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## Self-Determination and Recent Developments in the Baltic States

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## Self-Determination and Recent Developments in the Baltic States

### Keywords

Self-Determination, States, Succession of States, Treaties

# STUDENT COMMENTS

## Self-Determination and Recent Developments in the Baltic States

### I. INTRODUCTION

The principle of self-determination is a human right which has taken its place as a peremptory norm of international law. This principle essentially holds that people have the right to determine their future, to elect and be governed by a representative government, and to be free from foreign domination.

This paper will focus on the Baltic nations of Estonia, Latvia, and Lithuania, and their right to self-determination. Since the history of these countries is essential to an understanding of their claims to self-determination, Part II provides a brief history of how these nations came under Soviet domination. Part III discusses the principle of self-determination and how it relates to the Baltic states. Parts IV and V conclude with an in-depth look at recent events in the Baltic and the effects of resurgent nationalism on those countries.

### II. HISTORICAL BACKGROUND

While the three Baltic nations have different historical backgrounds, all three countries were incorporated into the Russian empire by the beginning of the 19th century. During this century, the Baltic people were subjected to increasing political oppression and intense Russification pressures which helped to foster active opposition and to strengthen their desire for self-determination. The opportunity to achieve this objective of self-determination occurred after World War I with the collapse of the Russian monarchy and the simultaneous defeat of Germany.<sup>1</sup> Independence was declared by all three republics in 1918, and was recognized by the Treaty of Versailles.<sup>2</sup>

During their years of independence, the Baltic states established po-

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1. A. ALEXIEV, *DISSENT AND NATIONALISM IN THE SOVIET BALTIC* 3 (1983).

2. See Treaty of Versailles, June 28, 1919, 2 Bevens 43. Their independence was also recognized by the League of Nations which admitted each of the Baltic nations as member states. See, e.g., J. DUGARD, *RECOGNITION AND THE UNITED NATIONS* 15-21 (1987).

litical systems that proved to be stable and effective. The Baltics also prospered economically, as evidenced by the superior standards of living in the republics compared to that of the Soviet Union.<sup>3</sup>

The independence, however, lasted only 22 years. A secret protocol attached to the Nazi-Soviet pact of August 1939 (the Molotov-Ribbentrop Pact) as well as subsequent agreements, divided Europe into German and Soviet spheres of influence. Under the terms of the agreements, the Baltic states fell into the Soviet sphere of influence,<sup>4</sup> opening the way for the Soviets to establish large military bases in the territory.

In June 1940, the Soviet Union used the German advance into Western Europe as a pretext for insisting upon total occupation of the Baltics. This occurred despite the Soviets' non-aggression/non-interference treaties with each of the republics. In these treaties, the Soviet Union promised to protect the political independence of the republics and not to interfere in their internal affairs. The Soviets waived "voluntarily and for all time" any claims to the territories.<sup>5</sup> In August 1940, the Soviet Union formally annexed each of the Baltic states.

During World War II, the territories shifted between German and Russian control. When the Baltics finally ended up in Soviet hands, a period of brutal repression followed. Over 20,000 Estonians, 100,000 Latvians, and 200,000 Lithuanians were deported to Siberia and elsewhere from 1945 to 1946. Overall, some 600,000 Balts were deported in the mid-to-late 1940's, a startling number considering the total population in the region at that time was only six million.<sup>6</sup> There was an active armed resistance in the area to the Soviet occupiers which was not completely suppressed until 1952.

After the years of overt oppression, the Soviet Union began a policy of increased consolidation of the Baltic republics, attempting to gradually socialize Baltic society with Soviet political and economic norms.<sup>7</sup> This socialization process included persecution of religious groups in the region.<sup>8</sup>

The process also included rapid industrialization and collectivization of agriculture in the area. The forced industrialization of the Baltics was significantly aided by the mass importation of labor from other parts of

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3. A. ALEXIEV, *supra* note 1, at 3.

4. See, e.g., Fein, *Baltic Citizens Link Hands to Demand Independence*, N.Y. Times, Aug. 24, 1989, at A10, col. 3; *Text of Secret Protocols to 1939 Hitler-Stalin Pact*, N.Y. Times, Aug. 24, 1989, at A10, col. 3; A. ALEXIEV, *supra* note 1, at 3-4. For a detailed discussion of the Nazi-Soviet pact and its repercussions for the Baltic states, see I. VIZULIS, *THE MOLOTOV-RIBBENTROP PACT OF 1939* (1990).

5. Meissner, *The Right of Self-Determination After Helsinki and its Significance for the Baltic Nations*, 13 CASE W. RES. J. INT'L L. 375, 381 (1981).

6. A. ALEXIEV, *supra* note 1, at 5-6.

7. *Id.* at 8.

8. For a discussion of religious persecution in the Baltic republics, see I. VIZULIS, *supra* note 4, at 79-81.

the U.S.S.R. This continued influx of workers has diluted the ethnic composition of the region and, as a result, today Estonians and Latvians constitute slim majorities in their republics.<sup>9</sup> Lithuanians account for over 80 percent of their population which helps explain why Lithuania is at the forefront of the present separatist movement.<sup>10</sup> The importation of workers has continued through the years, and has produced a visible backlash of dissent and nationalism which continues to the present day.

### III. THE RIGHT TO SELF-DETERMINATION AND THE BALTIC STATES

Although the Soviet Union does not recognize the Baltic states' claims to self-determination, international law does. The right to self-determination is widely recognized under international law. The Charter of the United Nations discusses the principle of self-determination; in fact, this principle was included in the Charter upon the initiation of the Soviet Union.<sup>11</sup> The International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, both recognize the right of people to self-determination. Article 1 of both Covenants states: "All people have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."<sup>12</sup> Because they were forcibly annexed into the Soviet Union, the Baltic people have been unable to freely determine their political status. In addition, the Soviet system of centralized control has prevented them from freely pursuing their economic, social, and cultural development.<sup>13</sup>

The Resolution on the Granting of Independence to Colonial Countries and Peoples<sup>14</sup> was passed by the United Nations General Assembly on December 14, 1960. The Declaration recognizes that all people have the right to self-determination, and orders that the subjugation, domination, and repression of people be stopped.<sup>15</sup> The Declaration further condemns attempts to disrupt a country's national unity and territorial integrity.<sup>16</sup>

The Baltic states have been victims of Soviet colonialism for fifty years. The Declaration Granting Independence to Colonial Countries and

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9. Mlechin, *Alienation*, 44 NEW TIMES, Oct. 1988, at 30, 31.

10. See, e.g., *id.* at 30-31; Nelan, *Lashed by the Flags of Freedom*, TIME, Mar. 12, 1990, at 26, 30.

11. Meissner, *supra* note 5, at 375.

12. U.N. Covenant on Economic, Social and Cultural Rights and U.N. Covenant on Civil and Political Rights, G.A. Res. 2200, 21 GAOR Supp. (No. 16) 49, U.N. Doc. A/6316 (1966-67), *quoted in* Meissner, *supra* note 5, at 376.

13. Because the Baltic republics were annexed against their will, the legal norm of *pacta sunt servanda* does not affect the legitimacy of their claims to self-determination. The Baltic people had no vote with respect to their republics' inclusion in the Soviet Union.

14. Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514, 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1960).

15. See I. VIZULIS, *supra* note 4, at 45.

16. *Id.*

Peoples imposes a duty on the Soviet Union to cease any further attempts at colonization of the republics and to leave the Baltic states so these republics can regain the sovereign status they possessed prior to 1940.<sup>17</sup>

The Helsinki Accords of 1975<sup>18</sup> and the Declaration on Principles of International Law Concerning Friendly Relations<sup>19</sup> also recognize the right to self-determination. The Declaration on Principles of International Law Concerning Friendly Relations further discusses the concept of territorial integrity. It declares that a nation must pass the requirement of possessing a government representing the whole people before it is entitled to protection from any action which would disrupt its territorial integrity.<sup>20</sup> Arguably, the government of the Soviet Union does not adequately represent the people of many of its republics, especially the Baltic states.

Furthermore, the General Assembly of the United Nations has adopted a definition of aggression which states that, "nothing in this Definition . . . could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right . . ." <sup>21</sup> The Soviet annexation of the Baltics in 1940 forcibly denied the republics their right to self-determination. In this regard, the Baltic states have a valid claim to self-determination.

In an article entitled "Self-Determination Under International Law: Validity of Claims to Secede," Professor Nanda argues that "divergent political beliefs, claims to resources, or ethnic or cultural identification," cannot be the main arguments raised in support of a group's claim to self-determination.<sup>22</sup> Such a situation would be too disruptive to the concept of states and world order. Instead, Nanda argues, the focus should be on the "nature and extent of the deprivation of human rights of the group making the claim."<sup>23</sup> The test is the extent to which the group suffers from "subjugation, domination and exploitation," and the extent to which

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17. *Id.* at 47.

18. Final Act of the Conference on the Security and Co-operation in Europe [Helsinki Accords], concluded Aug. 1, 1975, reprinted in 14 I.L.M. 1292.

19. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States, G.A. Res. 2625, 25 U.N. GAOR Supp. (No. 28) at 121, U.N. Doc. A/8028 (1970).

20. Nanda, *Self-Determination Under International Law: Validity of Claims to Secede*, 13 CASE W. RES. J. INT'L L. 257, 260-70 (1981).

21. G.A. Res. 3314, 29 U.N. GAOR Supp. (No. 31) at 142, U.N. Doc. A/9631 (1974), quoted in Nanda, *supra* note 20, at 270. Despite its numerous resolutions on the right to self-determination, the United Nations has taken little action with respect to the Baltic states' claims to independence. The U.N. did open informal talks with representatives from the Baltic nationalist movements for several months, but these contacts were suspended in early 1990 because of pressure put on the U.N. by the Soviet Union. See, e.g., Lewis, *U.N., Bowing to Soviets, Halts its Baltic Contacts*, N.Y. Times, Jan. 11, 1990, at A14, col. 3; Lewis, *U.S. Criticizes U.N. Over Baltic Move*, N.Y. Times, Jan. 12, 1990, at A15, col. 6.

22. Nanda, *supra* note 20, at 277.

23. *Id.*

its members are deprived of the opportunity to participate in the political process.<sup>24</sup>

Each of the Baltic republics has a local congress, multi-party systems are emerging in the republics, and several Baltic representatives have been elected to the National Congress of People's Deputies. Moscow has recently endorsed a plan which calls for increased participation by all the Soviet republics in the decision-making process.<sup>25</sup> These developments, coupled with the Soviet leadership's unfolding responses to separatist demands, show that the Baltic states do today have some say in the political process and their futures. However, the present changes in the Soviet Union cannot alter the fact that the Baltic people have historically been, and continue to be, subjugated, dominated, and exploited.

Not every commentator believes that the Baltic states have a right to self-determination. Historian George Strong points out that before 1918, each of the republics was at times part of the Russian empire.<sup>26</sup> If the Soviet Union is viewed as a successor to the czarist empire, then, Strong argues, "there is a certain historical validity to the present Soviet claim to [the Baltic] territories."<sup>27</sup>

Strong notes that the Baltics enjoyed independence for only 22 years, and the Russians were not involved in the negotiation of the treaty which recognized their independence (Versailles). As for the Nazi-Soviet non-aggression treaty, he argues that Stalin had no alternative but to attempt to buy time from Hitler by signing the agreement.<sup>28</sup>

Professor Strong is, however, in a substantial minority. In an article entitled "The Right of Self-Determination After Helsinki and its Significance for the Baltic Nations," Boris Meissner states that the Soviet annexation of the Baltic states constitutes "a forcible acquisition forbidden in modern international law."<sup>29</sup> He argues that even before World War II, an international prohibition on annexation existed. Thus, the "direct aggression" and forcible acquisition of the Baltics is invalid in light of this annexation prohibition.<sup>30</sup> Accordingly, Meissner concludes that, "the Baltic states could be considered territory that is occupied by the Soviet Union. Legally and politically the existing governments in the three Baltic states lack necessary legitimacy."<sup>31</sup>

Each of the Baltic republics possesses an ethnic homogeneity and internal unity based on a shared history, language, and culture. More importantly, the people of each republic share a common vision of themselves as nations within clearly defined borders. This is true despite fifty

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24. *Id.* at 278.

25. See generally *infra* notes 70-71 and accompanying text.

26. Strong, *Captive Nations?*, Wash. Post, Sept. 7, 1989, at A22, col. 2.

27. *Id.*

28. *Id.*

29. Meissner, *supra* note 5, at 381.

30. *Id.*

31. *Id.*

years of Soviet domination. As Meissner argues: "The right of self-determination cannot be consumed. As long as peoples are in the position to protect their national unity, they collectively have a continuing right to self-determination."<sup>32</sup>

Izidors Joseph Vizulis, an international lawyer from Latvia, shares in this conclusion:

[T]he principle of self-determination . . . seems irrefutably applicable to the Baltic peoples. They never joined the U.S.S.R. voluntarily; they were occupied and still are by the Soviet Union . . . Their forcible military occupation and the breach of the treaties in which the Soviet Union pledged to respect these nations' independence and sovereign rights cannot confer legitimacy on their seizure nor make the Baltic states a 'legitimate part' of the Soviet Union.<sup>33</sup>

Most Western nations have refused to recognize the Soviet annexation, and all of the Baltic republics maintain diplomatic missions in many foreign capitals, including Washington, D.C.<sup>34</sup> For countries which have not recognized the annexation *de jure*, the Baltic states continue to exist as legitimate nations from the standpoint of international law. Thus, their diplomatic missions can be viewed as the legitimate representatives of the Baltic states.<sup>35</sup>

The articles on the right to self-determination found in the U.N. Charter, the Human Rights Covenants, and other international agreements clearly confer on the Baltic states the right to self-determination. Of course, international law is an imperfect legal system in that it lacks a central enforcement authority. In this regard, it is left up to individual nations to remedy unjust situations.<sup>36</sup> In the case of the Baltic republics, this responsibility falls squarely on the shoulders of the Soviet Union.

#### IV. RECENT DEVELOPMENTS IN THE BALTIC STATES

Mikhail Gorbachev's policies of *glasnost* and *perestroika* have provided the Baltic people with a new freedom to express themselves. This has resulted in a situation which would have been unthinkable several

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32. *Id.* at 383.

33. I. VIZULIS, *NATIONS UNDER DURESS: THE BALTIC STATES* 133 (1985).

34. In addition, Baltic nationals with Baltic passports are regularly granted entry visas into numerous European, African, and South and Central American countries. I. VIZULIS, *supra* note 4, at 145.

35. Meissner, *supra* note 5, at 383. James Crawford has argued that if the continued recognition of the Baltic states by some countries signifies their continued existence as states, then the concept which protects a state against illegal annexation has become a peremptory norm in international law. J. CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 420 (1979). He also notes that the continued "existence" of the Baltic nations in Western eyes is as much a result of cold war politics as it is of international law. *Id.* Now that the cold war is "over," the seriousness of many Western nations' recognition is certainly open to debate.

36. Meissner, *supra* note 5, at 382.

years ago. Independent political groups have emerged throughout the region, including the Estonian, Latvian, and Lithuanian Popular Fronts (also called Movements for *Perestroika*), as well as a number of smaller, more vociferous nationalist organizations. The formation of these organizations has led to the emergence of something resembling a multi-party system in the Baltics.

One of the issues which provided a major impetus for the formation of the Popular Fronts was the deterioration of the environment in the Baltics. A decree from Moscow calling for a tenfold expansion of open-cut mining in Estonia drew widespread protest.<sup>37</sup> Nearly all the pollution that fouls local rivers, lakes, and the Baltic Sea is emitted by industries controlled by Moscow. Many of the beaches on the Baltic coast are too polluted for swimming.<sup>38</sup>

The programs of the Popular Fronts would impose heavy restrictions and environmental standards on industries operating in the area. An emerging international human right is the right to a clean environment,<sup>39</sup> a right the people of the Baltic states are increasingly being denied.

An "indestructible Baltic sense of national identity"<sup>40</sup> has led to unprecedented and open protest in the Baltic states. The once-banned flags of the former countries now fly throughout the region. In August 1989, to mark the fiftieth anniversary of the Nazi-Soviet pact, hundreds of thousands of Estonians, Latvians, and Lithuanians joined hands across their homelands, demanding their right to "restore their independent statehood."<sup>41</sup> At that time, a joint statement drawn up by the Popular Fronts advocated the right of the republics to self-determination, stating that the Soviet Union "infringed on the historical right of the Baltic nations to self-determination . . . [in carrying] out their violent annexations."<sup>42</sup>

In July 1989, the Soviet government did acknowledge that "there was a secret protocol" in the Nazi-Soviet pact.<sup>43</sup> In December of that year, the Congress of People's Deputies declared the protocol to be illegal, stating, in effect, that the incorporation of the Baltic states was itself illegal.<sup>44</sup>

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37. See, e.g., Preston, *Rising Demands in the Baltics*, Sydney Morning Herald, reprinted in WORLD PRESS REVIEW, June 1989, at 13. For a discussion of the effects of the environment on nationalism in the Soviet Union, see *Panel on Nationalism in the U.S.S.R.: Environmental and Territorial Aspects*, SOVIET GEOGRAPHY, June 1989, at 441.

38. See, e.g., *The Cracks Within*, NEWSWEEK, Nov. 28, 1988, at 46, 48.

39. See, e.g., *Report of the U.N. Conference on the Human Environment, Stockholm*, U.N. Doc. A/CONF.48/14/Rev. 1 (1974) [hereinafter Stockholm Declaration], reprinted in 11 I.L.M. 1416 (1972); THE WORKING GROUP FOR ENVIRONMENTAL LAW (BONN), THE RIGHT TO A HUMAN ENVIRONMENT: PROPOSAL FOR AN ADDITIONAL PROTOCOL TO THE EUROPEAN HUMAN RIGHTS CONVENTION (1973).

40. Preston, *supra* note 37, at 13.

41. Fein, *supra* note 4, at A10, col. 3.

42. *Id.*

43. See *New Future, New Past on Baltic*, N.Y. Times, July 28, 1989, at A26, col. 1.

44. See *Soviet Assembly Finds Protocols to 1939 Pact With Nazis Illegal*, Boston

While this development can be seen as another attempt by the Soviet Union to exorcise its Stalinist past, the Kremlin remains opposed to granting the republics full independence. As President Gorbachev once stated to Estonian officials, "in the case of divorce, it is not important whether the marriage was contracted legally or not. The property must be divided nonetheless."<sup>45</sup>

The Soviet government has tolerated for the most part the recent developments in the Baltic states, if not aided them. One of the most remarkable occurrences took place in July 1989, when the Supreme Soviet endorsed a plan which allows Lithuania and Estonia to develop market-oriented economies independent of the central plan. More specifically, the two republics will trade with the rest of Soviet Union almost as if they were foreign countries, trading through contracts rather than being allotted materials under Moscow's state plan.<sup>46</sup> This development "allow[s] them to effectively secede from the Soviet system of central economic planning."<sup>47</sup>

The plan theoretically allows the republics to control their own budgets, tax policies, financial markets and foreign trade. The Baltic states hope to develop market economies based on agriculture and light industry, resembling Finland or Sweden more than the traditional, centralized Soviet model.<sup>48</sup>

Critics of the plan say that it will divide the country, and that it gives too much preferential treatment to the Baltics.<sup>49</sup> Much of the opposition pertains to a provision that will allow the republics to control their own natural resources, a provision which conflicts with the Soviet constitution.<sup>50</sup> However, supporters of the plan in the central government believe that it will create a showplace of economic change, and will bring foreign investment which will benefit the entire Soviet economy.<sup>51</sup>

The Popular Fronts enjoy tremendous support, and are even establishing some international ties. Leaders of the Fronts have met with political organizations from Hungary, Czechoslovakia, Poland, and the United States, among others. Representatives from the Baltic republics have helped mediate the ongoing conflict between Armenians and Azerbaijanis in the Nagorno-Karabakh region. Resourcefulness such as this has led

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Globe, Dec. 25, 1989, at 41, col. 1. See also *U.S. Criticizes U.N. Over Baltic Move*, *supra* note 21, at A15, col. 8.

45. Serrill, *War of Nerves*, TIME, April 2, 1990, at 26, 28.

46. Anderson & Bogert, *Crises Around the Clock*, NEWSWEEK, Aug. 7, 1989, at 30, 31.

47. *Id.* at 30.

48. Keller, *Soviet Parliament Backs Autonomy for the Baltics*, N.Y. Times, July 28, 1989, at A1, col. 3.

49. See, e.g., *id.* at A1, col. 6; Keller, *More Autonomy for the Baltics Stirs Discomfort in Moscow*, N.Y. Times, July 27, 1989, at A10, col. 1; Anderson & Bogert, *supra* note 46, at 31.

50. See *More Autonomy for the Baltics Stirs Discomfort in Moscow*, *supra* note 49, at A10, col. 2.

51. *Id.* at A10, col. 1, 2.

some to view the Popular Fronts as being a step ahead of the central government. Moscow often ends up expressing its support and pledging its cooperation for Baltic initiatives.<sup>52</sup>

Recognizing the enormity of the Baltic problem, President Gorbachev made an unprecedented trip to Lithuania in January 1990, in an attempt to personally persuade the people of the republic to stay within the Soviet Union.<sup>53</sup> Once there, he declared that the Soviet constitution grants each republic the right to secede. However, he also pressed the idea of a "federation" and warned of the possibly tragic consequences of secession. While on the one hand stating that he was "for self-determination all the way to secession from the Soviet Union,"<sup>54</sup> he also insisted that, "You [the Lithuanians] are going nowhere. You cannot leave the Soviet Union."<sup>55</sup>

Very little was settled during President Gorbachev's three-day trip to Lithuania. Indeed, two months after Gorbachev's visit, a chain of events began which brought relations between Moscow and Lithuania to a flash point. On March 11, 1990, the newly-elected Lithuanian Parliament voted unanimously to restore their country's prewar independence. Four days later, the Soviet Parliament passed a resolution declaring Lithuania's secession invalid and illegal, and directing President Gorbachev to use any means necessary to protect Soviet citizens and interests in the republic.<sup>56</sup>

Soon after passage of the resolution, additional Soviet troops were sent to Lithuania, and a convoy of military vehicles rolled through the capital of Vilnius in a show of force.<sup>57</sup> President Gorbachev ordered all Lithuanians to turn in their firearms, and ordered the Vilnius government to halt its plan for a self-defense force.<sup>58</sup> On March 27, 1990, armed Soviet troops stormed a Vilnius hospital and arrested Lithuanian deserters from the Soviet army who had taken refuge there. The troops also "secured" the local Communist party headquarters in what became

52. See, e.g., Mlechin, *The Popular Front*, 43 NEW TIMES, Oct. 1988, at 25, 26.

53. This trip marked the first time a Soviet leader has visited Lithuania since its forced annexation. For a run-down of Gorbachev's trip to the republic, see Fein, *Gorbachev Urges Lithuania to Stay With Soviet Union*, N.Y. Times, Jan. 12, 1990, at A1, col. 6; Keller, *Buying Time in Lithuania*, N.Y. Times, Jan. 13, 1990, at A1, col. 2.

54. *Gorbachev Assures Lithuania*, Rocky Mtn. News, Jan. 12, 1990, at 3, col. 1.

55. *Getting Out of the U.S.S.R.?*, NEWSWEEK, Jan. 22, 1990, at 32.

56. See, e.g., Fein, *Soviet Congress Rejects Lithuanian Secession Move*, N.Y. Times, Mar. 16, 1990, at A6, col. 1.

57. See, e.g., Fein, *Lithuania Assails Moscow's Tactics As Convoy Arrives*, N.Y. Times, Mar. 23, 1990, at A1, col. 6; Serrill, *supra* note 45, at 26.

58. See, e.g., Serrill, *supra* note 45, at 26; Clines, *Gorbachev Pressing Lithuanians To Shun Any Self-Defense Plans*, N.Y. Times, Mar. 23, 1990, at A8, col. 1. Not surprisingly, both of these directives were overwhelmingly ignored. Only a handful of firearms were turned in, and the Vilnius government has announced plans to draft all young Lithuanian men into its own defense force, in order to give them legal shelter from the Soviet military draft. See, e.g., Serrill, *supra* note 45, at 26; Keller, *To Thwart Moscow's Draft, Lithuania Proposes Its Own*, N.Y. Times, July 19, 1990, at A8, col. 1.

Gorbachev's first use of armed force against the republics.<sup>59</sup>

Moscow's most overt and successful attempt to force Lithuania to retreat from its declaration of independence came in April 1990, when the Kremlin shut off the oil pipeline that serves as the principal supply of oil for the republic.<sup>60</sup> The cut-off highlighted Lithuania's dependence on Moscow for energy sources, and Moscow's ability to exert tremendous economic and political pressure on all of the republics. Soon there began a long series of negotiations in which President Gorbachev indicated that Lithuania could obtain independence in two years if it suspended its declaration of independence.<sup>61</sup> In June, a compromise was reached in which the Lithuanian Parliament voted to suspend its declaration of independence in exchange for Moscow's agreement to negotiate on the independence issue, while lifting all economic sanctions against the republic.<sup>62</sup> The following day, the pipeline was reopened.

Unfortunately, this compromise failed to produce a long-term solution to the strife between the Kremlin and Lithuania. On January 13, 1991, Soviet troops took over Vilnius newspaper offices and radio and television stations in armed attacks which left fourteen Lithuanians dead. The Soviet troops had ostensibly been sent to the republic in a further attempt to round up draft resisters; however, once there, the army took on an increasingly aggressive posture.<sup>63</sup>

No one in the Kremlin has taken responsibility for giving the order to fire on the civilians. Moscow has, however, endorsed the action, assert-

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59. See, e.g., Clines, *Soviet Troops, Storming Hospital, Seize Lithuanian Army Deserters*, N.Y. Times, Mar. 27, 1990, at A1, col. 1; Clines, *Lithuanian Police Guard Parliament As Pressure Rises*, N.Y. Times, Mar. 28, 1990, at A1, col. 8. For a discussion of the significance of the Soviet draft with respect to Baltic nationalism, see Fein, *In the Baltics, the Red Army is a Red-Flag Issue*, N.Y. Times, Jan. 13, 1991, at E3, col. 2.

60. See Fein & Russell, *Lithuanians Say Moscow Has Cut Off Main Oil Pipeline*, N.Y. Times, Apr. 19, 1990, at A1, col. 7.

61. See Fein, *Gorbachev Offers Deal to Lithuania*, N.Y. Times, May 25, 1990, at A1, col. 5. With this statement, Gorbachev proposed a timetable for independence much shorter than the possibly five year period envisioned in the Soviet law on secession. See generally *infra* notes 69-70 and accompanying text.

62. See Clines, *Soviets Open Line for Lithuania Oil to Help End Crisis*, N.Y. Times, July 1, 1990, at I1, col. 6. While the compromise reflects President Gorbachev's personal powers of persuasion as well as Moscow's economic and political leverage, it also shows the Kremlin's inability to fully resolve the issue of its relationship with the republics. Each crisis is met with an *ad hoc* response which fails to provide a long-term solution. The Kremlin is clearly hoping that the newly-empowered Federation Council presents such a solution. See generally *infra* notes 75-76 and accompanying text.

63. For a run-down of the events surrounding the killings in Lithuania, see Whitney, *Lithuania Rallies Become Peaceful*, N.Y. Times, Jan. 10, 1991, at A11, col. 1; Keller, *Soviet Army Raids Lithuania Offices*, N.Y. Times, Jan. 12, 1991, at A1, col. 1; Keller, *Lithuania Braces to Resist Any Attempt to Seize Control*, N.Y. Times, Jan. 13, 1991, at A1, col. 3; Keller, *Soviet Loyalists in Charge After Attack in Lithuania; 13 Killed; Crowds Defiant*, N.Y. Times, Jan. 15, 1991, at A1, col. 6; Whitney, *Gorbachev Blames Separatist Group for Baltic Clash*, N.Y. Times, Jan. 16, 1991, at A4, col. 1; Keller, *Lithuanian Dead Buried as Martyrs*, N.Y. Times, Jan. 17, 1991, at A4, col. 1.

ing that the Vilnius government has allowed ethnic and economic strife to bring the republic to the brink of civil war. Moscow has also argued that such steps were necessary to protect ethnic minorities against violence from the Lithuanians.<sup>64</sup> Nevertheless, the Kremlin has pledged that it will not attempt to overthrow the Vilnius government and that it seeks a peaceful and political solution to the crisis, a pledge that is certainly suspect in light of recent events.

The crackdown in Lithuania has led to fears of military force also being used in Latvia and Estonia.<sup>65</sup> Indeed, following Lithuania's lead, Latvia and Estonia have had their own confrontations with Moscow. The Latvian Parliament issued a declaration of independence on March 30, 1990, and the Estonian Parliament issued one of its own on May 4, 1990.<sup>66</sup> Unlike Lithuania, however, which declared full and immediate independence, the declarations of the Latvian and Estonian Parliaments call for a moderate, piecemeal approach to independence.<sup>67</sup> In effect, the Latvian and Estonian governments have not attempted to enforce their declarations, hoping instead to enter into meaningful dialogue with the Kremlin on the issue. Despite this, President Gorbachev has issued a decree proclaiming the Latvian and Estonian declarations to be null and void, and has stated that such declarations are a "violation of constitutional norms."<sup>68</sup>

In arguing that the republics' declarations of independence are illegal, President Gorbachev refers to a law on secession which was passed by the Soviet Parliament in April 1990. Under the terms of the law, a repub-

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64. See, e.g., *Gorbachev Blames Separatist Group for Baltic Clash*, *supra* note 63, at A1, col. 2; Keller, *Moscow's Envoy Seeks to Reassure Lithuania*, N.Y. Times, Jan. 18, 1991, at A4, col. 1.

65. See, e.g., Clines, *Wider Crackdown is Feared in Baltics*, N.Y. Times, Jan. 16, 1991, at A1, col. 1. These fears were realized in Latvia on January 20, 1991, when special Soviet troops raided the Latvian Interior Ministry building in the capital of Riga, killing four people. See Schemann, *Soviet Commandos Stage Latvia Raid; 4 Civilians Killed*, N.Y. Times, Jan. 21, 1991, at A1, col. 1. Both Latvia and Estonia have National Salvation Committees of their own, and both Committees seek direct rule in the republics from the Kremlin. As in Lithuania, these groups may be instigating violent incidents in an attempt to create an atmosphere of civil strife, thereby providing Moscow with a pretext to intervene. See, e.g., Clines, *Latvia's Leader Tries to Placate the Kremlin*, N.Y. Times, Jan. 17, 1991, at A4, col. 4.

66. Prior to its declaration of independence, the Estonian Parliament declared state property to be the property of Estonia, not the U.S.S.R. This was followed by a resolution accusing the Soviet Union of "aggression, military occupation and annexation of the Estonian republic," and declaring the annexation to be illegal. See, e.g., Mlechin, *supra* note 9, at 26; *Estonians Challenging Soviet Rule*, Rocky Mtn. News, Nov. 14, 1989, at 3, col. 4.

67. See, e.g., Keller, *Gorbachev Speaks of Retaliation Over Latvia's Independence Move*, N.Y. Times, May 6, 1990, at A1, col. 6; *Gorbachev Denounces Estonia's Declaration*, N.Y. Times, Aug. 13, 1990, at A2, col. 4. For a history of the constitutional developments which took place in Estonia between January 1988 and March 1989, see Gryazin, *Constitutional Development in Estonia in 1988*, 65 NOTRE DAME L. REV. 141 (1990).

68. See *Gorbachev Denounces Estonian Declaration*, *supra* note 67, at A2, col. 4; Keller, *supra* note 67, at A1, col. 6.

lic may secede only after a referendum is approved by two-thirds of the voters in the republic, followed by a transition period of up to five years during which the republic must satisfy all financial and territorial claims, which are subject to the final approval of the Soviet Parliament.<sup>69</sup> Such terms obviously do not meet with any of the Baltic states' approval. In any event, the republics argue that the secession law does not apply to them, as they were forcibly annexed by the Soviet Union.<sup>70</sup>

While the Soviet law on secession is a powerful tool with which to keep the republics in line, President Gorbachev seems to be pinning his hopes on saving the union based on a new union treaty, combined with the sweeping new powers of his presidency. The draft of the new Treaty of Union declares the Soviet Union to be a voluntary association of sovereign republics, with local republics' laws taking precedence over union law, subject to certain crucial exceptions.<sup>71</sup> The Kremlin retains control over the military, foreign affairs, and a wide range of economic matters. Significantly, Moscow is also responsible for maintaining order within the Soviet Union, a provision which could easily be used as a pretext for a crackdown on disruptive republics.<sup>72</sup>

The Soviet Parliament endorsed the Union Treaty on December 24, 1990, and it must now be approved by the republics in order to be legally binding.<sup>73</sup> The three Baltic states refused to participate in negotiations concerning the drafting of the treaty, and have indicated that they will not sign it under any circumstances. Such a position should gain widespread acceptance with the citizens of the Baltics, who overwhelmingly approved independence referendums in each of the republics in February and March 1991.<sup>74</sup>

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69. For a discussion of the Soviet law on secession, see Keller, *supra* note 67, at A21, col. 3; Fein, *supra* note 61, at A8, col. 3; Clines, *supra* note 62, at A6, col. 1; Serrill, *supra* note 45, at 27.

70. See, e.g., Keller, *supra* note 67, at A21, col. 3; Fein, *supra* note 61, at A8, col. 3.

71. See, e.g., Church, *Depths of Gloom*, TIME, Nov. 26, 1990, at 40, 42; *What a Mess*, THE ECONOMIST, Nov. 17, 1990, at 60, 63; Dobbs, *Moscow Orders National Vote on Future of Soviet Union*, Boston Globe, Dec. 25, 1990, at 1, col. 3.

72. See, e.g., Church, *supra* note 71, at 42; *What a Mess*, *supra* note 71, at 63.

73. See Dobbs, *supra* note 71, at 42, col. 4. Originally, the legislatures of the republics were to vote on the treaty. The Soviet Parliament has recently indicated, however, that the vote may include all citizens of the republics.

In an effort to gauge public opinion with respect to the Union Treaty, President Gorbachev put a vaguely worded referendum to the Soviet people on March 17, 1991. While approximately 77% of those who voted endorsed the referendum for "preserv[ing] the Union of Soviet Socialist Republics as a renewed federation of equal sovereign republics," the significance of this result is limited. Most importantly, the voting was boycotted by six of the fifteen Soviet republics, including each of the Baltic republics. See Cline, *Gorbachev Given a Partial Victory in Voting on Unity*, N.Y. Times, March 19, 1991, at A4, col. 6.

74. On March 3, 1991, the citizens of Latvia and Estonia voted overwhelmingly in support of non-binding referendums calling for complete independence of their republics. In Latvia, about 77% of the voters supported independence, while the corresponding figure in Estonia was approximately 78%. See Dobbs, *Latvians, Estonians Vote to Support Independence*, Wash. Post, March 4, 1991, at A8, col. 3. In a similar referendum in Lithuania in

In conjunction with the new Union Treaty, President Gorbachev hopes to use his executive powers to stem the separatist tide in the republics. On December 25, 1990, the Soviet Parliament endorsed a plan which expanded the President's authority. His new powers include the ability to preside over the Federation Council, comprised of the leaders of each of the republics.<sup>76</sup> The Federation Council has historically been a weak body, but under the new plan it will possess broad powers to coordinate relations between Moscow and the republics, effectively making it the most important decision-making body in the Soviet Union.<sup>76</sup> Through the Federation Council, Gorbachev hopes to convince the Baltic leaders that they have an effective voice in the government, and that they all possess a shared set of interests. The Baltic states, however, have refused to participate in the old Council except as observers, and it is likely they will resist the new Council as well.

The Baltic states are aware that their independence will not come in one drastic step, if it comes at all. Thus, these republics must first negotiate a radically different relationship with Moscow, a "special status" for the republics. This could take the form of a confederal relationship much like that envisioned by President Gorbachev, whereby the republics would be provided more autonomy to create democratic institutions, a multi-party system, and a market economy, while remaining subject to a wide range of Soviet laws.<sup>77</sup>

It is possible that the nationalist movements are too nationalistic, that is, that they are prejudiced against non-Balts. Discrimination is undoubtedly taking place against the "imported," Russian-speaking minority in the Baltics.<sup>78</sup> The suggestion has even been made that the "migrants" be paid to leave the region, an idea which has been strongly disavowed by the Popular Fronts.<sup>79</sup>

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February 1991, about 90% of the voters supported independence. *Id.* The higher number in Lithuania reflects the republic's comparatively higher ethnic homogeneity.

75. See Remnick, *Soviets O.K. Expansion of Gorbachev's Authority*, Boston Globe, Dec. 26, 1990, at 1, col. 5. It is hoped that the new government framework will put an end to the so-called "war of legislation" between the republics and Moscow, whereby the Kremlin issues a law which is then declared null and void by the republican legislatures. For a discussion of the war of legislation, see *When the Juggling Has to Stop*, THE ECONOMIST, Nov. 24, 1990, at 47; *What a Mess*, *supra* note 71, at 60; Church, *Time of Troubles*, TIME, Nov. 12, 1990, at 44; Masters, *Baltic Independence: A Dream Kept Fresh*, Wash. Post, July 9, 1989, at A20, col. 1.

Despite prevailing on his plan for the Federation Council, Gorbachev did lose in an attempt to create a presidential organ specifically designed to ensure that the republics comply with Soviet laws. See Remnick, *supra* note 75, at 1, col. 5.

76. See, e.g., *When the Juggling Has to Stop*, *supra* note 75, at 41.

77. See, e.g., Lewis, *The Estonian Test*, N.Y. Times, Nov. 2, 1989, at A19, col. 1. This is not unprecedented. Some states in the U.S.S.R. already operate on a federalist basis, with their local governments enjoying a great deal of autonomy. The Ukraine and Byelorussia, as sovereign republics, are members of the United Nations. Mlechin, *supra* note 52, at 28.

78. For an argument that the Popular Fronts are not respecting the rights of non-Balts, see Mlechin, *supra* note 9, at 30; Nelan, *supra* note 10, at 32-33.

79. Mlechin, *supra* note 9, at 31.

The perceived prejudice of the Popular Fronts has led to the formation of "Russian" opposition groups called National Salvation Fronts, as well as the International Movement (Intermovement) and the Council of Work Collectives. These groups feel threatened by Baltic initiatives (e.g., national language and citizenship requirements), and have called on President Gorbachev to impose direct presidential rule on the republics.<sup>80</sup> Some of the Popular Fronts' schemes do seem to promote discrimination on the basis of nationality. Thus, there is a danger of not only the Soviet Union being split on the basis of nationality, but the Baltic states as well.

Many observers believe that the nationalist movements cropping up throughout the Soviet Union could bring about the demise of the Soviet empire.<sup>81</sup> One commentator has noted that, "if an empire is rated by its control over far-flung peoples and territories, then the resurgence of nationalism in the Soviet Union obviously signifies weakening central control."<sup>82</sup> While predictions of the collapse of the Soviet Union appear to be alarmist, it is clear that the central government must respond adequately to its "nationalities" problem. President Gorbachev has acknowledged that the nationalities problem is one of the "most fundamental and vital issues" facing his country; however, the resurgent nationalism presents him with a dilemma. The more he encourages *glasnost* and *perestroika*, the greater the danger that ethnic aspirations will become uncontrollable.

Thus far, the situation in the Baltics has not erupted into ethnic violence and social anarchy; it has instead taken the form of peaceful protests and parliamentary debate.<sup>83</sup> However, the Baltic people have become more assertive and radical in their positions. They now call for not only more freedom from Moscow, but complete independence.<sup>84</sup> There is a real danger that an uncompromising line from the republics will inspire a crackdown from Moscow, which has described recent events in the republics as a threat to "the very viability of the Baltic nations."<sup>85</sup>

While acknowledging that his reforms have "brought to light a lot of problems . . . in interethnic relations," President Gorbachev "condemn[s] attempts at artificial aggravation of these questions, and advancing ultimatum demands."<sup>86</sup> There has been a noticeable shift to hard-line rheto-

80. See, e.g., *id.* at 33; Keller, *supra* note 64, at A4, col. 1; Keller, *Lithuania Told to Yield or Face Worse Hardship*, N.Y. Times, Jan. 15 1991, at A1, col. 1.

81. With 15 republics (in addition to other "sub-republics") having conferred upon themselves varying degrees of autonomy, it is apparent that the future Soviet Union will be much different from that to which we have grown accustomed since World War II. For an argument that the Soviet Union will not be able to hold onto all of its republics, see Nelan, *supra* note 10, at 26; Lewis, *Hold People Power*, N.Y. Times, Apr. 24, 1990, at A23, col. 1.

82. Schurman, *Evil Empire May End in Ethnic Squabbling*, Rocky Mtn. News, Oct. 19, 1989, at 47, col. 1.

83. See, e.g., Kohan, *Cry Independence*, NEWSWEEK, Aug. 21, 1989, at 28.

84. Fein, *supra* note 4, at A10, col. 1.

85. Dobbs, *Estonia Voids Anti-Russian Voting Law*, Wash. Post, Oct. 6, 1989, at A20, col. 1.

86. *The Cracks Within*, *supra* note 38, at 46, 47.

ric coming from the Kremlin, with Gorbachev, the head of the KGB, and the commander of the Soviet Baltic Fleet all warning of possibly further bloodshed in the republics.<sup>87</sup>

Warnings such as these have not gone completely unheeded in the republics.<sup>88</sup> The independence movements have been relatively orderly and democratic thus far. The Kremlin is attempting to alleviate the crisis in the Baltics by appeasing the republics with more autonomy, while warning them not to push too hard. However, these measures are only short-term solutions; a new federal structure must be created if Moscow is to maintain control over all of the republics.

## V. CONCLUSION

While certain developments reflect Soviet recognition of more autonomy for the Baltic republics, this does not mean that Moscow is willing to accept their calls for self-determination. As Professor Nanda points out, territory and resources constitute a state's power base, and it is unlikely that a state will willingly part with any of them.<sup>89</sup> The Baltics are an area rich in agriculture and industry, and President Gorbachev will not let them just leave the Soviet economy. Furthermore, allowing secession will only promote the other nationalist movements in the Soviet Union, and will probably mark the end of Gorbachev's rule.

Thus, while international law recognizes the right of the Baltic states to self-determination, it is highly unlikely that they will be able to fully realize this right. Of course, nothing can be taken for granted in light of

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87. See, e.g., Keller, *Gorbachev Urged to Consider Crackdown in Republics*, N.Y. Times, Dec. 20, 1990, at A3, col. 3; Remnick, *KGB Chief Says Soviets Must Prepare for "Bloodshed,"* Boston Globe, Dec. 23, 1990, at 2, col. 1; *Soviet Officer Warns of Force in Baltics*, Boston Globe, Dec. 27, 1990, at 18, col. 3. President Gorbachev recently stated that, "where the situation becomes especially tense and there is a serious threat to the state and people's welfare, I will have to introduce a state of emergency presidential rule." Keller, *supra* note 87, at A3, col. 4. Comments such as these have increased fears of a return to authoritarian rule in the Soviet Union, and prompted the resignation of Foreign Minister Eduard Shevardnadze in protest.

A further indication that the Kremlin may be reverting to its old, hard-line policies is President Gorbachev's recent suggestion that a Soviet law on freedom of the press be suspended. See, e.g., Fein, *Gorbachev Urges Curb on Press Freedom*, N.Y. Times, Jan. 17, 1991, at A4, col. 4. The policies of *glasnost* and *perestroika* have certainly suffered setbacks recently, with the takeovers of Lithuanian and Latvian media centers, and the grossly inaccurate media coverage of the crackdown in those republics. See, e.g., *id.*; Clines, *Curbs on Soviet Press Hint at Retrenchment*, N.Y. Times, Jan. 12, 1991, at A4, col. 1; Fein, *Credibility, Too, Is a Victim of the Repression in Vilnius*, N.Y. Times, Jan. 15, 1991, at A5, col. 1; Whitney, *Glasnost Not Public Accountability, Censorship on Baltic Troops Shows*, N.Y. Times, Jan. 18, 1991, at A4, col. 1.

88. In a possible response to the Kremlin's new hard line, the Lithuanian Parliament recently dropped its demand for the signing of a protocol on the goals and conditions of its negotiations with Moscow on Lithuanian independence, as a condition precedent to such negotiations. See, e.g., *Lithuania Eases Stand, Seeks New Talks With Soviets*, Boston Globe, Dec. 29, 1990, at 2, col. 5.

89. Nanda, *supra* note 20, at 263.

the remarkable changes presently taking place in Eastern Europe and the Soviet Union. However, the Kremlin does have significant political and economic pressures it can exert should it so desire. Furthermore, if the Baltic states push too hard, too fast (i.e., by increasing violence in the liberation movements), it is likely that Soviet troops will continue to crackdown in the republics.

Arguably, the economies of the Baltic republics are so intertwined with the Soviet Union that it is not even possible for them to go it alone at present. As the leader of the Estonian Green Movement has stated: "We can decide to be separate and free, but what will we do the next morning? Everything has been damaged by fifty years of Soviet administration. We have to reach a standard of living first that would make it possible to raise the question of secession."<sup>90</sup> These sentiments are echoed by an Estonian Front leader, who states: "[W]e must find a clever way to coexist and create conditions which would make the Soviet Union interested in our independence."<sup>91</sup> It remains unclear whether Gorbachev's recent initiatives will provide the framework necessary to appease all sides. While they are Gorbachev's boldest initiatives to date with respect to the republics, the Baltic states appear unwilling to accept them.

While many Western governments do not recognize the incorporation of the Baltics into the Soviet Union, the republics should not expect too much help from them. Most governments which have not recognized the annexation of the Baltics (such as the United States) also have not recognized their declarations of independence.<sup>92</sup> The West favors Gorbachev and his reforms, and thus will avoid doing anything that will weaken him domestically and give the hard-liners in the Kremlin reason to again seize control.

Thus, it appears that at present, the Baltic states and the Soviet Union will have to find a way to peacefully coexist. The best that the Baltic people can hope for is a continued increase in political and economic autonomy, while remaining republics within the Soviet Union.

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90. Kohan, *supra* note 79, at 31-32.

91. *Id.* at 32.

92. For a discussion of the dilemma faced by the United States and other governments, see Lewis, *Tough Choice for U.S.: Baltic States or Gorbachev*, N.Y. Times, Jan. 13, 1990, at I6, col. 1; Rosenthal, *U.S. Softens Tone on Lithuania Issue*, N.Y. Times, Mar. 28, 1990, at A1, col. 7; Friedman, *U.S. Is Artfully Silent on Oil Threats to Lithuania*, N.Y. Times, Apr. 19, 1990, at A10, col. 1. The Baltic states have been disappointed by the muted response from the West. During the oil pipeline crisis in Lithuania, Lithuanian President Vytautas Landsbergis charged that the United States "sold us out" for higher interests. *Lithuanian Police Guard Parliament as Pressure Rises*, *supra* note 59, at A1, col. 8.

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