With clear knowledge that the USSR would certainly dissolve, Dudayev and his troops then occupied several of the local government agencies and facilities and declared a popular election for later

66. See DUNLOP, *supra* note 4, at 91 (discussing sovereignty and the control strategies between the Soviet Union and Russia). Although examining the substance of Chechnya's right to independence within the framework of customary or modern international law is not the focus of this article, a close examination of the events of 1990-92 could offer much in terms of evaluating the international community's formal recognition of Chechnya's sovereignty, or lack thereof. An argument previously made is that Chechnya separated from Russia while it was still an administrative unit of the Soviet Union, following which the Russian Federation treaty was created in 1992 and Chechnya declined to join. See Luke P. Bellocchi, Note, *Self-Determination in the Case of Chechnya*, 2 BUFF. J. INT'L L. 183, 184-88 (1995) (analyzing the theory and experience of Chechnya's struggle to gain recognition as an independent nation); Duncan B. Hollis, Note, *Accountability in Chechnya—Addressing Internal Matters with Legal and Political International Norms*, 36 B.C. L. REV. 793, 799-802 (1995) (describing Chechnya's struggle with Yeltsin for sovereignty). Thus, the argument follows, Chechnya separated from Russia as an administrative unit of the Soviet Union, which then disbanded, and therefore Russia as a separate entity had no legal right to hold Chechnya as a Russian Republic—Chechnya's declaration of independence was made about a month before the United States and the European Community recognized Russia on Christmas Day of 1991. With this argument in mind, the modern wars in Chechnya are not internal matters, but an international conflict in which Russia has invaded a sovereign nation—albeit one not formally recognized by the majority of the international community. The Soviet law of April 26, 1990, supports this line of reasoning.

67. O'BALLANCE, *supra* note 63, at 166.

68. DUNLOP, *supra* note 4, at 97-99 (chronicling Dudayev's career and his role in the Chechen independence movement).

69. *Id.* at 95 (discussing Dudayev's leadership role and initiatives as head of the executive branch of the Chechen Congress).

70. O'BALLANCE, *supra* note 63, at 6-11 (describing the Moscow coup and its failure).

71. See DUNLOP, *supra* note 4, at 100-01 (discussing Dudayev's support for the reformists against the communist coup).

in the year.⁷² In late October, elections were held and some eighty-five to ninety percent of the participating voters elected General Dudayev President.⁷³ Days later, Dudayev officially declared Chechnya's independence. Boris Yeltsin responded by declaring martial law and sending the first contingent of Russian troops to Chechnya—initiating the modern wars.⁷⁴

II. HUMAN RIGHTS VIOLATIONS IN CHECHNYA

Since the Chechen declaration of independence, the first major military confrontations between Chechen and Russian forces took place in late 1994,⁷⁵ following several years of failed negotiations and posturing by the parties.⁷⁶ The "first war" from 1994–96 caused the deaths of an estimated 40,000 civilians in the first six months alone⁷⁷ and the displacement of an estimated one-third of the entire population of the Chechen Republic.⁷⁸ Only six months after the engagement began, one Russian Duma official openly acknowledged before U.S. congressional hearings that "[t]ens of

72. O'BALLANCE, *supra* note 63, at 166–67 (describing the armed take-over of government and media offices following the failed August coup in Moscow).

73. DUNLOP, *supra* note 4, at 114 (citing election statistics and asserting that eighty-five percent of voters elected Dudayev); Märta-Lisa Magnusson, *The Negotiation Process Between Russia and Chechnia—Strategies, Achievements and Future Problems*, in *CONTRASTS AND SOLUTIONS IN THE CAUCASUS* 407, 410 (Ole Hoiris & Sefa Martin Yurukel eds., 1998) (citing statistics and asserting that ninety percent of voting Chechens elected Dudayev). *But see* KNEZYS & SEDLICKAS, *supra* note 2, at 19 (noting that some non-Chechen districts within the Republic did not vote—grounds used by Russia to argue that the elections were invalid).

74. *See* O'BALLANCE, *supra* note 63, at 167–68 (discussing the elections, Russia's non-recognition, and the dispatch of Russian troops to Chechnya).

75. For accounts of the days immediately prior to Russia's first major military campaign in Chechnya, see LIEVEN, *supra* note 14, at 103–04 (describing accounts of Russian military convoys being diverted and blocked by civilians prior to even entering Chechnya); *id.* at 105 (describing encounters with Russian soldiers hesitant to enter the war).

76. DUNLOP, *supra* note 4, at 168–209 (outlining developments between 1992–94, involving a series of failed negotiations, brinkmanship, the increasing influence of hardliners within the Russian government, and the gradual movement towards armed conflict).

77. KNEZYS & SEDLICKAS, *supra* note 2, at 179–81 (citing estimates of deaths, casualties, and numbers of displaced persons that occurred during the first war); *see also* Svante E. Cornell, *International Reactions to Massive Human Rights Violations: The Case of Chechnya*, 51 *EUROPE-ASIA STUD.* 85, 88 (1999) ("To illustrate the level of bombardment of Grozny, it has been calculated that an average of over 4000 blasts were recorded per hour during the most intensive fighting. In Sarajevo, which has set a kind of 'standard of horror' in the post-cold war era, the highest rate recorded was 800.").

78. *See* KNEZYS & SEDLICKAS, *supra* note 2, at 179–81 (providing an overview of death and casualty figures during the first war); *see also* LIEVEN, *supra* note 14, at 43–45 (describing the author's first hand impressions of the December 1994 bombings of Grozny).

thousands of civilians have died in the course of the fighting.”⁷⁹ In the same session, Senator Alfonse D’Amato called Chechnya “a mass grave for at least 25,000 people Russia appears to have attempted to terminate Chechnya’s independence using the old methods that worked for the Czar and for Joseph Stalin.”⁸⁰

After a truce had ended the first period of fighting in late 1996,⁸¹ the “second war” began in late 1999. Although the Chechen conflict had largely been contained within the Republic or very near its borders,⁸² major warfare started again in August 1999 following an incursion by Chechen forces, some led by a Saudi commander, into neighboring Dagestan to join forces with anti-Russian Dagestani separatists and allegedly consolidate an Islamic state.⁸³ The second period of warfare was also characterized by indiscriminate Russian military operations and an increased trend by Chechens of resorting to attacks or hostage takings within Russia proper.⁸⁴

During the course of both wars, both the Chechen and Russian sides have been responsible for grave violations of fundamental human rights, but, some commentators have concluded that “responsibility for the main body of human rights violations, nevertheless, lies with the Russian[s].”⁸⁵

79. *Hearing on Chechnya: Hearing Before the Comm’n on Sec. and Cooperation in Eur.*, 104th Cong. 34 (1995) (statement of Sergei Kovalev, Member of the Russian State Duma).

80. *Id.* at 29 (statement of Sen. Alfonse D’Amato, Co-chairman, Comm’n on Sec. and Cooperation in Eur.).

81. KNEZYS & SEDLICKAS, *supra* note 2, at 294–304 (describing the period of negotiations that led to a truce and cessation of major hostilities).

82. *See id.* at 235 (noting two “military terrorist actions” in which Chechens stormed hospitals and other civilian structures and took numerous hostages); *see also* Cornell, *supra* note 77, at 87 (noting how the Chechen side has “made itself guilty of hostage taking and terrorist acts on several occasions” and outlining the attacks in the Russian Republic and Dagestan).

83. Francois Jean, *Chechnya: Moscow’s Revenge: The Human-Rights Debacle in Chechnya*, HARV. INT’L R., 16, 17 (2000) (describing an attack in Dagestan by Chechens led by the Wahhabi commander of Saudi origin, Khattab).

84. As of the writing of this article in 2003, one of the most notorious, recent incidents took place in October 2002 when Chechens took close to 700 people hostage in a Moscow theater and demanded that Russia end its war and withdraw its forces from Chechnya. Vladimir Isachenkov, *Russian Special Forces Storm Theater, Most Rebel Captors and 67 Hostages Killed, 750 Rescued*, ASSOC. PRESS, October 26, 2002, available at 2002 WL 102131731.

85. Cornell, *supra* note 77, at 87; *see also*, *Troubling Trends: Human Rights in Russia: Hearing Before the Comm’n on Sec. and Cooperation in Eur.*, 107th Cong. 30 (2001) (statement of Sen. Ben Campbell, Chairman, Comm’n on Sec. and Cooperation in Eur.) (“The discovery of dozens of bodies in a mass grave near the main Russian military base in Chechnya is only the most egregious horror in a long line of horrors being visited upon non-combatants in that region.”); *id.* at 32 (prepared statement of Congressman Christopher Smith) (“I think we all understand that guerrilla warfare can be savage, and there have been documented instances of atrocities committed by Chechen forces. However, Russia military actions in Chechnya suggest less of a military operation against an armed secessionist forces—or an ‘anti-terrorist operation,’ as Moscow phrases it—than a war against an entire people who are its own citizens.”);

Neglect for human rights, in a statement by the Council of Europe's Parliamentary Assembly President, is also coupled with a "deplorable lack of willingness" by the appropriate Russian authorities to investigate such abuses.⁸⁶ Although it is extremely difficult to gauge estimates of the number of individuals killed in Chechnya since 1994, Senator Gordon Smith asserted that in the 1994–96 war alone, over 100,000 Chechens were killed as a result of indiscriminate Russian military operations, out of a population of approximately one million Chechens.⁸⁷ This may have included the use of chemical weapons by the Russian military.⁸⁸ Beyond

Russia's disastrous war in Chechnya saw butchery and savagery on a scale and intensity recalling World War II. . . .

Russian estimates of deaths during the twenty-one-month war range up to 90,000, mostly civilians. Some 600,000 people, half the population, fled or were driven from their homes. Both sides committed atrocities, although the far larger Russian military was guilty of the worse excesses. Russian troops indiscriminately attacked towns and villages, killing and raping civilians, pillaging and burning homes. Chechen fighters executed prisoners and civilian opponents, used civilians to shield their forces and military installations, and drove Russian civilians out of Chechnya in a systematic campaign.

Renfrew, *supra* note 1, at 68–69;

I fully recognise the complexity of the internal problems stemming from concern at the serious crimes committed against innocent civilians in Dagestan following the armed incursions there, the crimes of kidnapping, murder and cruel actions of the Chechen rebels, and the need to counter terrorist activities. Nevertheless, the primary responsibility for addressing human rights violations, as recognised internationally, rests with the Russian authorities and I firmly believe it requires a sustained, effective national response.

Situation of Human Rights in Chechnya in the Russian Federation, Report by the High Commissioner for Human Rights Mary Robinson, U. N. Commission on Human Rights, 56th Sess., Item 4, pt. III (Apr. 5, 2000) [hereinafter *High Commissioner Report*], available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/A029D87F9FD4FAFD802568B9002CB49F?opendocument> (last visited Dec. 2, 2003).

86. Press Release, Council of Europe, Statement by Assembly President on Chechnya (July 12, 2001) ("There is little doubt that the conduct of the Russian forces . . . is largely to be blamed for this . . . The reports of new human rights abuses come against the background of the Russian authorities' deplorable lack of willingness to properly investigate allegations of past abuse."), available at [http://press.coe.int/cp/2001/527a\(2001\).htm](http://press.coe.int/cp/2001/527a(2001).htm).

87. See *Chechnya: Implications for Russia and the Caucasus: Hearing Before the Comm. on Foreign Relations*, 106th Cong. 2 (1999) (statement of Sen. Gordon Smith, Member, Comm'n on Foreign Relations).

The shelling of civilians and the tens of thousands of refugees who have fled Chechnya threaten to make this current military campaign as devastating as the Russian onslaught between 1994 and 1996. Over 100,000 Chechens were killed during that period, and I can only hope that we will not see history repeat itself in the current operation.

Id.

88. See Cornell, *supra* note 77, at 90 ("In August, aid workers operating in Chechnya discovered evidence of the use of chemical weapons. The evidence includes containers of the type used

countless deaths due to indiscriminate bombings in civilian areas, Russian military human rights violations in Chechnya can be classified into three categories: (A) torture, including rape; (B) forced “disappearances;” and (C) extrajudicial killings.

A. Torture and Rape

Torture is prohibited under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁸⁹ Recent accounts of torture committed by Russian military forces and/or mercenaries, as compiled by human rights groups, include:

- On October 10, 2001, two Chechen males, forty-nine and twenty-two years old, were tied and beaten after soldiers raided their village and accused them of links to Osama bin Laden. The youngest was beaten with a hammer and had petrol poured over him.⁹⁰
- On February 2, 2000, a fifty-five year old Chechen male was detained by soldiers and placed in a basement. The soldiers then threw grenades into the basement twice, wounding but not killing him. Later the man was abducted, masked, and beaten by soldiers using rifles. He was then tied in an upraised position and beaten in his genitals.⁹¹
- On March 5, 2000, a fifty-one year old Chechen male was arrested by Russian special police and beaten for several hours. Police cut off his hair and forced him to eat it, forced burning metal parts into his mouth and nose, and carved racist words on his forehead with a knife. He was beaten unconscious and taken home. Four days later soldiers again beat him and cut off his ear.⁹²
- On June 22, 2001, a Chechen male was detained and interrogated by soldiers who punched, kicked, and beat him with a hose and

for chemical warfare, defoliated trees, skin irritations among villagers ‘consistent with the use of toxic chemicals’, and witness reports of yellow gases.”)

89. Convention for the Protection of Human Rights and Fundamental Freedoms, Apr. 11, 1950, art. 3, Europ. T.S. No. 5 [hereinafter Convention for Human Rights] available at <http://www.echr.coe.int/Convention/webConvenENG.pdf>.

90. Memorandum from Amnesty International to the Parliamentary Assembly of the Council of Europe on the Conflict in Chechnya, Russian Federation, Failure to Protect or Punish: Human Rights Violations and Impunity in Chechnya, 7 (Jan. 21, 2002) [hereinafter Amnesty Memo] (describing the case of Magomed and Akhmed Mutaev), available at <http://web.amnesty.org/library/index/ENGEUR460042002> (last visited Dec. 2, 2003).

91. *Id.* at 7–8 (describing case of Zaindi Bisultanov).

92. *Id.* at 11–12 (describing case of Alaudin Sadykov).

metal rod. He was repeatedly questioned and beaten, shocked, and placed in a covered pit over the course of several days.⁹³

- On July 1, 2001 two Chechen brothers were detained by soldiers and beaten periodically over a six day period. The soldiers tied the two brothers to chairs and forced them to watch the other receive electric shocks, including to ears and genitals. Soldiers also forced an object into one brother's mouth to keep it open and then filed his teeth.⁹⁴

Numerous accounts of rape have also been collected, despite a strong cultural tendency to avoid public reporting of such experiences:

- In January 2000, two Chechen women were arrested on a bus and taken to a military checkpoint. The soldiers accused one woman of being a sniper, and attempted to force her to shoot a gun they gave her. They beat and raped her after exclaiming, "you will never have children again."⁹⁵
- On June 26, 2001, three soldiers gang raped a Chechen woman who was nine-months pregnant. During the rape, the woman gave birth to her child. One soldier then stopped the other two from killing the newly born baby.⁹⁶
- On March 27, 2000, soldiers abducted an eighteen-year-old Chechen woman from her home. Medical reports indicated that she was beaten, raped, and then strangled to death.⁹⁷ In what was the first instance of a high ranking Russian officer being arrested and charged with murder of a civilian in Chechnya, Colonel Yuri Budanov was brought before a military court for her death.⁹⁸ He was found "temporarily insane" and acquitted by the court.⁹⁹

93. Human Rights Watch, *Swept Under: Torture, Forced Disappearances, and Extrajudicial Killings During Sweep Operations in Chechnya*, 14 *RUSSIA/CHECHNYA* No. 2 (D), 22–23 (2002) (describing case of "Umar Chadaev"), available at <http://www.hrw.org/reports/2002/russchech/chech0202.pdf>.

94. *Id.* at 28–29 (describing case of "Bisultan and Muslim Barkhaev").

95. Memorandum from Human Rights Watch, to Members of the Committee on the Elimination of Discrimination Against Women 3–4 (Jan. 10, 2002), available at http://hrw.org/background/eca/chechnya_women.pdf (last visited Nov. 2, 2003).

96. Amnesty Memo, *supra* note 90, at 10 (discussing the case of "Fatima").

97. Memorandum from Human Rights Watch, *supra* note 95, at 2–3 (describing case of Kheda Kungaeva).

98. Press Release, Human Rights Watch, *Russia/Chechnya: Justice Flouted in Military Murder Case* (Dec. 31, 2002) (describing the abduction and murder of Elza Kungaeva and review of Colonel Budanov's case), available at <http://www.hrw.org/press/2002/12/russia1231.htm> (last visited Nov. 2, 2003).

99. *Id.* (asserting that Budanov's acquittal was a "travesty of justice").

B. Forced Disappearances

Soldiers commonly conduct “sweep operations” in Chechnya, where entire villages are sealed and homes searched, with “the stated aim of seizing illegal weapons and ferreting out those believed to be collaborating with Chechen rebels.”¹⁰⁰

- On January 14, 2001, two Chechen men were entering a village then being “swept” by Russian soldiers. They waited at the outskirts by the road. Later, witnesses saw soldiers detaining the men and placing them in armored personnel carriers. The next day, police told inquiring relatives that the men were being held at the station and would soon be released. Their dead bodies were found days later in a rock quarry.¹⁰¹
- On August 8, 2000, two Chechen brothers were detained by soldiers during a sweep of the village of Gekhi. The father of the brothers saw soldiers place his youngest son, who was tied, into an armored personnel carrier. It was later announced on Russian television that soldiers had killed Chechen rebel commanders in Gekhi, and then depicted the dead body of one “commander”—who the father realized was his youngest son. Bodies of both sons were later found in an unmarked grave.¹⁰²
- On February 18, 2001, soldiers stopped a car and detained two Chechen brothers, releasing a third passenger on the spot. Relatives went to a military base to inquire into their whereabouts, but officials denied they were detained there. Days later, an individual approached one of the relatives and confirmed they were held at the base and would be released for a price of U.S. \$6,000. The relative did not have the money, and instead sent complaints to military authorities on numerous occasions, with little acknowledgment. The brothers had not yet surfaced, alive or dead, at the time the relative was last interviewed by human rights workers in 2002.¹⁰³

100. Human Rights Watch, *The “Dirty War” In Chechnya: Forced Disappearances, Torture, and Summary Executions*, 13 *RUSSIA/CHECHNYA* No. 1 (D), at 8 (2001) [hereinafter *Dirty War*], available at <http://www.hrw.org/reports/2001/chechnya/RSCH0301.PDF> (last visited Nov. 2, 2003).

101. *Id.* at 8–9 (describing the cases of Akhmed Zaurbekov and Khamzad Khasarov).

102. *Id.* at 10–11 (describing the cases of Ali Musaev and Umar Musaev).

103. Human Rights Watch, *Last Seen . . . : Continued “Disappearances” in Chechnya*, 14 *RUSSIA* No. 3 (d), at 14–15 (2002) [hereinafter *Last Seen*] (describing the cases of Mair-Ali Shavanov and Lema Shavanov), available at <http://hrw.org/reports/2002/russchech02/chech0402.pdf> (last visited Nov. 2, 2003).

- On February 13, 2001, armed and masked men detained four Chechen men and drove them to an officer's base. Relatives arrived at the base and inquired into their whereabouts. An officer verified that they were being questioned, and three of the men were later released. An officer told relatives of the fourth man that he had been transferred to another location, which he refused to identify. Relatives had since not received information about him at the time they were last interviewed by human rights workers.¹⁰⁴

C. Extrajudicial Killings

Thousands of civilians have been killed in indiscriminate bombing or shelling by Russian forces in Chechnya.¹⁰⁵ The bombardment of Grozny and subsequent creation of refugees, asserted Senator Christopher Smith, "brutally reduced Grozny's former 400,000 population in half."¹⁰⁶ In some instances, Russian soldiers have barred aid workers access into towns during military operations.¹⁰⁷ In another instance, soldiers promised Chechen civilians a day's refrain from shelling to find food, and then opened fire with artillery after they emerged.¹⁰⁸ In addition to deaths created as a result of indiscriminate military force, numerous accounts of extrajudicial killings have also been collected by human rights organizations.

- On October 22, 2002, Russian soldiers conducted a sweep of the village of Chechen-Aul, and detained eight men. Two were released after having been beaten, one "disappeared," and the

104. *Id.* at 21 (describing the case of Iman Masaev).

105. See *supra* note 2 and accompanying text; see also Human Rights Watch, *Russia: Three Months of War in Chechnya*, 7 HUM. RTS. WATCH/HELSINKI No. 6, at 4, 7-11 (1995) (outlining instances of "[i]ndiscriminate and [d]isproportionate [u]se of [f]orce by Russian [t]roops" in a number of Chechen villages and in Grozny shortly after the start of the war), available at <http://www.hrw.org/reports/1995/Russia1.htm> (last visited Nov. 2, 2003).

106. *Hearing on Chechnya: Hearing Before the Comm'n on Sec. and Cooperation in Eur.*, 104th Cong. 25 (1995) (statement of Sen. Christopher H. Smith, Chairman, Comm'n on Sec. and Cooperation in Eur.).

107. AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 1997, at 269 (1997) (noting the bombardment of the town of Semovodsk and how International Red Cross workers were not allowed in).

108. AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 2001, at 199 (2001) ("The villagers had been promised a 'safe corridor' for one day to allow them to collect food. Despite these assurances, the group came under artillery attack and at least three women were killed and five were wounded.")

remaining five were found several days later in a nearby field dead, and bearing signs of torture.¹⁰⁹

- On November 14, 2002, masked men wearing Russian special forces uniforms abducted a fifty-two year old Chechen man from his house. The man was later found executed nearby. A racist, anti-Chechen slogan was left on the home's gate—"Greetings, Darkies!"¹¹⁰
- On December 10, 2000, three Chechen men were detained by masked soldiers during a sweep of several villages. All three men were later found in a mass grave outside the village of Dachny, shot dead, blindfolded, and with their hands tied behind their backs.¹¹¹ In the same grave, some fifty other bodies were found, including at least thirteen who have since been identified as "disappeared." Many of them bore gunshots to the head or stomach and some were scalped or otherwise mutilated.¹¹²

The Russian response to allegations of human rights violations by its forces has been less than adequate. In regards to the mass grave found in 2001 at Dachny, Russian authorities prematurely re-buried a number of the bodies or otherwise failed to conduct adequate medical examinations for evidence.¹¹³ This led the international human rights monitoring organization Human Rights Watch to declare that the investigation was, unfortunately, "typical of Russia's general failure to carry out meaningful investigations into widespread violations of human rights and humanitarian law that have been perpetrated by its troops."¹¹⁴ In other situations, investigations are opened by the appropriate civilian agencies, but they lack the jurisdiction to cover military forces, or are otherwise ineffective in investigating claims against soldiers.¹¹⁵

109. Human Rights Watch, *Into Harm's Way: Forced Return of Displaced People to Chechnya*, 15 *RUSSIA* No. 1 (D), at 18–19 (2003) (describing events in the village of Chechen-Aul in late October to early November 2002), available at <http://hrw.org/reports/2003/russia0103/russia0103.pdf> (last visited Nov. 3, 2003).

110. *Id.* at 19 (describing the case of Khosh-Ahmed Zainutdinov).

111. Human Rights Watch, *Burying the Evidence: The Botched Investigation into a Mass Grave in Chechnya*, 13 *RUSSIA/CHECHNYA* No. 3 (D), at 8–9 (2001) [hereinafter *Burying the Evidence*] (discussing the cases of Magomed Magomadov, Odes Mitaev, and Said-Rakhman Musaev), available at <http://www.hrw.org/reports/2001/chechnya2/chechnya2.pdf> (last visited Nov. 3, 2003).

112. *Dirty War*, *supra* note 100, at 31–32 (describing the mass grave at Dachny village discovered in early 2001).

113. *Burying the Evidence*, *supra* note 111, at 15–19 (discussing the Russian investigation of the grave at Dachny and its shortcomings).

114. *Id.* at 15.

115. *Dirty War*, *supra* note 100, at 24 ("The most devastating flaw in the investigative process is the civilian procuracy's lack of authority to compel cooperation by the military . . ."). In the same

The inadequate response by authorities may be improving, albeit barely. For example, in the early parts of the war, the Chechen Republic's civilian authorities forwarded 342 reports of major violations by Russian soldiers to the military and internal affairs authorities, with "approximately half" being closed or stalled and the rest returned to the civilian authorities.¹¹⁶ Even if civilian authorities retained the jurisdiction to investigate crimes by soldiers or special forces, they cannot stop the transfer of military units out of Chechnya after alleged violations occur.¹¹⁷ During 2001, of 102 investigations initiated by the Chechen Republic's official authorities, only one case resulted in a conviction at the time with a number of others being either suspended or still investigated.¹¹⁸ Among military authorities, Human Rights Watch noted that of 118 investigations of Russian forces, eleven murder prosecutions were secured as of December 2001.¹¹⁹

Criticism of Russia and the impunity with which its forces operate in Chechnya from the Council of Europe,¹²⁰ the United Nations,¹²¹ and human

report, Human Rights Watch asserted that civilian authorities are "poorly staffed, late in opening investigations, and in some cases fail[] even to take the most basic steps, such as questioning available witnesses." *Id.* at 23.

116. Human Rights Watch, *Russian Federation: A Review of the Compliance of the Russian Federation with Council of Europe Commitments and Other Human Rights Obligations on the First Anniversary of its Accession to the Council of Europe*, 9 HUM. RTS. WATCH/HELSINKI No. 3 (D), at 11 (1997) (discussing the forwarding of cases by the Chechen Procuracy to military officials and subsequent treatment of cases), available at <http://www.hrw.org/reports/1997/rusfed/Russia-04.htm>; see also RUDOLF BINDIG, COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS, Doc. 9732: *The Human Rights Situation in the Chechen Republic*, § IV, ¶ 5-9, (Mar. 13, 2003) (noting assessments of criminal investigations for human rights abuses in Chechnya, and citing a Human Rights Watch report that seventy-nine percent of all disappearance cases have been closed), available at <http://www.europarl.eu.int/meetdocs/delegations/russ/20030409-Tchechenie/05.pdf>.

117. *Last Seen*, *supra* note 103, at 38 (asserting that civilian authorities "lack authority to investigate abuses by military personnel . . . [or] prevent the regular transfers of units of the security forces out of Chechnya" and that at times "it was apparent that transfers . . . were designed expressly to frustrate investigations").

118. *Id.* at 40 (discussing the "lack of diligence" of civilian authorities in cases opened between May and December 2001).

119. *Id.* (asserting that "[t]he military procuracy demonstrates a similar lack of diligence in their investigation of abuses involving allegations against service personnel").

120. See Press Release, Council of Europe, Assembly Gravely Concerned About Human Rights in Chechnya, Puts the Situation Under Its Constant Review (Jan. 25, 2001) ("[The Council of Europe's Parliamentary Assembly] pointed out that a combination of ill-disciplined troops and the apparent failure to pursue alleged crimes committed by servicemen created a climate of impunity, leading to more human rights violations, and demanded that it be remedied immediately."), available at [http://press.coe.int/cp/2001/57a\(2001\).htm](http://press.coe.int/cp/2001/57a(2001).htm) (last visited Nov. 9, 2003).

121. *High Commissioner Report*, *supra* note 85, at 6, pt. III ("[T]he most pressing and immediate issue, in my view, concerns the adequacy and credibility of the response by the Russian authorities to the scale of allegations of gross human rights violations such as mass killings, extrajudicial, summary or arbitrary executions, violence against women, torture, arbitrary detention and

rights groups,¹²² has been profound, perhaps helping to encourage greater accountability among its armed forces in Chechnya. Still, the overall official Russian response to human rights violations committed by its forces in Chechnya has been extremely poor. As Senator Christopher Smith related in May 2002: "Occasionally, the Russian Government announces that criminal charges have been filed against certain military personnel for egregious human [rights] violations in Chechnya. However, the record indicates that most of these cases eventually melt like snow in the noonday sun."¹²³

III. THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights functions as the primary judicial mechanism for the Convention for the Protection of Human Rights and Fundamental Freedoms,¹²⁴ signed by members of the Council of Europe in 1950. The Council came into being in 1949, composed primarily of Western European nations¹²⁵ committed to "individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy."¹²⁶ Soviet-bloc nations could not join the Council as it required its members to "accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and

pillage."); Press Release, United Nations Human Rights Commission, Human Rights Commission 'Deeply Concerned' Over Situation in Chechnya (Apr. 25, 1996) ("The Commission on Human Rights this morning expressed its deep concern that the disproportionate use of force by the Russian Federation's armed forces in Chechnya continued to lead to the grave violation of human rights and international humanitarian law."), available at <http://www.un.org/News/Press/docs/1996/19960425.hrcn751.html> (last visited Nov. 3, 2003).

122. See Press Release, Human Rights Watch, Russia: "Sham" Grave Investigation (Apr. 17, 2001) ("[T]he Russian government's investigation into the mass grave site discovered in late February near the main Russian military base in Chechnya has been absolutely inadequate. The fifty-one bodies found show evidence of having been extrajudicially executed and bear unmistakable signs of torture."), available at <http://www.hrw.org/press/2001/04/chechgrave0417.htm> (last visited Nov. 3, 2003).

123. *Developments in the Chechen Conflict: Hearing Before the Comm'n on Sec. and Cooperation in Eur.*, 107th Cong. 27 (2002) (statement of Sen. Christopher H. Smith, Chairman, Comm'n on Sec. and Cooperation in Eur.).

124. Convention for Human Rights, *supra* note 89, art. 19.

125. See Jonathan L. Black-Branch, *Observing and Enforcing Human Rights Under the Council of Europe: The Creation of a Permanent European Court of Human Rights*, 3 *BUFF. J. INT'L L.* 1, 4-5 (1996) (discussing the creation of the Council of Europe and its human rights mission). The original signatories were "the United Kingdom, Norway, Sweden, Federal Republic of Germany, including West Berlin, the Saar, Ireland, Greece, Denmark, Iceland, and Luxembourg." *Id.*

126. Statute of the Council of Europe, May 5, 1949, pmbl., *Europ. T.S. No. 1* [hereinafter *Statute*]. See also Gerard Quinn, *The European Union and the Council of Europe on the Issue of Human Rights: Twins Separated at Birth?*, 46 *MCGILL L.J.* 849, 856-57 (2001) (discussing the conjoined relationship of human rights with democracy as a principle of the Council of Europe and the Convention).

fundamental freedoms.”¹²⁷ The Council’s organizing principles and purposes revolve around the creation and facilitation of a common “European Policy” towards primarily political and social, but also economic matters, with the exception of defense issues.¹²⁸ Thus, a recent work has characterized the Council as having three basic purposes: “to protect and reinforce democratic pluralism and human rights, . . . seek common solutions to the major societal problems confronting its member states, . . . [and] encourage a heightened sense of Europe’s multicultural identity.”¹²⁹ However, the Council, which has expanded to include forty-five members as of 2003, including Russia, engages in a wide variety of policy activities and has concluded conventions on issues ranging from education to biomedicine to the media and the arts.¹³⁰

Both the Court and Convention have evolved since the Council’s origins. The Convention was signed in 1950 and “entered into force on September 3, 1953.”¹³¹ It was the first of the Council’s numerous conventions and is still regarded as its most important one.¹³² Many of the Convention’s rights and protections derive from the United Nations’ Universal Declaration of Human Rights of 1948 (UDHR).¹³³ The Convention provides for a right to life,¹³⁴ prohibition of torture,¹³⁵

127. Statute, *supra* note 126, art. 3; see also, MANUAL OF THE COUNCIL OF EUROPE: STRUCTURE, FUNCTIONS AND ACHIEVEMENTS 137 (1970) [hereinafter MANUAL] (asserting that Article 3 of the Statute was “clearly intended in 1949 to exclude the communist countries of Eastern Europe and Spain and Portugal”).

128. See Statute, *supra* note 126, art. 1(d), (stating that “[m]atters relating to national defense do not fall within the scope of the Council of Europe”); MANUAL, *supra* note 127, at 118–19 (discussing the early development of the Council as a mechanism for discussion, creation, and promotion of general policy issues); *id.* at 103 (asserting that “[t]he Council of Europe is essentially a political organisation”); A.H. ROBERTSON, EUROPEAN INSTITUTIONS: COOPERATION, INTEGRATION, UNIFICATION 33–34 (2nd ed. 1966) (discussing the purpose of the Council of Europe and asserting that it is an organization primarily focusing on international co-operation in regards to common policy issues, rather than a forum for the creation of a larger union).

129. Diana Pinto, *The Council of Europe: Its Missions and Its Structures*, in THE CHALLENGES OF A GREATER EUROPE: THE COUNCIL OF EUROPE AND DEMOCRATIC SECURITY 29, 29 (1996).

130. For an overview of Council of Europe activities, see THE COUNCIL OF EUROPE, ABOUT THE COUNCIL OF EUROPE, available at http://www.coe.int/T/E/Com/About_COE/ (last visited Jan. 29, 2004).

131. ROBERTSON, *supra* note 128, at 46.

132. See Pinto, *supra* note 129, at 34 (asserting that the Council “derives its strength from the more than 155 conventions it has concluded over the years, the oldest and most important of which is the European Convention on Human Rights”).

133. See Black-Branch, *supra* note 125, at 5–6 (discussing the origins of the Convention and how the UDHR “served as a model” for the Convention drafters).

134. Convention for Human Rights, *supra* note 89, art. 2.

135. *Id.* art. 3.

prohibition of slavery,¹³⁶ right to a fair trial,¹³⁷ freedom of religion,¹³⁸ freedom of assembly,¹³⁹ and other fundamental protections.

However, the Council went beyond the UDHR model and created a means by which the strength of its provisions would exceed that enjoyed by the United Nations.¹⁴⁰ This was done through the creation of three individual bodies: (1) the European Commission of Human Rights; (2) the Court of Human Rights; and (3) the Committee of Ministers.

At that time, the Commission was composed of international law jurists from the Council's contracting party-nations, who served in a number of capacities. First, the Commission was charged with determining the admissibility of cases initiated by individuals against state actors.¹⁴¹ The very fact that individuals could initiate claims against states before the Commission in a supranational forum was, and still is, regarded as a groundbreaking development in international law.¹⁴² Prior to the creation of the Convention, the proposal for allowing individual petitions was a major issue of contention among contracting parties.¹⁴³ By allowing individual claims to be represented by the Commission, as well as those initiated by government actors, the Convention has become, in the words of the United Nations' High Commissioner for Human Rights, "probably the most effective human rights enforcement mechanism in existence."¹⁴⁴ However, the Commission adhered to strict guidelines in determining whether such

136. *Id.* art. 4.

137. *Id.* art. 6.

138. *Id.* art. 9.

139. *Id.* art. 11.

140. See MARK W. JANIS ET AL., *EUROPEAN HUMAN RIGHTS LAW: TEXT AND MATERIALS* 15 (2d ed. 2000) ("[T]he Universal Declaration provided no legal machinery to enforce rules against recalcitrant states. . . . [s]o it made sense, especially in Europe, for there to be regional international human rights machinery which might provide realistic enforcement mechanisms."); Black-Branch, *supra* note 125, at 5-6 ("[T]he Council of Europe was motivated to go beyond recognizing the principles of human rights enshrined in the U.N. Declaration and set out to entrench these principles in an international treaty which was open for nations to sign.").

141. See *MANUAL*, *supra* note 127, at 267-68 (describing the Commission's role in determining admissibility of cases and requirements imposed on that process).

142. See ROBERTSON, *supra* note 128, at 48 ("It is the great merit of the European Convention on Human Rights that it institutes a procedure which permits an individual to complain to the European Commission even against his own government.").

143. JANIS ET AL., *supra* note 140, at 19-21 (citing discussion and disagreement among Convention committee members in 1949 in regards to the proposal to allow individual complaints against states).

144. *Human Rights and Europe's Wrongs*, EUROPAWORLD, Oct. 11, 2000 (quoting Mary Robinson, UN High Commissioner for Human Rights), at <http://www.europaworld.org/issue%/humrigrEurwong101100.htm> (last visited Nov. 5, 2003).

petitions were admissible.¹⁴⁵ For instance, it could only examine cases involving claims *ratione materiae*—admissible on merits derived from the Convention's stated protections,¹⁴⁶ in which domestic remedies had already been pursued and exhausted,¹⁴⁷ and for those states that recognized the right of individuals to initiate actions.¹⁴⁸

If the Commission found a case to be admissible, then it was charged with a second function—that of fact finder.¹⁴⁹ A sub-commission or delegation would be created, that would conduct on-site investigations or hear witness testimony by concerned parties.¹⁵⁰ Upon determining the facts of a case, the Commission could then attempt to conclude a “friendly settlement” between the parties concerned.¹⁵¹ If successful, the Commission would publish a report on the settlement, effectively ending the matter.¹⁵² If unsuccessful, the Commission would forward a complete statement of the facts and a non-binding opinion as to the merits of the claim to the Committee of Ministers and the Court.¹⁵³

At this point, the Court or the Committee of Ministers would be charged with reviewing the case. The Committee was responsible for hearing cases that were not pursued in the Court by either the Commission

145. See D.J. HARRIS ET AL., *LAW OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 604–24 (1995) (outlining the major barriers to admissibility, particularly those related to the requirement that domestic remedies be exhausted before claims are reviewed by the Commission).

146. *MANUAL*, *supra* note 127, at 267.

147. See TOM ZWART, *THE ADMISSIBILITY OF HUMAN RIGHTS PETITIONS: THE CASE LAW OF THE EUROPEAN COMMISSION OF HUMAN RIGHTS AND THE HUMAN RIGHTS COMMITTEE* 187–230 (1994) (describing and analyzing the domestic remedies requirement of the Convention).

148. See Pinto, *supra* note 129, at 35 (1996) (describing how contracting parties could not be forced to accept the Convention's stipulations regarding individual petitions against them); see also Heinrich Klebes, *Membership in International Organizations and National Constitutional Law: A Case Study of the Law and Practice of the Council of Europe*, 1999 ST. LOUIS-WARSAW TRANSATLANTIC L.J. 69, 71 (1999) (discussing the reluctance and voluntary acquiescence of several European nations to the Convention's requirements over time).

149. See ROBERTSON, *supra* note 128, at 47–48 (outlining the role of the Commission in “ascertaining the facts” of a case and either settling the dispute or referring it to the ECHR); see also JANIS ET AL., *supra* note 140, at 61–63 (citing the example of the Commission's fact finding in the inter-state claim against Greece for violations of the Convention following the 1967 military coup).

150. See *MANUAL*, *supra* note 127, at 268–69 (describing examples of the Commission's fact finding procedures).

151. *Id.*; see also JANIS ET AL., *supra* note 140, at 46–53 (citing a 1980 case in which a “friendly settlement” was concluded between a number of African and European nations, and noting that such settlements, at least between inter-state actors, are somewhat rare).

152. *MANUAL*, *supra* note 127, at 269 (describing the reporting activities of the Commission when settlements were, and were not, concluded successfully).

153. *Id.* (discussing the Commission's role in forwarding claims to the Committee and Court for subsequent review).

or a nation-member.¹⁵⁴ Cases not referred to the Court would be sent to the Committee, which is composed of the Ministers of Foreign Affairs of the contracting parties,¹⁵⁵ and which is technically responsible for implementing the decisions of the Council of Europe as its executive body.¹⁵⁶ However, the Committee's enforcement capabilities are limited because the actual Ministers of Foreign Affairs do not meet often,¹⁵⁷ and because it does not enjoy any formal jurisdiction.¹⁵⁸ Thus, although the Committee enjoys the ability to determine whether or not a violation of the Convention has taken place by a two-thirds majority vote of all "representatives entitled to sit on the Committee,"¹⁵⁹ it is mainly limited in its responses, such as making recommendations to the governments of the nation-members of the Council.¹⁶⁰ In the absence of such a vote, the Committee may opt to do nothing.¹⁶¹

Adjudication by the Committee of Ministers, in this sense, has played a largely symbolic role, since the cases involving serious breaches of the Convention would be pursued in the ECHR.¹⁶² The Committee, thus,

154. JANIS ET AL., *supra* note 140, at 31 (discussing the forwarding of cases to the ECHR by either the Commission or a state-member).

155. Statute, *supra* note 126, art. 14.

156. *Id.* art. 13 ("The Committee of Ministers is the organ which acts on behalf of the Council of Europe . . .").

157. See ROBERTSON, *supra* note 128, at 37-38 (discussing the workload for the Committee and the necessity to delegate much of its duties to lower ranking bureaucrats that represent the various ministers); Black-Branch, *supra* note 125, at 25 (noting that the actual Committee formally meets only two times per year).

158. See MANUAL, *supra* note 127, at 276.

[T]here is a well-known principle of international law that a State may only be brought before an international court with its consent; and, when the Convention was drafted, some States did not agree to accept the jurisdiction of the Court. It was therefore decided that the Committee of Ministers of the Council of Europe should be empowered to take decisions on the question of violation of the Convention.

Id.

159. Statute, *supra* note 126, art. 20(a). This article also requires a unanimous vote by "representatives casting a vote." *Id.*

160. See *id.* art. 15(b) ("In appropriate cases, the conclusions of the Committee may take the form of recommendations to the governments of members, and the Committee may request the governments of members to inform it of the action taken by them with regard to such recommendations."); see also ROBERTSON, *supra* note 128, at 38 ("The very limited nature of the powers of the Committee is immediately apparent. They are wide in scope but narrow in effect. . . . [T]he result of the deliberations is only to make a *recommendation* to Member Governments and not to take a decision that will be binding on them.")

161. See JANIS ET AL., *supra* note 140, at 29 ("If no such majority [is] forthcoming, the Committee of Ministers simply decide[s] to take no action.")

162. See *id.* (discussing how the Committee hears only those cases that are not forwarded to the Court). The Committee does, however, play a key role in other aspects of the Council of Europe's activities beyond adjudicative matters involving alleged violations of the Convention for Human Rights,

usually "has no difficulty in endorsing the conclusions in the Commission's report. Undoubtedly this is made easier by the fact that most of the cases will either concern uncontroversial issues that have already been examined"¹⁶³ or cases in which the respondent government would be willing to adhere to the Committee's recommendations.¹⁶⁴ Thus, decisions of the Committee of Ministers are usually adhered to by member-governments of the Council of Europe.¹⁶⁵

The third, and most important, mechanism of the Convention is the ECHR. The Court is vested with jurisdiction over all matters concerning the "interpretation and application" of the Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁶⁶ The ECHR serves as Europe's constitutional court for human rights.¹⁶⁷ This Court was originally limited in its powers because member-nations of the Council were not obligated to accept the jurisdiction of the Court unless they consented to it.¹⁶⁸ Those who could bring cases to the Court were the Commission of Human Rights, a member-state that was acting on behalf of one of its nationals alleging a violation of the Convention, a respondent member-state, or any member-state to the Convention.¹⁶⁹ Individuals themselves could not bring cases directly to the Court, but could initiate cases by petitioning the Commission to represent its claims.¹⁷⁰

most notably, through its adoption of conventions in other policy areas. See Pinto, *supra* note 129, at 31 (explaining the various roles of the Committee, including initiating the adoption of legally binding conventions).

163. HARRIS ET AL., *supra* note 145, at 694.

164. *Id.* at 693 (asserting that many of the cases that are forwarded to the Committee of Ministers are those in which "the Commission has found a violation but either the case raises issues which are already the subject of established Court case-law or the government has intimated that it accepts the Commission's finding and is willing to take the necessary consequential measures").

165. See MANUAL, *supra* note 127, at 276 (noting that nations generally "make a point of conforming to a decision by the Committee of Ministers").

166. Convention for Human Rights, *supra* note 89, art. 32.

167. HARRIS ET AL., *supra* note 145, at 648; JANIS ET AL., *supra* note 140, at 64-65; Klebes, *supra* note 148, at 77 ("[T]he European Court of Human Rights now plays the role of a European 'constitutional court' for all matters relating to human rights and fundamental freedoms, just as the Court of Justice of the European Communities is a 'constitutional court' for matters falling in the domain of community law.").

168. MANUAL, *supra* note 127, at 278 (noting how the Court, at the time that the Manual was published, could not hear cases in which the member-states of the Council of Europe had not yet voluntarily accepted its jurisdiction).

169. Black-Branch, *supra* note 125, at 24 (outlining the parties that could bring cases to the Court under the former Article 48 of the Convention).

170. HARRIS ET AL., *supra* note 145, at 659-60 (discussing the early position that individuals had no right to bring a case to the Court or to be a party); JANIS ET AL., *supra* note 140, at 66-67 (noting how although individuals could not originally bring cases to the Court, the Court recognized that the Commission could represent the interests of the individual in its very first case).

Most of the cases referred to the Court were through the Commission for Human Rights.¹⁷¹ Governments forwarded a number of cases to the Court via interstate petition through the Commission. A few times, however, interstate petitions were brought by member-nations that seemed to have little direct interest in the alleged violation, other than a desire to remedy a perceived violation by another member-nation.¹⁷² Other restrictions on admissibility beyond the jurisdictional consent obstacle and the limitations imposed in regards to standing, were that the "Court [could] only examine a case after the Commission [] acknowledged the failure to reach a friendly settlement agreement and within a [three-month period] following the transmission of the Commission's report to the Committee of Ministers."¹⁷³

The Court is composed of international law jurists representing each of the member-nations of the Council of Europe,¹⁷⁴ forty-five as of 2003. The Council's Assembly elects judges to the Court,¹⁷⁵ which then elects its own President, Vice-Presidents, and other administrators.¹⁷⁶ Depending on the gravity of the case, the Court hears cases in panels of three, seven, or seventeen judges.¹⁷⁷ The President, in consultation with the parties and the Commission, will dictate a timeline for written and oral proceedings and filings of necessary documents.¹⁷⁸ During oral proceedings, representatives from the contesting parties, a delegate from the Commission, and various witnesses are heard.¹⁷⁹ Proceedings are typically conducted in either of the two official languages of the Council: English or French.¹⁸⁰

During proceedings, the Court may be able to fashion a friendly settlement between the parties, which often involves an agreement to pay compensation and/or promise to change the national law or policy implicated.¹⁸¹ If the case is not removed from the Court, it will deliberate in

171. See JANIS ET AL., *supra* note 140, at 66-67 (discussing standing to bring cases to the Court up to 1994 and noting that the majority of cases were referred to the Court by the Commission).

172. See DONNA GOMIEN ET AL., LAW AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE EUROPEAN SOCIAL CHARTER 40-41 (1996) (discussing two such interstate claims by the Scandinavian nations, the Netherlands, and France, against first Greece, and later, Turkey).

173. HARRIS ET AL., *supra* note 145, at 652 (noting the three-month requirement and inability to mediate a settlement before a case could be referred to the Court).

174. Convention for Human Rights, *supra* note 89, art. 20 ("The Court shall consist of a number of judges equal to that of the High Contracting Parties.").

175. *Id.* art. 22.

176. *Id.* art. 26.

177. *Id.* art. 27.

178. GOMIEN ET AL., *supra* note 172, at 77.

179. *Id.* at 78.

180. HARRIS ET AL., *supra* note 145, at 658.

181. *Id.* at 680-81.

private following the conclusion of oral proceedings and issue a public decision as to whether a violation has occurred.¹⁸² The Court retains a powerful means by which to authorize its decisions. If a violation of the Convention is found, and "if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."¹⁸³ However, "just satisfaction" is limited strictly to the payment of monetary compensation,¹⁸⁴ and awarded only if the offending member-nation has not adequately offered to voluntarily remedy the situation through a change in its domestic practices and/or payment of compensation to the victim or victims.¹⁸⁵ If the offending state has failed to adequately address the situation, then two forms of compensation can be directed: (1) expenses related to legal fees and other administrative costs; and (2) "damages"—either "pecuniary" or "moral."¹⁸⁶ The pecuniary damages will typically cover compensatory needs to make injured parties "whole again," whereas moral damages serve to reward them for the loss and grievances resulting from the violation.¹⁸⁷ Member-nations that are party to the Convention are obligated to follow the Court's judgment, which is technically to be executed by the Committee of Ministers.¹⁸⁸ As the body officially composed of the foreign ministers of the Council's member-nations, the Committee greatly influences nations' compliance with the Court's judgments. The degree to which member-nations have complied with the Court "is generally recognised to be exemplary."¹⁸⁹ Nations have, in almost every case, followed the Court's

182. GOMIEN ET AL., *supra* note 172, at 82 (describing the issuance of decisions, which typically contain a statement of the facts, summaries of the party's positions, and an opinion as to the merits of the case and whether a violation has occurred).

183. Convention for Human Rights, *supra* note 89, art. 41; *see also, id.* art. 13, at 10 ("Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority . . ."). For discussion on what constitutes an "effective remedy," *see* FRANCIS G. JACOBS & ROBIN C. A. WHITE, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 338-39 (2nd ed. 1996).

184. GOMIEN ET AL., *supra* note 172, at 82 (noting that the Court does not retain the power to force a member-nation to change its laws or policies).

185. HARRIS ET AL., *supra* note 145, at 684-85 (noting how the Court will not rely on its "just satisfaction" imperative unless a member-nation has failed to appropriately redress the situation and offer compensation on its own).

186. *Id.* at 686-87.

187. *Id.*

188. Convention for Human Rights, *supra* note 89, art. 46 ("The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.").

189. HARRIS ET AL., *supra* note 145, at 702.

rulings.¹⁹⁰ This includes payment of monetary damages to victims of Convention violations.¹⁹¹ In rare cases, the influence of the Court and the Council in general has led to some nations being virtually removed as a party to the Convention, as Greece voluntarily left following its 1967 right-wing military coup.¹⁹²

In 1994, the Convention's organs were substantially revised to reflect a rapidly growing caseload, concurrent with the expansion of the Council's membership, through Protocol Number 11 of the Convention.¹⁹³ This may have been a reflection of its credibility and enforcement capabilities:

The European Convention on Human Rights . . . has for several years been a victim of its own success. Applicants have to wait for an average of five years . . . after making their application to the European Commission of Human Rights before the European Court of Human Rights gives its final decision. This situation has become unacceptable.

. . . [T]he number of applications is rising, not only from the emerging democracies of central and eastern Europe, but also from the "old" member states. In 1995[,] 3480 applications were registered by the Commission compared to the 1985 figure of 596; the Court issued eighty-seven judgments in 1995, against eleven in 1985.¹⁹⁴

To streamline the adjudication of alleged Convention violations, Protocol Number 11 eliminated the Commission of Human Rights and vested its

190. See Klebes, *supra* note 148, at 78 (referring to a survey of close to forty years of judgments by the Court and asserting that "[a]ll its decisions have been respected, though sometimes grudgingly, by the States concerned").

191. JANIS ET AL., *supra* note 140, at 69.

192. GOMIEN ET AL., *supra* note 172, at 89 (discussing Greece's alleged violations of the Convention and its subsequent departure from the Council of Europe); see Pinto, *supra* note 129, at 30 (outlining instances in which relations between the Council and Greece, Turkey, and Yugoslavia, were broken or substantially damaged due to a failure to maintain appropriate levels of democratic governance).

193. Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established Thereby, Nov. 5, 1994, *pmbi.*, Europ. T.S. No. 155 [hereinafter Protocol No. 11] (outlining a recognized need, in reference to the Convention, to "maintain and improve the efficiency of its protection of human rights and fundamental freedoms, mainly in view of the increase in the number of applications and the growing membership of the Council of Europe").

194. *A New Court of Human Rights in Strasbourg*, in THE CHALLENGES OF A GREATER EUROPE: THE COUNCIL OF EUROPE AND DEMOCRATIC SECURITY 81, 81 (1996) [hereinafter *A New Court*]; see also, JANIS ET AL., *supra* note 140, at 70 ("While there were only ten judgments delivered by the European Court in the 1960s, there were 26 judgments in the 1970s, 169 in the 1980s, and, in the first nine years of the 1990s, already 818, an annual average about 30 times that of the [International Court of Justice].").

admissibility and review functions to a single entity, the ECHR.¹⁹⁵ It also formally allowed individuals, groups of individuals, and non-governmental organizations, in addition to member-states, the right to petition the Court directly for alleged violations.¹⁹⁶ Furthermore, whereas member-states originally had the option of not consenting to petitions derived from individuals' allegations, Protocol Number 11 required that all parties to the Convention—i.e., all members of the Council—accept the jurisdiction of the Court when it comes to claims initiated by any party—states or individuals.¹⁹⁷ Committees and Chambers composed of judges of the Court, then, are responsible for determining the admissibility of claims¹⁹⁸ subject to provisions governing admissibility criteria that have largely remained unchanged.¹⁹⁹ The revamped Court also assumed the ability previously granted to the Commission to conduct friendly settlements between disputing parties.²⁰⁰

The European Convention, the ECHR, and its associated machinery in the Council, remain effective and powerful organs for the protection of human rights in Europe. All nations seeking to join the Council of Europe must become parties to the Convention and accept its jurisdiction, including over those actions initiated by individuals following the passage of Protocol Number 11. This serves to continuously encourage member-nations' compliance with the provisions laid out in the Convention.²⁰¹ Its greatest contributions to the international human rights movement are its elevation of individual rights beyond the sole jurisdiction of domestic regimes into

195. Protocol No. 11, *supra* note 193, art. 1 (establishing a permanent Court of Human Rights to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention").

196. *Id.* art. 34 ("The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto.").

197. *See id.* (stating that in regards to individual and NGO applications, "[t]he High Contracting Parties undertake not to hinder in any way the effective exercise of this right").

198. *A New Court*, *supra* note 194, at 82–83 (describing the review of applications by the Court post-Protocol No. 11); *see also* GOMIEN ET AL., *supra* note 172, at 91–92 (explaining how individual applications will be ruled on by a committee, whereas interstate applications are decided by a Chamber).

199. *See* Protocol No. 11, *supra* note 193, art. 35 (outlining criteria for admissibility, including that domestic remedies be exhausted, claims be asserted within six months after exhausting domestic remedies, individual applications not be anonymous or reflect matters previously examined by the Court or by another concurrent adjudication mechanism, and that claims derive from the content jurisdiction of the Convention).

200. *Id.* art. 38 (1)(b) (noting the Court's abilities to conclude friendly settlements between parties).

201. *See* Pinto, *supra* note 129, at 36 ("[E]ast European countries now joining or aspiring to join the Council of Europe are expected, as an entrance requirement, to accede to the European Convention on Human Rights in its entirety. . . . The requirements for admission to the Council of Europe are thus constantly being raised. . . .").

international law, and a sufficiently strong ability to remedy Convention violations.²⁰² Either through friendly settlements or judgments, member-nations have changed domestic regulations or legislation, or amended constitutions, to remain in compliance with the Convention.²⁰³ Currently, the Convention stands as "the essential Bill of Rights for 800 million people."²⁰⁴

IV. CHECHNYA'S CASE IN THE EUROPEAN COURT OF HUMAN RIGHTS

A. The International "Response"

International response to the war in Chechnya and the allegations of massive abuses of human rights by Russian forces has been varied, but generally lacking in any substantial effects.²⁰⁵ Despite whatever moral condemnation Russia has received for the actions of its military, the international community still formally treats the conflict as an internal Russian affair, as opposed to an international war.²⁰⁶ Although popular or

202. HARRIS ET AL., *supra* note 145, at 28–29.

For the first time, sovereign states accepted legally binding obligations to secure the classical human rights for all persons within their jurisdiction and to allow all individuals, including their nationals, to bring claims against them leading to a binding judgment by an international court finding them in breach. This was a revolutionary step in a law of nations that had been based for centuries on such deeply entrenched foundations as the idea that the treatment of nationals was within the domestic jurisdiction of states and that individuals were not the subject of rights in international law. . . . [T]he Convention remains the most advanced instrument of this kind.

Id.; see also LYAL S. SUNGA, *INDIVIDUAL RESPONSIBILITY IN INTERNATIONAL LAW FOR SERIOUS HUMAN RIGHTS VIOLATIONS* 139–49 (1992) (outlining some traditional conceptualizations of individuals within the international law framework and noting that the Nuremberg trials were important for recognizing individual culpability for human rights violations in international law).

203. MANUAL, *supra* note 127, at 282 (outlining instances in Norway, Belgium and Austria, in which member-nations took actions to comply with the Convention); Georg Ress, *The European Convention on Human Rights and States Parties: The Legal Effect of the Judgments of the European Court of Human Rights on the Internal Law and Before Domestic Courts of the Contracting States*, in *PROTECTION OF HUMAN RIGHTS IN EUROPE: LIMITS AND EFFECTS* 209, 256 (Irene Maier ed., 1982) (describing an instance when the Federal Republic of Germany amended its Code of Criminal Procedure and Code of the Constitution of Courts in order to comply with the Convention in a pre-emptive manner).

204. *Human Rights and Europe's Wrongs*, EUROPAWORLD, Oct. 11, 2000, at <http://www.europaworld.org/issue&humrightEurwrong101100.htm> (last visited Nov. 4, 2003).

205. See *supra* notes 120–23 and accompanying text (listing examples of criticism by various parties towards Russia in regards to the human rights situation in Chechnya).

206. See Bellocchi, *supra* note 66, at 190–91 (arguing that Chechnya has a legitimate claim for independence, and criticizing the international community for not recognizing its independence); Peter Daniel DiPaola, Note, *A Noble Sacrifice? Jus Ad Bellum and the International Community's Gamble in*

radical segments of the Islamic world have perhaps embraced Chechnya's independence, formal support by governments of Islamic nations has been lacking.²⁰⁷ The United States, although proffering some criticism, has largely conceded the matter to be an internal Russian affair since the beginning of the crisis in 1994.²⁰⁸ United States' support for Russia and its increasing willingness to turn a blind eye to human rights violations in Chechnya has become more common since the Russian Federation became a pragmatic partner of the United States and its war against international terrorism.²⁰⁹

Chechnya, 4 IND. J. GLOBAL LEGAL STUD. 435, 465-69 (1997) (discussing possible explanations why the international community has neglected to directly address the conflict between Russia and Chechnya); Hollis, *supra* note 66, at 793-94 (asserting that "[d]espite expressing moral outrage at acts such as Russia's indiscriminate bombing of civilians, foreign governments tempered their criticism by recalling that Chechnya remained a part of the Russian Federation").

207. Cornell, *supra* note 77, at 92-93 (noting muted reaction by the governments of Turkey and Iran towards Chechnya); *Iran Describes Chechnya Issue as Internal Russian Affair*, DEUTSCHE PRESSE-AGENTUR, Feb. 16, 2003 (reporting an Iranian diplomat's statement that the conflict in Chechnya was an internal Russian affair, and attributing Iran's stance to a desire to maintain positive ties with Russia), available at LEXIS, News Library, World News File (last visited Nov. 3, 2003); see also Shireen Hunter, *Iran's Pragmatic Regional Policy*, 56 J. INT'L AFF. 133, 133-47 (2003) (discussing Iran's national interests and the importance of maintaining secure relations with Russia). *But see* Thomas D. Grant, *Current Development: Afghanistan Recognizes Chechnya*, 15 AM. U. INT'L L. REV. 869, 869-70 (2000) (noting the Taliban's recognition of Chechnya as an independent state).

208. See Michael R. Gordon, *U.S. Stays Aloof From Russia's War Within*, N.Y. TIMES, Dec. 25, 1994, §4, at 10 (describing President Clinton's stance towards the situation in Chechnya in late 1994).

209. See Masha Lipman, *On Chechnya, Bush Is Putin's Enabler*, TIMES UNION (Albany, N.Y.), Nov. 26, 2002, at A13.

President Bush has likened the Oct. 23 seizure of hostages in a Moscow theater to the Sept. 11, 2001, attacks in the United States. He couldn't have come up with a better present for his good friend Vladimir before their meeting in St. Petersburg last week. President Vladimir Putin, of course, will not admit that the terrorist attack was in any way related to the ferocious and bloody war the Russian army has waged on Chechnya for the past three years.

Id.; see also Vladimir Mikheyev, *How to Bring Peace to Grozny*, RUSDATA DIALINE-RUSSIAN PRESS DIGEST, Sept. 28, 2001, at 1 (reporting a Russian newspaper's assertion that the United States' post-September 11, 2001, stance towards Chechnya "amounts to recognition of the validity of the Kremlin's course in constantly stressing to the Western powers the direct link between the Chechen mafia-type extremism and the terrorist international"), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 3, 2003).

Commentators have criticized the Russian strategy of continually referring to the situation in Chechnya as an operation against terrorism. KNEZYS & SEDLICKAS, *supra* note 2, at 176.

[T]he "military terrorism" conducted by the Russians differed only in its scale. . . . What is more, the international community remained in much the same stupor. But as soon as a similar act, only on a much smaller scale, was executed on Russian soil in response, immediately cry was made about "terrorism."

Id.

For its part, the Russian exaggeration of the political role of religion in prewar Chechnya was an effort to brand the Chechen separatists as 'Muslim fundamentalists.' The intention . . . has generally been threefold: to appeal to

Criticism of Russia has been stronger in Europe, however. Former Soviet-bloc states in Eastern Europe have been most vocal in support for Chechen independence.²¹⁰ Both the European Union²¹¹ and the Council of Europe²¹² have also expressed strong criticism of Russia. Members of the

Western audiences with the line that the war has been a sort of Western crusade against a common Islamic enemy; to argue that the Chechens are too 'primitive' to have developed a modern nationalism and sense of national identity; and to suggest that as simple, primitive people, they have been misled by religious propaganda into acting contrary to their own best interests.

LEIVEN, *supra* note 14, at 357. Some U.S. legislators have been equally critical of the Russian casting of the Chechen War as an operation against terrorism. As Senator Christopher H. Smith asserted:

Moscow contends that the war in Chechnya is an integral part of the war against international terrorism, although President Putin himself has noted the "historical roots" to the conflict, as opposed to the presence of foreign terrorist elements. It must be noted that the U.S. Government has confirmed links between some insurgents in Chechnya and "various terrorist organizations and mujahidin." . . . At the same time, we have called for accountability for human rights violations on all sides

Let me be clear. I understand completely the concern of the Russian Government, or any government, for the security of its borders, its domestic tranquility, and its territorial integrity. But, this does not give the Russian military a blank check to kill or torture any young man capable of fighting or other citizens young and old, or to rape and steal, or to bomb hospitals and humanitarian convoys.

Developments in the Chechen Conflict, Hearing Before the Comm'n on Sec. and Cooperation in Eur., 107th Cong. 26-27 (2002) (statement of Sen. Christopher H. Smith, Co-Chairman, Comm'n on Sec. and Cooperation in Eur.).

210. Cornell, *supra* note 77, at 93-94 (outlining support for Chechen independence in Eastern European nations, particularly the former Baltic nations of Estonia, Latvia, and Lithuania); *Group in Estonian Parliament Calls on U.S., Russian Leaders to Recognize Chechen Independence*, BALTIC NEWS SERV., Apr. 22, 1997 (reporting on support for Chechnya's independence among ministers in Estonia's parliament), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 3, 2003). Perhaps the only commonality shared between the Baltic nations and the Taliban of Afghanistan was their support for Chechnya's independence and historical experience under Soviet authorities. Afghanistan formally recognized Chechnya's independence in early 2000. Grant, *supra* note 207, at 869-70.

211. See *Russian War Crimes in Chechnya Must Be Prosecuted: EU Parliament*, AGENCE FRANCE PRESSE, July 3, 2003 (noting an EU resolution calling for the investigation and prosecution of human rights violations in Chechnya by Russian forces), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 3, 2003); *EU Condemns Russia for Chechnya Onslaught*, AGENCE FRANCE PRESSE, Dec. 10, 1999 (noting EU condemnation of Russia's bombing of Grozny and Russia's ultimatum that all civilians leave the city or face annihilation), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 10, 2003).

212. Press Release, Council of Europe, Assembly Urges Russia to Act Without Delay on Chechnya (Sept. 28, 2000) ("The Council of Europe Parliamentary Assembly today reiterated its conviction that Russia's conduct of its military campaign in the Chechen Republic and the resulting human rights violations are unacceptable in terms of the Council of Europe's principles and objectives."), available at [http://press.coe.int/cp/2000/654a\(2000\).htm](http://press.coe.int/cp/2000/654a(2000).htm) (last visited Nov. 4, 2003); Press Release, Council of Europe, Parliamentary Assembly President Calls for Immediate Investigation of Reports of Summary Executions in Chechnya (Feb. 11, 2000), available at <http://press.coe.int/>

Council itself have directly advocated that Russia be subject to the provisions of the Convention and asserted that the Council should "pursue all avenues of accountability with regard to the Russian Federation . . . including interstate complaints before the ECHR and the exercise of universal jurisdiction for the most serious crimes committed in the Chechen Republic."²¹³ Beyond vocal condemnation, however, little has been done by the international community to effectively prevent Russian forces from continuing to commit alleged war crimes in Chechnya and offer redress for Chechen victims of human rights abuses.

For the first time, however, an opportunity for judicial accountability—not just moral criticism—has manifested for Chechen victims of alleged Russian military human rights violations. On January 16, 2003, it was announced that the ECHR ruled admissible for the first time, claims against Russia by Chechen residents for violations of the Human Rights Convention during the war in 1999–2000.²¹⁴

The six applications deemed admissible by the Court in January 2003 are related to three separate events, although they largely allege violations of the same Convention articles. *Khashiyev v. Russia* and *Akayeva v. Russia* charge Russia with the disappearances, torture, and deaths of several Chechen residents following the Russian military's occupation of a suburb of Grozny in January 2000.²¹⁵ *Isayeva v. Russia*, *Yusupova v. Russia* and *Bazayeva v. Russia* charge Russia with deaths, injuries, and property damage resulting from a Russian aerial bombardment of civilians leaving

cp/2000/110a(2000).htm (last visited March 6, 2004).

We have received alarming reports from usually reliable sources on the execution of at least 38 civilians, on violence, looting and destruction of civilian property by Russian troops. Not only must these reports be investigated, the perpetrators must be brought to justice and the Russian authorities must take action to prevent such acts being committed.

Id. (quoting the Assembly president Lord Russell-Johnston). For further support, see Press Release, Council of Europe, Assembly Urges Russia to Find Peaceful Solution in Chechnya (Jan. 27, 2000) ("With its military operation in Chechnya, Russia is violating some of its most important obligations under the European human rights convention and international humanitarian law . . ."), available at [http://press.coe.int/cp/2000/68a\(2000\).htm](http://press.coe.int/cp/2000/68a(2000).htm) (last visited Nov. 4, 2003).

213. BINDIG, *supra* note 116, § IV, ¶ 68.

214. Press Release, European Court of Human Rights, Six Complaints Against Russia Concerning Events in Chechnya Declared Admissible (Jan. 16, 2003), available at <http://www.echr.coe.int/Eng/Press/2003/jan/Decisiononadmissibility6Chechenapplicationseng.htm> (last visited Nov. 4, 2003).

215. *Khashiyev v. Russia*, App. No. 57942/00, Eur. Ct. H.R. at 12 (2002) [hereinafter *Khashiyev & Akayeva Admissibility*] (decision as to admissibility) (consolidated with *Akayeva v. Russia*, App. No. 57945/00), available at http://hudoc.echr.coe.int/Hudoc2doc2/HEDEC/200301/57942_02_da_chbl_19_12_02.doc (last visited Nov. 10, 2003).

Grozny in October 1999.²¹⁶ *Isayeva v. Russia* charges Russia with deaths relating from aerial bombardment of civilians leaving the town of Katyr-Yurt in February 2000.²¹⁷

The remainder of this Article will examine recent ECHR case law on violations of Article 2 (protection of the right to life), Article 3 (prohibition of torture or inhuman or degrading treatment), and Article 13 (right to an effective domestic remedy) of the Convention in relation to *Khashiyev* and *Akayeva*. Significant ECHR precedent already exists regarding disappeared persons cases, much of which, but not all, involves complaints filed by Kurds against the government of Turkey.²¹⁸ This Article will conclude with thoughts on how the Court should rule on Convention violations, in light of established Court precedent on disappearances and ill-treatment. Particular focus will be on violations of Article 2 and Article 13, relating to patterns of disappearances and alleged killings in Chechnya, as illustrated by the charges in *Khashiyev* and *Akayeva*.

B. *Khashiyev and Akayeva*

The Court originally joined the separate cases of *Khashiyev* and *Akayeva* in July 2000, as each involved similar circumstances derived from the entrance of Russian military forces into Grozny in the beginning of 2000.²¹⁹

Russia's initial air campaign of its "second war" in Chechnya began on September 5, 1999, followed by a ground invasion directed towards capturing Grozny.²²⁰ The Russian military soon encircled the city²²¹ and in

216. *Isayeva v. Russia*, App. No. 57947/00, Eur. Ct. H.R. at 10–11 (2002) (decision as to admissibility) (consolidated with *Yusupova v. Russia*, App. No. 57948/00, and *Bazayeva v. Russia*, App. No. 57949/00) available at http://hudoc.echr.coe.int/Hudoc2doc2/HEDEC/200301/57947_00_57948_00_57949_00_da_chb1_19_12_02.doc (last visited Nov. 10, 2003).

217. *Isayeva v. Russia*, App. No. 57950/00, Eur. Ct. H.R. at 2, 8 (2002) (decision as to admissibility), available at http://hudoc.echr.coe.int/Hudoc2doc2/HEDEC/200301/57950_02_da_chb1_19_12_02.doc (last visited Nov. 10, 2003).

218. For a general background and perspective on the situation of Kurds in Turkey, see HENRI J. BARKE & GRAHAM E. FULLER, *TURKEY'S KURDISH QUESTION* 5–60, 133–55 (1998); JAMES CIMENT, *THE KURDS: STATE AND MINORITY IN TURKEY, IRAQ AND IRAN* 43–52, 187–89 (1996); MICHAEL M. GUNTER, *THE KURDS AND THE FUTURE OF TURKEY* 79–84 (1997); CHRISTOPHER HOUSTON, *ISLAM, KURDS AND THE TURKISH NATION STATE* 95–111 (2001); Olivia Q. Goldman, *The Need for an Independent International Mechanism to Protect Group Rights: A Case Study of the Kurds*, 2 *TULSA J. COMP. & INT'L L.* 45, 67–75 (1994); Edip Yuksel, *Yes, I Am a Kurd*, 7 *J. INT'L L. & PRAC.* 359 (1998).

219. See *Khashiyev & Akayeva Admissibility*, *supra* note 215, at 1 (stating date of applications and the Court's decision to join applications on July 11, 2000).

220. See Marina Koreneva, *Russian Troops Break into Chechnya as Grozny Threatens Deadly Reprisals*, *AGENCE FRANCE PRESSE*, Sept. 30, 1999 (describing a Russian announcement that its troops were entering Chechnya), available at *LEXIS*, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 4, 2003); *Russian Troops in Chechnya*, *Europeans*

December had issued an ultimatum stating that “[p]ersons who stay in the city will be considered terrorists and bandits and will be destroyed by artillery and aviation. . . . Everyone who does not leave the city will be destroyed.”²²² Throughout December and into January 2000, Russian ground forces entered the city, taking heavy losses,²²³ and finally announced that they had secured Grozny on February 6, 2000.²²⁴

During January 2000, reports began surfacing about grave human rights violations directed at Chechen civilians by Russian forces throughout the republic during the height of the battle for Grozny.²²⁵ Both Khashiyev and Akayeva were residents of Grozny who had managed to escape the

“Concerned,” DEUTSCHE PRESSE-AGENTUR, Sept. 30, 1999 (discussing escalation of the Russian invasion of Chechnya and expectations of a full-scale ground attack), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 4, 2003); *Ten Chechens Killed in Latest Russian Air Assault*, AGENCE FRANCE PRESSE, Sept. 29, 1999 (noting the beginning of Russian air assaults in Chechnya following the Chechen incursion into Dagestan), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 4, 2003). For a general overview of the military tactics employed by the Russian forces and their 1999 entrance into Grozny, see OLGA OLIKER, *RUSSIA'S CHECHEN WARS 1994-2000: LESSONS FROM URBAN COMBAT* 41-49 (2001).

221. *Chechen Capital 80 Per Cent Encircled*, ITAR-TASS (Moscow), Oct. 28, 1999 (reporting the announcement by Russian troops that most of Grozny had been surrounded), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 4, 2003); *Russian Army to Tighten Stranglehold on Grozny*, AGENCE FRANCE PRESSE, Nov. 27, 1999 (describing Russian encirclement of Grozny and bombardment of the city), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 4, 2003).

222. Yuri Bagrov, *Russian Warns Grozny Residents, Flee or Be Destroyed*, ASSOC. PRESS, Dec. 6, 1999 (quoting leaflets dropped on Grozny stating the Russian ultimatum to an estimated 15,000-40,000 residents left in the city), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 4, 2003); see also Yuri Bagrov, *Russia Claims to Open Corridor for Civilians but Keeps Bombing Grozny*, ASSOC. PRESS, Dec. 7, 1999 (discussing the Russian ultimatum to leave Grozny and international reaction), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 4, 2003).

223. Yuri Bagrov, *Street Fighting Rages in Grozny, Russians Halted in Several Areas*, ASSOC. PRESS, Jan. 20, 2000 (describing street to street fighting in Grozny between Chechens and Russians), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 4, 2003); Ruslan Musayev, *Russian Forces Suffer Heavy Losses in Tank Attack on Grozny*, ASSOC. PRESS, Dec. 16, 1999 (reporting on Russian casualty figures following the first ground assault into Grozny), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 4, 2003); Dmitry Surtsev, *Russia Unleashes Fierce Blitz on Grozny, Southern Rebel Bases*, AGENCE FRANCE PRESSE, Jan. 16, 2000 (noting conflicting reports on Russian casualties in Chechnya), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 4, 2003).

224. Lyoma Turpalov, *Russia Proclaims End to Grueling Battle for Grozny*, ASSOC. PRESS, Feb. 6, 2000, available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File (last visited Nov. 4, 2003).

225. See Fred Weir, *Refugees Target of Russian Ire*, CHRISTIAN SCI. MONITOR, Jan. 14, 2000 (discussing a Russian policy to treat all arms-bearing age Chechen males as suspected terrorists and accounts of disappearances), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File.

main brunt of the fighting and returned to Grozny in the end of January.²²⁶ According to the applicants, their witnesses, and as reported by the international organization Human Rights Watch, the following events allegedly occurred:

On January 19, 2000, a fifty-nine year old woman living in the Staropromyslovski district of Grozny was injured by shrapnel.²²⁷ Two of Khashiyev's male relatives, Khamid and Risvan, and a third man, placed the woman in a wheelbarrow and attempted to seek medical assistance for her.²²⁸ According to a witness who had talked to the wounded woman's daughter, they were soon stopped by Russian soldiers, who shot the woman, beat the three men, and then took them away.²²⁹ The next day, a soldier confronted some other Chechen men, threatened to kill them, and then claimed he had earlier shot and killed a wounded woman in a wheelbarrow.²³⁰ That same day, the woman's daughter confronted a Russian commander who said, "[w]e are taking revenge for our dead comrades whose mothers also wanted to see them alive."²³¹ Later that day, she found her mother's body still in the wheelbarrow, with shrapnel wounds and a gunshot to the head.²³²

On January 25, 2000, Khashiyev returned to his house in the Staropromyslovski district and found the bodies of his sister, her son, and Akayeva's brother dead in Akayeva's yard.²³³ The bodies were mutilated with multiple bullet and stab wounds and their identification documents were lying next to the bodies.²³⁴ Later, the bodies of Khamid, Risvan, and the third man who had accompanied them in the attempt to find assistance for the wounded woman, were found dead in a garage with similar wounds.²³⁵ Photos and an autopsy showing bullet wounds in the bodies of Khamid and Risvan were taken in the nearby Republic of Ingushetia, where many Chechen refugees had fled.²³⁶

In the coming weeks, both applicants conducted interviews with human rights organizations and filed complaints with Russian military and civil

226. *Khashiyev & Akayeva Admissibility*, *supra* note 215, at 2.

227. Human Rights Watch, *Civilian Killings in Staropromyslovski District of Grozny*, 12 *RUSSIA/CHECHNYA* No. 2 (D) (2000) [hereinafter *Civilian Killings*], available at http://www.hrw.org/reports/2000/russia_chechnya/ (last visited Nov. 6, 2003).

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *Khashiyev & Akayeva Admissibility*, *supra* note 215, at 3.

236. *Id.* at 4.

authorities.²³⁷ At the time the admissibility decision of *Khashiyev and Akayeva* was announced by the ECHR, the applicants had received contradictory information from authorities about the status of their investigations.²³⁸

The Russian government objected to the facts as provided by Khashiyev, Akayeva, and Human Rights Watch. Although the Russian government acknowledges the deaths of both applicants' relatives, it has stated that responsibility for their deaths could be due to Chechen terrorists dressed as Russian soldiers, or robbers.²³⁹

V. COURT OF HUMAN RIGHTS PRECEDENT

In a number of cases, the European Court of Human Rights has issued rulings that pertain to human rights violations and circumstances that apply to practices of abuse occurring in Chechnya. This part outlines a series of major themes that the Court has developed in recent case law related to Convention violations committed by various member states. These themes should also have significant importance to the Chechen victims' claims brought against Russia.

A. *McCann & Kaya: Article 2 Obligation to Investigate*

An important obligation arising from ECHR case law is that nation-members to the Convention must provide effective investigations of fatalities involving the use of force by government actors. This obligation was clearly identified in *McCann and Others v. United Kingdom*, a case originating in 1988, which involved the killings of several Irish Republican Army (IRA) operatives in Gibraltar.²⁴⁰ In *McCann*, the applicants charged the United Kingdom with violations of Article 2 of the Convention—the right to life.²⁴¹ British intelligence tracked the movement of McCann and

237. *Id.* at 3–4.

238. *See id.* at 4–5. Russian authorities announced the opening of a criminal investigation by Grozny prosecutors in May 2000. The case was suspended and re-opened three times by the prosecutor, and no servicemen have been identified as possible suspects. The applicants themselves had not even been informed of the opening of the case. *Id.* at 5.

239. *Id.* at 6.

240. *McCann and Others v. United Kingdom*, App. No. 18984/91, A324 Eur. Ct. H.R. ¶¶ 141, 200, 212–14 (1995) (holding that the United Kingdom did not violate Article 2 for its use of lethal force against three IRA operatives but that it had breached Article 2 for exercising “a lack of appropriate care in the control and organization of the arrest operation”), available at <http://hudoc.echr.coe.int/Hudoc2doc/HEJUD/sift/528.txt> (last visited Nov. 13, 2003).

241. Convention for Human Rights, *supra* note 89, art. 2.

two other IRA members to Gibraltar, where they were allegedly planning a bomb detonation near a British military ceremony.²⁴² Convinced that a parked car bomb had been set to detonate,²⁴³ British soldiers followed the three suspects down streets with the intent to arrest, but instead shot and killed all three members in the belief that they had weapons on them and/or were immediately about to detonate a bomb.²⁴⁴ Following the shootings, no weapons were found on their bodies and no bomb in the suspected car.²⁴⁵ About a month after the killings, a television documentary was aired suggesting that the soldiers had killed the three IRA members in an extrajudicial fashion.²⁴⁶

The applicants' main contention was that the shootings of the IRA members constituted a violation of Article 2, paragraph 2 because they were not "absolutely necessary" to safeguard the lives of others and instead amounted to a pre-planned execution.²⁴⁷ Ultimately, the Court found that

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1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a. in defence of any person from unlawful violence;
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

Id.

242. *McCann*, App. No. 18984/91, A234 Eur. Ct. H.R. ¶¶ 13, 15, 23 (describing the surveillance of Daniel McCann, Sean Savage, and Mairead Farrell, an IRA "Active Service Unit," which had entered Gibraltar to allegedly detonate a bomb).

243. *Id.* ¶¶ 48, 63 (describing a British witness' account of an examination of a parked Renault that was believed to be a car bomb set by the IRA members).

244. *Id.* ¶¶ 60-63 (describing British accounts of the shootings of McCann and Farrell); *id.* ¶¶ 78-79 (describing British accounts of the shooting of Savage).

245. *Id.* ¶ 93 ("After the shooting, the bodies of the three suspects and Farrell's handbag were searched. No weapons or detonating devices were discovered."); *id.* ¶ 96 ("The bomb-disposal team opened the suspect white Renault car but found no explosive device or bomb. The area was declared safe between 19.00 and 20.00 hours.")

246. *Id.* ¶ 125.

On 28 April 1988 Thames Television broadcast its documentary entitled "Death on the Rock" . . . including allegations that McCann and Farrell had been shot while on the ground. A statement by an anonymous witness was read out to the effect that Savage had been shot by a man who had his foot on his chest.

Id. The accepted findings of fact by the Commission of Human Rights, however, later declared that there was no indication that the three had been shot while lying on the ground. *Id.* ¶ 132.

247. *Id.* ¶¶ 144, 174 (describing submissions to the ECHR by the United Kingdom and the applicants).

the shootings did not violate Article 2 because the British soldiers were operating under a sincere belief that the three suspects were an immediate danger based on previous intelligence reports.²⁴⁸ Thus, the Court found that the United Kingdom was not directly in violation of Article 2 in the sense that they had wrongfully killed the deceased. However, the applicants also argued that Article 2, paragraph 1 imposed a general duty on governments to provide an effective and impartial investigation into killings by state actors.²⁴⁹ They argued that the official investigation failed to meet such a standard due to inappropriate evidence-collecting procedures, inadequate provision of legal representation, and bias.²⁵⁰ Although the Court also found that there was no violation of Article 2 under this argument,²⁵¹ it did recognize that such an obligation exists:

The Court confines itself to noting, like the Commission, that a general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life . . . requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the State.²⁵²

This obligation resides in a reading of both Article 2, paragraph 1 and Article 1 of the Convention, which states generally that: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms . . . of this Convention."²⁵³ Read together, both Articles 1 and 2 thus require a proper and adequate official investigation into deaths resulting from the use of force by government actors as a necessary component of member-states' obligation to secure individual rights contained in the Convention.

248. *Id.* ¶¶ 180–81, 200 (observing that there was no evidence of a pre-meditated execution, and it was reasonable for the soldiers to believe that there was a bomb set to detonate based on intelligence reports of the three IRA members).

249. *Id.* ¶¶ 157, 161 (stating the applicants' charge that "the State must provide an effective *ex post facto* procedure for establishing the facts surrounding a killing by agents of the State through an independent judicial process").

250. *Id.* ¶ 157.

251. *Id.* ¶¶ 163–64 (concluding that "the Court does not consider that the alleged various shortcomings . . . substantially hampered the carrying out of a thorough, impartial and careful examination of the circumstances surrounding the killings").

252. *Id.* ¶ 161.

253. Convention for Human Rights, *supra* note 89, art. 1.

This obligation was again reiterated in *Kaya v. Turkey*, involving the alleged extrajudicial killing of a civilian by Turkish soldiers in 1993.²⁵⁴ In *Kaya*, the applicant charged Turkey with a violation of Article 2's right to life. The facts were highly disputed by both parties. The applicant alleged that his brother, Abdülmenaf, was traveling with another man not far from his home village in an area where Turkish troops were conducting military operations against Kurdish rebels.²⁵⁵ After encountering soldiers, Abdülmenaf ran off and hid in some bushes, where, according to the applicant's witnesses, he was subsequently found and shot by soldiers, who then planted a weapon at his side.²⁵⁶ The Turkish government asserted that its soldiers were called to the scene after receiving information about nearby terrorist activity.²⁵⁷ The soldiers then came under fire, returned fire, and subsequently found Abdülmenaf's dead body with an assault rifle in the vicinity of where the shots had come from.²⁵⁸ A government doctor was then flown to the scene, where he conducted an "on-the-spot" autopsy of the body and issued a report on the same day.²⁵⁹ The weapon was kept as evidence,²⁶⁰ and the body was taken by the Turkish soldiers to a nearby village for burial.²⁶¹

The applicant charged Turkey with the willful, extrajudicial, unwarranted killing of his brother, in violation of Article 2 of the Convention.²⁶² Due to the substantial discrepancies in the parties' versions of the facts and the unavailability of conclusive testimony, the Court held that it was not possible to find that the government had, "beyond reasonable doubt," executed Abdülmenaf in an extrajudicial fashion.²⁶³ However, the applicant also charged Turkey with a *McCann*-like claim that there was an inappropriate official investigation into the death of his brother.²⁶⁴ The "on-

254. *Kaya v. Turkey*, App. No. 22729/93, 1998-I Eur. Ct. H.R. ¶ 10 (1998), available at <http://hudoc.echr.coe.int/Hudoc2doc2/HEJUD/199810/kaya%20batj.doc> (last visited Nov. 10, 2003).

255. *Id.* ¶¶ 9-10.

256. *Id.* ¶ 10 (describing the killing of Abdülmenaf by soldiers as allegedly witnessed by villagers).

257. *Id.* ¶ 12 (describing the respondent's version of events).

258. *Id.*

259. *Id.* ¶ 26-29.

260. *Id.* ¶ 30.

261. *Id.* ¶ 14.

262. *Id.* ¶ 63 ("The applicant contended that there existed sufficiently strong, clear and concordant inferences and unrebutted presumptions of fact which inexorably led to the conclusion that his brother was intentionally killed by the security forces in circumstances where there was no threat to their lives.").

263. *Id.* ¶ 78 ("[T]he Court considers that there is an insufficient factual and evidentiary basis on which to conclude that the applicant's brother was, beyond reasonable doubt, intentionally killed by the security forces in the circumstances alleged by the applicant.").

264. *Id.* ¶ 79.

the-scene" autopsy and investigation had not included a recording of crucial information about the bullet wounds, examination of the assault weapon allegedly fired by Abdülmenaf, or a complete review of statements by witnesses.²⁶⁵ Also, the quick burial had precluded further examination of the body.²⁶⁶ The Court acknowledged that the entire incident took place in "an area prone to terrorist violence, which may have made it extremely difficult to comply with standard practices,"²⁶⁷ and that "loss of life is a tragic and frequent occurrence in view of the security situation in south-east Turkey."²⁶⁸ However, the Court concluded:

[N]either the prevalence of violent armed clashes nor the high incidence of fatalities can displace the obligation under Article 2 to ensure that an effective, independent investigation is conducted into deaths arising out of clashes involving the security forces, more so in cases such as the present where the circumstances are in many respects unclear.

... There has accordingly been a violation of Article 2 of the Convention in that respect.²⁶⁹

Kaya confirmed that the Article 2 obligation to provide an official, effective investigation of a killing in which the government used lethal force applies not only to isolated killings in largely civilian areas, but to deaths occurring in areas where frequent military engagements and violence persist.

B. Tomasi & Ribitsch: Article 3 Obligation to Safeguard the Health of Those in Custody

A series of ECHR cases also recognizes an obligation to safeguard the health of those taken into Government custody. *Tomasi v. France* is indicative of this obligation's development. *Tomasi* involved the detention and torture of a French citizen by government authorities for an alleged connection with Corsican separatists.²⁷⁰ While in detention for several days, Tomasi alleged that French guards had repeatedly beaten him, refused

265. *Id.* ¶¶ 79–83 (outlining the applicant's and respondent's arguments in regards to the alleged inadequacy of the autopsy and investigation of Abdülmenaf's death).

266. *Id.* ¶ 79.

267. *Id.* ¶ 89.

268. *Id.* ¶ 91.

269. *Id.* ¶ 91–92.

270. *Tomasi v. France*, App. No. 12850/87, A241-A Eur. Ct. H.R. ¶¶ 7–8, 52 (1992) (describing the arrest of Félix Tomasi for allegedly being a member of the Corsican National Liberation Front, which had been involved in a series of recent bombings), available at <http://hudoc.echr.coe.int/Hudoc2doc/HEJUD/sift/381.txt> (last visited Nov. 11, 2003).

him food, held a gun to his head, and threatened his and his family's lives, among other things.²⁷¹ These facts were disputed. Some witnesses in custody with Tomasi testified to seeing him with various physical marks that could have been the result of beatings.²⁷² However, French authorities completely denied the charges and medical evidence could not expressly support all of Tomasi's allegations.²⁷³

Upon his eventual release from detention, Tomasi sued France charging it with violating Article 3 of the Convention, which states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."²⁷⁴ In response, France argued that the inconsistent medical evidence made it impossible to definitively presume a causal link between Tomasi's injuries and his detention.²⁷⁵ The Court, however, recognized that: (1) there was sufficient medical evidence to indicate Tomasi was beaten during the time of his custody;²⁷⁶ and (2) the custody placed him in a vulnerable position in which French authorities were responsible for him.²⁷⁷ The Court concluded that Tomasi's treatment in detention was sufficiently "inhuman and degrading" to warrant a violation of Article 3.²⁷⁸

The case of *Ribitsch v. Austria* further developed the *Tomasi* holding. *Ribitsch* involved the detention and interrogation by Austrian police of alleged heroin dealer Ribitsch following the high-profile overdose death of a well-known musician.²⁷⁹ Facts were again disputed by the parties. While being held in police custody and interrogated for several days, Ribitsch claimed that he had been repeatedly beaten by officers who were under pressure to extract a confession from him.²⁸⁰ Immediately following his detention, he told several family members he had been beaten and went to a

271. *Id.* ¶ 52 (citing statements by Tomasi before a judge during proceedings about his detainment).

272. *Id.* ¶ 60 (noting a domestic judge's interview of a witness who had allegedly seen Tomasi with marks on his stomach and an impaired ear); *id.* ¶ 65 (noting witness accounts that Tomasi was seen with bruises throughout his body).

273. *Id.* ¶ 66 (citing a domestic court's conclusions that medical evidence was not specific enough to corroborate Tomasi's claims and that French police had completely denied the allegations).

274. *Id.* ¶ 73; Convention for Human Rights, *supra* note 89, art. 3.

275. *Tomasi*, App. No. 12850/87, A241-A Eur. Ct. H.R. ¶ 109.

276. *Id.* ¶ 110 ("[The examining physicians'] certificates contain precise and concurring medical observations and indicate dates for the occurrence of the injuries which correspond to the period spent in custody on police premises.").

277. *Id.* ¶ 113 ("The Commission stressed the vulnerability of a person held in police custody . . . [Tomasi was] deprived of his liberty and therefore in a state of inferiority.").

278. *Id.* ¶ 115-16.

279. *Ribitsch v. Austria*, App. No. 18896/91, A336 Eur. Ct. H.R. ¶¶ 7-10 (1995) (outlining Austrian authorities' arrest of Ribitsch and his wife for drug trafficking), available at <http://hudoc.echr.coe.int/Hudoc2doc/HEJUD/sift/549.txt> (last visited Nov. 11, 2003).

280. *Id.* ¶ 16.

hospital that verified the existence of bruises on his arm and "symptoms characteristic of a cervical syndrome."²⁸¹ The police involved in the interrogation denied participating in or witnessing any maltreatment of Ribitsch.²⁸² Instead, the officer charged with responsibility for most of Ribitsch's alleged beatings claimed that Ribitsch had sustained his injuries by accidentally slipping while getting out of a police car.²⁸³ Forensic evidence was inconclusive to support either Ribitsch's, or the accused police officer's, account of events,²⁸⁴ and the domestic court ultimately acquitted the alleged offending officer.²⁸⁵

Before the ECHR, Ribitsch charged Austria with violating Article 3 of the Convention.²⁸⁶ Similar to the French authorities' response in *Tomasi*, the Austrian government maintained that although Ribitsch sustained injuries while in custody, the inconsistency in the factual accounts did not definitively show that the government was responsible for his injuries.²⁸⁷ The Commission for Human Rights stated, "[i]n the event of injuries being sustained during police custody, it was for the Government to produce evidence establishing facts which cast doubt on the account of events given by the victim."²⁸⁸ The Court found that, although the accused officer was acquitted of any wrongdoing by the domestic court, Austria had still not fulfilled its obligations under the European Convention.²⁸⁹ Like the Commission, the Court held that Austria was "under an obligation to provide a plausible explanation of how the applicant's injuries were caused,"²⁹⁰ failed to fulfill that obligation,²⁹¹ and consequently violated

281. *Id.* ¶ 13.

282. *Id.* ¶ 15.

283. *Id.* ¶ 12. The officer contended that

[a]s he was getting out of the police car, and while he had handcuffs on his wrists, Mr. Ribitsch had slipped and his right arm had banged into the rear door. [The police officer] who had opened the door for him, managed to grab hold of his left arm, but was not able to prevent him from falling.

Id.

284. *Id.* ¶¶ 19–20 (citing a statement by an examiner from the University of Vienna's Institute of Forensic Medicine concluding that the evidence was not specific enough to support Ribitsch's allegations, yet at the same time did not support Officer Markl's version of events).

285. *Id.* ¶ 22.

286. *Id.* ¶ 24 (outlining the initial claim by Ribitsch against Austria that he had experienced inhuman and degrading treatment while being detained).

287. *Id.* ¶ 30 (noting the government's arguments as to the charge of violating Article 3).

288. *Id.* ¶ 31.

289. *Id.* ¶ 34 ("Police Officer Markl's acquittal in the criminal proceedings by a court bound by the principle of presumption of innocence does not absolve Austria from its responsibility under the Convention.").

290. *Id.*

Article 3.²⁹² Thus, *Ribitsch* took *Tomasi* a step further by recognizing a respondent government's obligation to either rebut facts alleging inhuman or degrading treatment while in custody, or be found in violation of Article 3.²⁹³

C. Akdivar & Kiliç: *Exhausting Domestic Remedies and Provision of an Effective Remedy*

In other human rights claims against Turkey, arising from its conflict with Kurdish separatists, the Court addressed Turkey's obligation to provide effective judicial procedures for aggrieved victims in an environment of instability caused by ongoing military engagement. In such situations, the Court recognizes a state's obligation to make effective judicial remedies available for alleged victims of government wrongdoing.

In the case of *Akdivar v. Turkey*, the applicants charged Turkey with a variety of Convention violations, alleging that soldiers engaged in anti-Worker's Party of Kurdistan (PKK) operations in Southeast Turkey burned their houses and forcibly moved them out of their village in November 1992.²⁹⁴ In its finding of facts, the Commission of Human Rights concluded that "no proper investigation [of the applicants' claims] was carried out at the domestic level."²⁹⁵ This conclusion was reached because: (1) authorities had generally not been helpful to the applicants,²⁹⁶ (2) there were indications that witness statements were created by the police;²⁹⁷ (3)

291. *Id.* ("[T]he Court concludes that the Government have [sic] not satisfactorily established that the applicant's injuries were caused otherwise than—entirely, mainly, or partly—by the treatment he underwent while in police custody.")

292. *Id.* ¶¶ 36–40.

293. See *Selmouni v. France*, App. No. 25803/94, 1999-V Eur. Ct. H.R. ¶ 87, at 27 (1999), available at <http://hudoc.echr.coe.int/hudoc2doc2/HEJUD/200109/selmouni%20-%20batj.doc> (last visited Nov. 13, 2003). Here, the Court cited *Tomasi* and *Ribitsch* for the proposition that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention.

Id.

294. *Akdivar v. Turkey*, App. No. 21893/93, 1996-IV Eur. Ct. H.R. ¶¶ 13–15 (1996) (describing the violent situation in Southeast Turkey and the allegations that government forces had burned homes and evacuated the applicants' village), available at <http://hudoc.echr.coe.int/Hudoc1doc/HEJUD/sif/650.txt> (last visited Dec. 2, 2003).

295. *Id.* ¶ 19.

296. See *id.* ¶ 20 ("[N]o one gave proper advice to them . . . on how to obtain compensation for the loss of their homes . . . [N]o authority took up the applicants' problems or referred them to the competent body.")

297. *Id.* ¶ 23 (citing the Commission's report that "it is striking that the various statements by the villagers are drafted in a stereotyped form and have on the whole the same contents . . . [T]he

the government's official investigation of the 1992 incident was dated two years after the date of the alleged incident;²⁹⁸ and (4) the investigation was based on a one-day helicopter fly-over of the remnants of the village.²⁹⁹ The Commission also concluded from its review of evidence that Turkish soldiers were responsible for the burning of the applicants' homes.³⁰⁰

Despite these shortcomings, Turkey argued that the applicants' case should be removed from the Court for failure to exhaust domestic remedies, a requirement for admissibility then stated in Article 26 of the Convention.³⁰¹ The applicants responded with the assertion that the forced displacement of villagers by the government in Southeast Turkey was a de facto state policy, and by implication, any judicial challenge to that policy would be ineffective.³⁰² The Commission also noted that it would be very difficult in practical terms for aggrieved parties in the applicants' position to effectively utilize judicial mechanisms if they did exist, and that even so, Turkish authorities showed a "clear reluctance" to investigate claims against their own forces.³⁰³

In its analysis, the Court first noted the overall importance of Article 13 of the Convention,³⁰⁴ that "[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by

recorded statements give the impression of having been drafted in a uniform manner by the gendarmes rather than reflecting spontaneous declarations by the villagers").

298. *Id.* ¶ 22 (describing the government's investigation of the incident).

299. *Id.* ("It was further noted that the investigation reports of September 1994 were based on an exploratory mission undertaken by helicopter on 21 September 1994. During this mission, the investigating team did not land at Kelekçi but only observed the village during low-level flights.").

300. *Id.* ¶¶ 25-27.

301. *Id.* ¶ 56. The requirement that domestic remedies be exhausted is not found at Article 26, but in Article 35 of the Convention—Admissibility criteria: "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken." Convention for Human Rights, *supra* note 89, art. 35.

302. *Akdivar*, App. No. 21893/93, 1996-IV Eur. Ct. H.R. ¶ 60.

[T]he destruction of their homes was part of a State-inspired policy which had affected over two million people and almost three thousand settlements. . . . That policy, in their submission, was tolerated, condoned and possibly ordered by the highest authorities in the State and aimed at massive population displacement in the emergency region of South-East Turkey. There was thus an administrative practice which rendered any remedies illusory, inadequate and ineffective. Since there were no signs that the Government were [sic] willing to take steps to put an end to the practice, victims could have no effective remedy.

Id.

303. *Id.* ¶ 63 (outlining the delegate of the Commission's position on successfully accessing judicial proceedings given the circumstances of the case and the situation in Southeast Turkey).

304. *Id.* ¶ 65 (emphasizing how the principle of exhausting domestic remedies rests on the assumption outlined in Article 13 that an effective domestic remedy is available to aggrieved parties).

persons acting in an official capacity.”³⁰⁵ Applicants should not be forced to exhaust domestic remedies that are not effective; thus, the admissibility requirement is “inapplicable where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile.”³⁰⁶

The Court, citing previous cases as well as a decision by the Inter-American Court of Human Rights, then laid out a test establishing the burden of proof between contesting parties in regards to the exhaustion of the domestic-remedies requirement. First, the respondent government must establish that its domestic remedies for aggrieved parties are both effective and available “in theory and in practice.”³⁰⁷ Second, if this is proven, the applicant must show either: (A) that domestic remedies were exhausted but for some reason were inadequate,³⁰⁸ or (B) that there are “special circumstances absolving [the applicant] from the requirement.”³⁰⁹ In making its decision, the Court recognized that at the time of the alleged incident, the region was engulfed in violence between the PKK and government,³¹⁰ and that such a situation made it difficult to gather evidence and effectively pursue judicial remedies.³¹¹ But, recognizing the Turkish authorities’ late and inadequate official investigation, the Court found that the government had failed to rebut a presumption that its available remedies were ineffective, and thus, there was no need for the applicants to exhaust such remedies since it would have amounted to a futile exercise.³¹²

In the case of *Kiliç v. Turkey*, the Court expounded on charges involving Article 13 violations in relation to Article 2 right to life

305. Convention for Human Rights, *supra* note 89, art. 13.

306. *Akdivar*, App. No. 21893/93, 1996-IV Eur. Ct. H.R. ¶ 67.

307. *Id.* ¶ 68.

308. *Id.* (“[O]nce this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case . . .”).

309. *Id.*

310. *Id.* ¶ 70 (“[T]he situation existing in South-East Turkey at the time of the applicants’ complaints was—and continues to be—characterised by significant civil strife due to the campaign of terrorist violence waged by the PKK and the counter-insurgency measures taken by the Government in response to it”).

311. *Id.* (“In particular, the difficulties in securing probative evidence for the purposes of domestic legal proceedings, inherent in such a troubled situation, may make the pursuit of judicial remedies futile . . .”).

312. *Id.* ¶ 75 (“[I]n the absence of convincing explanations from the Government in rebuttal, the applicants have demonstrated the existence of special circumstances which dispensed them at the time of the events complained of from the obligation to exhaust this remedy.”).

charges.³¹³ In that case, Kemal Kiliç, a human rights activist and journalist who had worked for a pro-Kurdish newspaper, had been tracked, shot, and killed by unknown assailants.³¹⁴ His death occurred after he made several requests to local government officials for protection.³¹⁵ A government investigation did take place, but was lacking due to inadequate evidentiary proceedings and a failure to explore the possibility that Kiliç had been murdered by Government-supported agents.³¹⁶ The applicant, Kemal's brother, charged Turkey with both an Article 2 violation for failing to investigate his death, as well as an Article 13 violation for failing to provide an effective domestic remedy.³¹⁷

The Court found that Turkey had violated both Article 2³¹⁸ and Article 13.³¹⁹ In doing so, the Court rejected Turkey's argument that it could do little to safeguard the security of all persons in Southeast Turkey due to the ongoing military conflict between the government and the PKK.³²⁰ Because inadequate protections "permitted or fostered a lack of accountability of members of the security forces for their actions,"³²¹ Turkey had an Article 2 obligation to "take appropriate steps to safeguard the lives of those within its jurisdiction."³²² Beyond any Article 2 obligations to preventively secure Kemal Kiliç's right to life, the failure to appropriately investigate his death violated Article 13's guarantee of a right to an effective remedy—a right that the Court stated as being even broader than the requirements of Article

313. *Kiliç v. Turkey*, App. No. 22492/93, 2000-III Eur. Ct. H.R. (2000), available at <http://hudoc.echr.coe.int/Hudoc2doc2/HEJUD/200207/kilic.batj.doc> (last visited Dec. 2, 2003).

314. *Id.* ¶¶ 9, 14–15 (describing circumstances surrounding Kemal Kiliç's death on February 18, 1993).

315. *Id.* ¶¶ 10–13 (outlining Kemal Kiliç's public complaints about threats and attacks made to himself and other associates).

316. *Id.* ¶¶ 79–82 (outlining the official investigation in Kiliç's death and instances of its inadequacies).

317. *Id.* ¶¶ 54, 88.

318. *Id.* ¶ 83.

Having regard therefore to the limited scope and short duration of the investigation in this case, the Court finds that the authorities have failed to carry out an effective investigation into the circumstances surrounding Kemal Kiliç's death. It concludes that there has in this respect been a violation of Article 2 of the Convention.

Id.

319. *Id.* ¶ 93 (holding that an Article 13 violation had taken place due to the lack of an effective investigation).

320. *Id.* ¶ 60 (outlining Turkey's argument that "security forces did their utmost to establish law and order" and "in the climate of widespread intimidation and violence, no one in society could have felt safe at that time").

321. *Id.* ¶ 75.

322. *Id.* ¶ 62.

2.³²³ *Akdivar* and *Kiliç* together impose an obligation on member-nations to both safeguard the individual right to life, as well as provide aggrieved parties with an effective remedy following the commission of violations, even in environments characterized by military confrontation that may impair judicial proceedings.

D. Kurt, Çakici, Timurtaş, & Çiçek: Custody and Extrajudicial Killings

The Court's treatment of "disappearances" is also illustrated in cases involving abusive Turkish government practices related to its conflict with Kurdish separatists.³²⁴ Violations of Convention protections often revolve around critical factual questions regarding the establishment of custody of those alleged to have been victims of extrajudicial killings.

In the case of *Kurt v. Turkey*, the applicant charged the government with multiple violations of the Convention after last seeing her son surrounded by government soldiers following a raid of their village in November 1993.³²⁵ After inquiring into his whereabouts several days later, authorities asserted that they had no record of his detention, and that they believed her son had been kidnapped by the PKK.³²⁶

In her case before the Court, the applicant asserted that Turkey violated its Article 2 obligation, even though no body had ever been found.³²⁷ The fact that her son was last seen in the presence of government soldiers, coupled with the ongoing and documented practice of torture and killings in Southeast Turkey, compelled the logical conclusion that he had been detained and died in government custody, thus violating Turkey's Article 2

323. *Id.* ¶ 93 ("[N]o effective criminal investigation can be considered to have been conducted in accordance with Article 13, the requirements of which are broader than the obligation to investigate imposed by Article 2.").

324. See generally Gobind Singh Sethi, *The European Court of Human Rights' Jurisprudence on Issues of Forced Disappearances*, 8 HUM. RTS. BRIEF 29 (2001). In this Article, Sethi provides a concise analysis of the development of the Court's cases involving Turkey and its operations against the Kurds, specifically as illustrated in the cases of *Kurt v. Turkey*, *Timurtaş v. Turkey*, and *Çiçek v. Turkey*. *Id.* at 30–32. See also Irum Taqi, Note, *Adjudicating Disappearance Cases in Turkey: An Argument for Adopting the Inter-American Court of Human Rights' Approach*, 24 FORDHAM INT'L L.J. 940, 984–87 (2001). Taqi analyzes *Kurt*, *Çakici* and *Timurtaş* and concludes that the contradicting tests employed by the Court in disappearance cases should be remedied by adoption of the Inter-American Court of Human Rights' approach of relying on context that presumes recurring patterns of disappearances by governments. *Id.* Sethi also arrives at a similar conclusion. See Sethi, *supra*, at 31. See also *infra* notes 384–89 and accompanying text (discussing the appropriateness of the European Court adopting an analysis that takes into account circumstantial evidence and overall context in the determination of disappearance cases).

325. *Kurt v. Turkey*, App. No. 24276/94, 1998-III Eur. Ct. H.R. ¶¶ 14–15, 72 (1998), available at <http://hudoc.echr.coe.int/Hudoc2doc2/HEJUD/199901/Kurt%20batj.doc> (last visited Dec. 2, 2003).

326. *Id.* ¶¶ 16–17.

327. *Id.* ¶ 101.

obligations.³²⁸ Citing both *McCann* and *Kaya*,³²⁹ the Court stated that an Article 2 requirement to investigate an alleged killing of an individual by government agents is implicated after a body is produced.³³⁰ There was no concrete evidence that Kurt had ever been detained by the government at a threshold beyond a reasonable doubt.³³¹ Because there was only a general presumption that he may have been detained and then killed by government forces, neither an Article 2 right to life, nor Article 3 prohibition of torture violation could be proven.³³² However, since Kurt may have been detained and either tortured or killed by authorities, and government officials had inadequately investigated this possibility after the applicant approached the public prosecutor,³³³ the Court found that Turkey violated Article 13.³³⁴

The principles of *Kurt*, however, were later unraveled by the Court in another disappearance case—*Çakici v. Turkey*.³³⁵ In *Çakici*, the applicant argued that police detained Ahmet Çakici in a village raid in November 1993 and subsequently took him to several police stations where he was held in custody and tortured.³³⁶ The government responded that Çakici had never been taken into custody by authorities and there were no records of his detention.³³⁷ Instead, the government asserted that he was aligned with PKK fighters the entire time the applicant alleged he was detained, and was later killed in an armed confrontation between government forces and the PKK in early 1995.³³⁸ Government police simply released information claiming that a body had been found with Çakici's identity card following the clash, but did not release records as to any further examination or burial

328. *Id.* ¶¶ 101–02 (outlining the applicant's arguments that Turkey was in violation of Article 2, despite the lack of concrete evidence that he had been detained by authorities beyond having been last seen in the presence of soldiers).

329. See *supra* Part V.A (discussing these cases).

330. *Kurt*, App. No. 24276/94, 1998-III Eur. Ct. H.R. ¶ 107 (noting that the Court must establish under Article 2 whether the victim was detained by the respondent state, and that such a burden must be established beyond a reasonable doubt).

331. *Id.* ¶¶ 107–08. For a discussion on the beyond a reasonable doubt threshold in ECHR disappearance cases, see Sethi, *supra* note 324, at 30–31.

332. *Kurt*, App. No. 24276/94, 1998-III Eur. Ct. H.R. ¶¶ 108, 116 (stating in regards to the alleged Article 2 violation, that "the applicant's case rests entirely on presumptions . . . [that] are not in themselves sufficient to compensate for the absence of more persuasive indications that her son did in fact meet his death in custody" and noting that the same reasons also justify a rejection of her Article 3 charge).

333. *Id.* ¶ 141.

334. *Id.* ¶ 142 (holding that no effective remedy had been available to the applicant).

335. *Çakici v. Turkey*, App. No. 23657/94, 1999-IV Eur. Ct. H.R. (1999), available at <http://hudoc.echr.coe.int/Hudoc2doc2/HEJUD/200105/cakici%20%20batj%20-%2023657jv.gc%20080799e.doc> (last visited Dec. 2, 2003).

336. *Id.* ¶¶ 15–16, at 4–5.

337. *Id.* ¶ 19, at 5.

338. *Id.* ¶ 20, at 5.

of the body.³³⁹ Relying on statements from a variety of witnesses, the Commission, operating in its function as fact-finder, concluded that Çakici had indeed been arrested by authorities in the village raid, contrary to the government's claims, and that he had spent at least some time in government detention where he had been mistreated.³⁴⁰

The Court accepted these facts, and ruled that Turkey violated Çakici's Article 2 right to life because there was enough circumstantial evidence, particularly Turkey's claim that his identity card was later found on a dead PKK fighter.³⁴¹ The Court found that Turkey had violated Article 2 on two levels: (1) Çakici's death was "attributable to the respondent State"³⁴² in the sense that it assessed responsibility for his death on Turkey; and (2) Turkey also failed to provide a *McCann* or *Kaya* type Article 2 investigation into his death.³⁴³ The latter holding was particularly significant because, unlike in *McCann* or *Kaya*, Çakici's dead body was never produced, and his death by government agents was largely inferred through deduction and circumstantial evidence.

In reviewing the applicant's Article 3 charge that the government had tortured Çakici in detention, the Court noted that "in cases of unacknowledged detention and disappearance independent, objective medical evidence or eyewitness testimony was unlikely to be forthcoming and that to require either as a prerequisite of a finding of a violation of Article 3 would undermine the protection afforded by that provision."³⁴⁴ Relying again on witness testimony, the Court found that the authorities had violated Article 3's prohibition of torture as well.³⁴⁵ Çakici, thus, diverged from *Kurt* and indicated that in the absence of official custody records,³⁴⁶ or even the body of the alleged victim, Article 2 and Article 3 violations can be inferred from witness testimony and circumstantial evidence. The Court

339. *Id.* ¶ 52, at 13.

340. *Id.* ¶¶ 48–50, at 12–13.

341. *Id.* ¶ 85, at 22 ("[V]ery strong inferences may be drawn from the authorities' claim that [Çakici's] identity card was found on the body of a dead terrorist. The Court finds on this basis that there is sufficient circumstantial evidence, based on concrete elements, on which it may be concluded beyond reasonable doubt that Ahmet Çakici died following his apprehension and detention by the security forces.")

342. *Id.* ¶ 87, at 22–23 ("As Ahmet Çakici must be presumed dead following an unacknowledged detention by the security forces, the Court finds that the responsibility of the respondent State for his death is engaged.")

343. *See id.* ¶ 86–87, at 22–23 (stating that the lack of an adequate investigation also amounted to a failure of the state's Article 2 obligations).

344. *Id.* ¶ 91, at 23.

345. *Id.* ¶¶ 91–92, at 23–24 ("[T]his evidence supports a finding to the required standard of proof, i.e. beyond reasonable doubt, that Ahmet Çakici was tortured during his detention.")

346. *See id.* ¶ 85, at 22 (accepting as fact that Çakici had been held in detention by the government even though there were no custody records to indicate the detention).

found Turkey in violation of Article 13 as well, for failing to provide an effective remedy to the applicant following Çakici's "unacknowledged detention" and presumption of death.³⁴⁷

In *Timurtaş v. Turkey*, the applicant alleged that his son, Abdulvahap, was taken by soldiers around August 1993 and held in detention for an unknown period of time, where he presumably died.³⁴⁸ Turkey alleged that Abdulvahap had not been detained and that he had simply left home.³⁴⁹ However, the applicant produced a photocopied police document indicating that police detained Abdulvahap in August 1993, and taken together with corroborating witness statements, the Commission concluded that his detention did occur.³⁵⁰ Relying on *Çakici*, the Court noted that the determination of whether an Article 2 violation had occurred depends on "all the circumstances of the case, and in particular on the existence of sufficient circumstantial evidence, based on concrete elements."³⁵¹ Three significant factors³⁵² in Abdulvahap's case were: (1) the Court accepted as fact that he had been detained by the police;³⁵³ (2) a long period of time had elapsed since his disappearance, which supported a presumption of death,³⁵⁴ and (3) the general situation in Southeast Turkey in 1993 also supported a presumption of death after disappearance, including, as also noted in *Kiliç*, the government's inability to protect the lives of individuals in the area and lack of accountability for the actions of its forces due to "defects

347. *Id.* ¶¶ 113–14, at 30.

348. *Timurtaş v. Turkey*, App. No. 23531/94, 2000-VI Eur. Ct. H.R. ¶¶ 15–18, at 3–4 (2000), available at <http://hudoc.echr.coe.int/Hudoc2doc2/HEJUD/200207/timurtas.batj.doc> (last visited Dec. 2, 2003).

349. *Id.* ¶ 22, at 5.

350. *Id.* ¶¶ 28, 42, 45, at 6, 11, 12 (noting the Commission's conclusion that Abdulvahap had been detained on August 14, 1993, and subsequently held in detention at two locations).

351. *Id.* ¶ 82, at 22.

352. Sethi identifies an additional significant factor contributing to a presumption that detention had occurred: that there was evidence explaining why the government would be motivated to detain the alleged victim. Sethi, *supra* note 324, at 30.

353. *Timurtaş*, App. No. 23531/94, Eur. Ct. H.R. ¶ 85, at 22 (distinguishing Abdulvahap's case from the facts in *Kurt*—in which there wasn't enough evidence to conclude that Kurt had been taken into detention by authorities).

354. *See id.* ¶ 83, at 22 ("It must be accepted that the more time goes by without any news of the detained person, the greater the likelihood that he or she has died."); *id.* ¶ 85, at 22 ("[S]ix and a half years have now elapsed since Abdulvahap Timurtaş was apprehended and detained—a period markedly longer than the four and a half years between the taking into detention of the applicant's son and the Court's judgment in the *Kurt* case."). It was not stated why a period of six and a half years was sufficiently significant to presume the occurrence of a death whereas a period of four and a half years was supposedly not as significant.

undermining the effectiveness of criminal law protection.³⁵⁵ As in *Çakici*, the Court concluded that Turkey violated Article 2 both for its role in Abdulvahap's death,³⁵⁶ and for later failing to investigate the applicant's case.³⁵⁷ Furthermore, the applicant had an "arguable complaint" for an alleged violation of the Convention, and Article 13 requires a domestic remedy in response to such a complaint.³⁵⁸ The Court held that Turkey had failed to provide such a remedy to the applicant's complaint and therefore violated Article 13 as well.³⁵⁹

The Court's analyses in *Çakici* and *Timurtaş*—finding that a disappearance and death could be inferred from overall circumstantial evidence—was also recognized in *Çiçek v. Turkey*.³⁶⁰ In *Çiçek*, the applicant alleged that the government took her sons into custody following a raid on their village by approximately one hundred soldiers.³⁶¹ The government claimed that no military operation had occurred in the village on the date the sons were allegedly taken, and that the sons had not been detained by the government, but had possibly left the country for Syria.³⁶² There were conflicting statements by witnesses regarding the alleged military operation in the village and the sons' supposed detention.³⁶³ No custody records were found indicating that the sons had been detained in government facilities.³⁶⁴

Faced with discrepancies between the statements of the applicant's witnesses and the government's witnesses, and in the absence of any custody records showing that the sons had been detained, the Court concluded that the military operation had occurred and the sons had been

355. *Id.* ¶ 85, at 23 (citing *Kiliç*, noting the "general context of the situation in south-east Turkey" and recognizing that "defects undermining the effectiveness of criminal law protection . . . permitted or fostered a lack of accountability of members of the security forces").

356. *Id.* ¶ 86, at 23.

357. *Id.* ¶¶ 89–90, at 23–24 (outlining instances of "lethargy" characterizing the investigation of Abdulvahap's disappearance, and holding that the inadequate official investigation of the case also amounted to an Article 2 violation).

358. *Id.* ¶ 111, at 29 (citing *Çakici* and noting that Article 13 requires an effective domestic remedy in response to the substance of arguable complaints).

359. *Id.* ¶¶ 112–13, at 29 (stating that there was "no doubt that the applicant had an arguable complaint" and that Turkey had failed to provide the appropriate remedy for it).

360. *Çiçek v. Turkey*, App. No. 25704/94, Eur. Ct. H.R. (2001), available at <http://hudoc.echr.coe.int/Hudoc2doc%5Cchedec%5Csift%5C2580.txt> (last visited Mar. 6, 2004).

361. *Id.* ¶¶ 10–17, at 3 (outlining the applicant's version of facts regarding her two sons' disappearances on May 10, 1994).

362. *Id.* ¶¶ 19–21, at 4 (outlining the respondent's version of facts and denying that any detention took place).

363. *Id.* ¶¶ 27–31, at 5–6 (describing the statements of various witnesses taken by police and the public prosecutor).

364. *Id.* ¶ 24, at 5 (noting that records at government holding facilities did not show the names of the applicant's sons).

detained based on the consistencies of the applicant's witnesses.³⁶⁵ In regards to the lack of custody records at the government facilities where the sons were allegedly taken, the Court stated that "even if the applicant's sons' names do not appear in the custody registers, this does not prove that they were not arrested by the gendarmes."³⁶⁶ Similar to the analysis in *Timurtaş*, the Court held that (1) consistent witness testimonies established that the sons had in fact been detained;³⁶⁷ (2) the significant passage of time since the sons' disappearance supported a presumption of death,³⁶⁸ and (3) the general situation in Southeast Turkey fostered a lack of accountability among government forces.³⁶⁹ Therefore, Turkey again violated Article 2's right to life for its role in the sons' deaths³⁷⁰ and failure to investigate the case.³⁷¹ In addition, Turkey violated Article 13 due to the "superficial" official investigation that amounted to a denial of the applicant's right to a domestic remedy for her complaint.³⁷²

Çakici, *Timurtaş*, and *Çiçek* indicate that the Court is expanding its analyses of "disappearance" cases by presuming detentions and subsequent deaths through increased reliance on circumstantial evidence provided by witnesses as opposed to the formal requirements elucidated in earlier cases. Whereas *McCann* and *Kaya* only initiated an Article 2 required investigation upon the use of fatal force by a government agent,³⁷³ the *Çakici* line of cases indicates that government liability can be found both in responsibility for presumed deaths as well as by failing to investigate complaints even in the absence of a dead body.³⁷⁴ Also, the *Çakici* line of cases indicates that disappearances and detentions can be proven in the absence of official custody records and based largely on witness testimony.

365. *Id.* ¶¶ 125–32, at 24–25 (outlining the conflicting versions of facts and finding the applicant's witnesses to be consistent, whereas government witnesses were not, and concluding that the alleged operation and detention of the sons had occurred).

366. *Id.* ¶ 138, at 26.

367. *Id.* ¶ 139, at 27.

368. *Id.* ¶ 146–47, at 29 (noting that six and a half years had passed since the disappearance of the sons).

369. *Id.* ¶ 146, at 29 (citing *Timurtaş* and *Kiliç* in noting the possibility that an unacknowledged detention could result in death and that ineffective enforcement of criminal laws in the area fostered government unaccountability).

370. *Id.* ¶ 147, at 29.

371. *Id.* ¶ 150, at 30.

372. *Id.* ¶¶ 180–81, at 37.

373. See *supra* Part V.A (discussing *McCann* and *Kaya*).

374. The Court's reasoning in the *Çakici* line of cases has continued in *Orhan v. Turkey*, App. No. 25656/94, Eur. Ct. H.R. (2002), available at <http://hudoc.echr.coe.int/Hudoc2doc2/HEJUD/200211/orhan%20-%2025656jv.chb1%2018062002e.doc> (last visited Nov. 11, 2003). In *Orhan*, Turkey was again found to be in violation of Article 2 after the Court presumed the deaths of several "disappeared" individuals following an "unacknowledged detention." *Id.* ¶¶ 330–32, at 59–60.

The expansion of the analysis and evidentiary focus are appropriate considering that the core purpose of a state-fostered "disappearance" is to remove, and presumably kill, perceived enemies of the state with no evidence left behind. Particularly where alleged, government-directed disappearances occur on a frequent basis, and official responses suggest a pattern of inadequate investigation, the Court is also correct to include in its analyses the existence of inadequate state protection for persons in its jurisdiction that contribute to a general unaccountability for the actions of government forces.

VI. IMPLICATIONS FOR CHECHEN CLAIMS

The facts of *Khashiyev* and *Akayeva* differ from those elucidated in the Turkish cases discussed earlier. However, the Court should rule in favor of the applicants and charge Russia with violations of both Convention Articles 2 and 13.

The *Çakici* line of cases indicates that the Court will rely on witness testimony to show that alleged victims were taken into custody by authorities.³⁷⁵ In *Khashiyev* and *Akayeva*, Human Rights Watch reported that a single witness allegedly saw Russian soldiers beat and then detain the three men who were later found killed.³⁷⁶ Furthermore, the same witness saw the soldiers shoot the wounded woman in the wheelbarrow,³⁷⁷ an event also corroborated by soldier's statements allegedly made to two other witnesses the next day,³⁷⁸ and the wounded woman's body was found in a wheelbarrow with a shot to the head.³⁷⁹ The Court's investigation may reveal other witnesses who can either corroborate or contradict these reports.³⁸⁰

375. See *supra* Part V.D (discussing *Çakici*, *Timurtaş*, and *Çiçek*).

376. *Civilian Killings*, *supra* note 227 ("According to a witness at the scene who later spoke to Petimat Goigova, the soldiers severely beat the three men, shot the mother, and then drove away with the three men.").

377. *Id.*

378. See *id.*

On January 20 at about 4 p.m., a tall young conscript soldier came to the house of "Wakha R." (not his real name) and "Sultan P." (not his real name), and told the men that he had killed a wounded woman in a wheelbarrow, and that he would now kill them also. When the two men asked the soldier why he had killed the woman, he replied that she had begged, "Help me, I am freezing," and the soldier had walked over to her, said "I will help you," and shot her.

Id.

379. *Id.* (describing the daughter's alleged discovery of her mother's dead body).

380. Following the submission of claims by an applicant, the factual investigation and resolution of the case by the Court may take several years. See *supra* Parts V.A-D (describing cases in which holdings were announced years after the claims were submitted).

Regardless of whether detention of the three men is presumed to have occurred or not, however, and in the absence of other evidence, a question of fact exists as to how the men were killed. One possibility would be, as the applicants allege, that some form of arrest occurred by Russian soldiers, who then tortured and killed the men.³⁸¹ Another possibility would be, as the government alleges, that no arrest occurred and instead Chechens or criminals killed the men, or similarly, if Russian forces did arrest the men, they were later released and then killed by Chechens or criminals.³⁸² The only undisputed fact is that the three men were found dead.³⁸³ Certainly, if it can be shown that they were detained and both tortured and killed, an Article 3 violation—as indicated by *Tomasi* and *Ribitsch*—would apply, as would an Article 2 violation of the right to life.

In the absence of other evidence that would either establish custody or identify persons involved in their deaths, it would be difficult for the Court to hold Russia accountable for an Article 2 violation assigning it direct responsibility for their deaths beyond a reasonable doubt.³⁸⁴ However, harking to the Court's recent rulings in *Çakici* and related cases, a consideration of circumstantial evidence and overall political context should be considered in an Article 2 analysis,³⁸⁵ and may persuade the Court to find against Russia's claim of innocence. Such evidence would include statements allegedly made to witnesses by vengeful Russian soldiers indicating a willingness to kill Chechen civilians,³⁸⁶ reports that soldiers committed numerous atrocities against Chechen civilians in that district of Grozny at the same period of time,³⁸⁷ and frequent occurrences of other human rights violations committed by Russian military forces during

381. See *Khashiyev & Akayeva Admissibility*, *supra* note 215, at 2–4.

382. *Id.* at 6.

383. *Id.*

384. See *Kurt v. Turkey*, App. No. 24276/94, 1998-III Eur. Ct. H.R. ¶ 107, at 28 (1998) (noting that an Article 2 violation requires proof beyond reasonable doubt to determine if an actor has taken a person's life), available at <http://hudoc.echr.coe.int/Hudoc2doc2/HEJUD/199901/Kurt%20batj.doc> (last visited Dec. 2, 2003).

385. See *supra* Part V.D (discussing the Court's willingness to take into consideration circumstantial evidence and defects which foster a sense of government unaccountability in the cases of *Çakici*, *Timurtaş*, and *Çiçek*).

386. See *Civilian Killings*, *supra* note 227 (reporting statements allegedly made by Russian soldiers indicating a desire to seek revenge on Chechens for the deaths incurred in the battle for Grozny).

387. See *id.* (documenting allegations of atrocities committed by Russian soldiers in Staropromyslovski within days of their entrance into Grozny); see also Press Release, Human Rights Watch, More than Sixty Civilians Murdered in Chechen Capital: "Pattern" of Summary Executions Emerging (Feb. 23, 2000) (listing the names of over fifty civilians who were allegedly killed by Russian soldiers in three districts of Grozny), available at <http://www.hrw.org/press/2000/02/chech0223.htm> (last visited Dec. 2, 2003).

operations in general throughout Chechnya.³⁸⁸ Consideration of the overall context in which the alleged violations occurred is appropriate assuming that in such an environment, the potential exists for such violations to be committed with impunity. As *Çakici* and its line of cases indicate, an atmosphere that fosters a lack of accountability for the actions of government agents should be considered in an Article 2 analysis.³⁸⁹ Thus, in this context, the Court should place great weight on witness testimony and the overall climate of the situation.

Even if Article 2 liability assessing direct responsibility for the three deaths cannot be concluded, an Article 2 violation should be found for the government's failure to properly investigate the cases in a prompt and thorough manner. As alleged by the applicants in *Khashiyev* and *Akayeva*, and noted in the Court's admissibility decision, the government failed to promptly examine a variety of items constituting material evidence in the three men's deaths, and to disclose details of criminal investigations.³⁹⁰ For these same reasons, an Article 13 violation for failing to provide an effective remedy should also be found, as an "arguable complaint" can likely be determined to exist.³⁹¹ Even though it may have been difficult for the government to provide such a remedy to civilians given the circumstances in Chechnya at that time, the government is not absolved of this requirement. Rather, these facts increase the burden on Russia to provide aggrieved parties with effective procedures, considering the possibility that the very lack of procedures would encourage Convention violations without fear of official retaliation.

These contextual circumstances supporting an Article 13 violation also carry weight in determining potential standing issues. In *Akdivar*, the government of Turkey alleged that the applicants had failed to exhaust domestic remedies before petitioning the ECHR.³⁹² Similarly, in the *Khashiyev* and *Akayeva* admissibility decision, Russia asserts that the Chechen applicants failed to comply with this requirement of the

388. See *supra* Parts II.A-C (outlining several reported human rights violations allegedly committed by Russian forces in Chechnya).

389. See *supra* Part V.D and accompanying text (discussing cases in which the Court considered defects in criminal law protections that fostered government unaccountability a factor to be considered in Article 2 charges).

390. See *Khashiyev & Akayeva Admissibility*, *supra* note 215, at 8-9 (noting the applicants' assertions that articles of clothing were not gathered by investigators, procedural requirements of Russia's criminal code were not complied with, and the cases were continuously stalled).

391. See *supra* Part V.C (discussing cases in which Article 13 requires governments to provide an effective domestic remedy in theory and practice to aggrieved parties if an "arguable complaint" can be said to exist).

392. *Akdivar v. Turkey*, App. No. 21893/93, 1996-IV Eur. Ct. H.R. ¶ 56 (1996), available at <http://hudoc.echr.coe.int/Hudoc1doc/HEJUD/sift/650.txt> (last visited Nov. 11, 2003).

Convention.³⁹³ Yet at the same time, Russia acknowledged the overall lack of any effective judicial system in Chechnya during that period of the war.³⁹⁴ *Akdivar* releases the requirement that applicants exhaust domestic remedies when there is an absence of appropriate mechanisms to address grievances and provide remedies, and where the factual circumstances compel a conclusion that the de facto government practices violate the Convention in such a manner that pursuing any remedies against government agents is basically "futile."³⁹⁵ This rationale is correct, because the absence of official protections and processes for civilians to obtain effective remedies in a zone of conflict cannot justify impunity for war crimes. To argue so would ultimately undermine the very reason for the existence of war-crimes laws and human-rights guarantees in times of conflict.

Khashiyev, Akayeva, and the remaining cases recently declared admissible by the Court will most likely only be the beginning of claims against the Russian government originating from the war in Chechnya. Factual details will certainly vary in future cases, as they do in the series of cases that charge the government of Turkey with breaches of human rights. If the cases involving Turkey are any indication, claims against Russia for its actions in Chechnya will likely also revolve around alleged violations of Articles 2 and 13, at least, and possibly Articles 3, 5, 6, and others as well.³⁹⁶ As previously noted, member-nations have generally complied with Court rulings,³⁹⁷ which have often included a demand that respondent states violating the Convention pay compensation to petitioners.³⁹⁸ This has

393. *Khashiyev & Akayeva Admissibility*, *supra* note 215, at 14 (noting Russia's argument that the applicants had not exhausted all domestic remedies and thus do not have standing before the Court).

394. *See id.* (noting Russia's acknowledgement that an effective government Court system in the Chechen Republic was basically non-existent at the time the complaints originated).

395. *Akdivar*, App. No. 21893/93, 1996-IV Eur. Ct. H.R. ¶ 67.

396. Article 5 protects the "Right to liberty and security" and Article 6 protects the "Right to a fair trial." Convention for Human Rights, *supra* note 89, art. 5, 6. In several of the Turkish cases, the Court found that the government violated Article 5 by holding individuals in unacknowledged detention. *See Çiçek v. Turkey*, App. No. 25704/94, Eur. Ct. H.R. ¶¶ 168-69, at 34 (2001), available at <http://hudoc.echr.coe.int/Hudoc2doc2/%5Cchdec%5Csiff%5C2580.txt> (last visited Mar. 6, 2004); *Timurtaş v. Turkey*, App. No. 23531/94, 2000-VI Eur. Ct. H.R. ¶¶ 106, at 26 (2000), available at <http://hudoc.echr.coe.int/Hudoc2doc2/HEJUD/200207/Timurtas.batj.doc> (last visited Nov. 11, 2003).

397. *See supra* notes 188-92, 201 and accompanying text (noting the general record of compliance among member nations with decisions of the Court).

398. *Austria Violated Rights of Anti-Haider Paper: EU Rights Court*, AGENCE FRANCE PRESSE, Feb. 26, 2002 (reporting that Austria was ordered to pay \$14,700 for violating free speech rights), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File; *Council of Europe Says London Must Allow Elections in Gibraltar*, AGENCE FRANCE PRESSE, Jun. 26, 2001 (reporting that the United Kingdom was ordered to pay \$64,000 for not guaranteeing residents of Gibraltar the right to vote in European Parliament elections), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File; *Cyprus Says It Will Pay EU Human*

certainly included compensation paid to applicants in cases such as *Çiçek*, *Timurtaş*, and *Çakici*, for violating Articles 2, 13, and others.³⁹⁹ In 2001, the Court fined Turkey two and a half million British Pounds for a military engagement against Kurds which resulted in multiple civilian deaths and destruction of property, which Turkey, in its bid to enter the European Union, agreed to pay.⁴⁰⁰

Certainly, money is no substitution for the lives of victims of extrajudicial killings, or compensation for years of brutal and excessive military force used in Chechnya. The aggregation of monetary fines imposed upon Russia, assuming that the Court rules against Russia for Convention violations as it has against Turkey in its conflict with the Kurds, may ultimately pressure Russian authorities to provide greater disciplinary and judicial procedures in the future. This would be a significant development, as not only are there indications that human rights abuses are continuing in Chechnya with impunity,⁴⁰¹ but they may actually be spreading to neighboring republics as well.⁴⁰²

Indeed, the Council of Europe should seriously consider the use of mechanisms including, and in addition to, individual ECHR judgments for continuing Convention violations allegedly committed by Russia. Already, the rapporteur for the Council of Europe's parliamentary legal affairs and human rights committee has suggested the possibility that an international war-crimes tribunal be created for human rights violations in Chechnya

Rights Fine to Turkish Cypriot, AGENCE FRANCE PRESSE, Dec. 22, 2000 (reporting that Cyprus was ordered to pay \$15,370 for mistreating a suspected drug trafficker), available at LEXIS, News & Business, Country & Region, Europe, News, European News Sources File.

399. See *Çiçek*, App. No. 25704/94, Eur. Ct. H.R. ¶¶ 198–209, at 40–41 (assessing and ordering damages and compensation for court costs and expenses); *Timurtaş*, App. No. 23531/94, Eur. Ct. H.R. ¶¶ 127–28, 131, at 31–32 (same); *Çakici v. Turkey*, App. No. 23657/94, 1999-IV Eur. Ct. H.R. ¶¶ 122–33, at 31–34 (1999) (same), available at <http://hudoc.echr.coe.int/Hudoc2doc2/HEJUD/200105/cakici%20%20batj%20-%2023657jv.gc%20080799e.doc> (last visited Dec. 2, 2003).

400. See *Cloudy Forecast for Turkey*, AL-AHRAM WEEKLY ON-LINE (Cairo), June 21–27, 2001 (noting a “record” high fine assessed against Turkey for a 1993 military engagement, and tensions between Turkey and the EU over Turkey’s human rights record), available at <http://weekly.ahram.org.eg/2001/539/rc9.htm> (last visited Dec. 2, 2003).

401. See Press Release, Human Rights Watch, U.N. Should Censure Russia over Chechnya Abuses: Three “Disappearances” a Week Documented (Apr. 10, 2003) (noting continuing reports of alleged extrajudicial killings and torture of civilians in Chechnya by Russian forces), available at <http://www.hrw.org/press/2003/04/unchr041003.htm> (last visited Dec. 2, 2003).

402. See Press Release, Human Rights Watch, Russia: Abuses Spread Beyond Chechnya: Neighboring Ingushetia Now Affected (July 16, 2003) (noting concern that “[i]n Ingushetia, Russian forces are showing the same patterns of brutal behavior that we’ve seen in Chechnya”), available at <http://www.hrw.org/press/2003/07/russia071603.htm> (last visited Dec. 2, 2003).

similar to the International Criminal Tribunal for the former Yugoslavia.⁴⁰³ Russia's continued membership in the Council of Europe and any potential accession to the European Union should be strongly considered.

The commitment to democracy and human rights serves as the stated foundation for Council of Europe membership and its *raison d'être*.⁴⁰⁴ Given these principles, military force amounting to state-directed terrorism perpetuated on a massive scale amounts to just as much, if not more, of a threat to democracy, than terrorist crimes committed by non-state actors.⁴⁰⁵ For the Chechen victims of torture, disappearances, and killings, the ongoing situation is both grim and urgent. For now, the European Court of Human Rights may be Chechnya's last chance.

403. BINDIG, *supra* note 116, § II, ¶ 3 (suggesting the creation of an international war crimes tribunal for human rights violations in Chechnya if "efforts to bring to justice those guilty of human rights abuses are not intensified").

404. *See supra* notes 124–30 and accompanying text (discussing the guiding principles of Council of Europe accession).

405. *See* Gérard Soulier, *Terrorism*, in THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS 15, 15–16 (Mireille Delmas-Marty ed., Christine Chodkiewicz trans., 1992) (discussing "terrorism" and asserting that "it is in fact the response to terrorism which is the true threat to democracy").

