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Volume 21 | Number 1

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Todd Alan Frommeyer, *Power Sharing Treaties in Russia's Federal System*, 21 Loy. L.A. Int'l & Comp. L. Rev. 1 (1999).

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LOYOLA OF LOS ANGELES
INTERNATIONAL AND COMPARATIVE
LAW JOURNAL

VOLUME 21

MARCH 1999

NUMBER 1

Power Sharing Treaties in Russia's
Federal System

TODD ALAN FROMMEYER*

INTRODUCTION

"Autonomy means not separation but union between the self governing . . . peoples and the peoples of Russia." - Stalin to the North Caucasus peoples in 1920.¹

Over the last 10 years, the Russian Federation has instituted significant changes affecting the structure and management of the country as well as the lives of its inhabitants. In the late 1980s, Mikhail Gorbachev instituted the policies of *Glasnost* and *Peres-*

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The *Loyola of Los Angeles International & Comparative Law Journal* was unable to obtain English translations for certain Russian source material cited in this Article. Accordingly, the *Journal* relies on the author's representations as to the accuracy of these sources.

1. ROBERT CONQUEST, SOVIET NATIONALITIES POLICY IN PRACTICE 32 (1967) [hereinafter NATIONALITIES].

*troika*² to breathe life into the moribund Union of Soviet Socialist Republics (USSR).³ These policies, however, failed to help the Communist Party maintain its hold on the country and instead precipitated the Party's disintegration.

The Russian people faced two traumatic upheavals when the Soviet Union collapsed in the early 1990s. First, there was no longer an authoritarian government to control every aspect of the peoples' lives. Instead, the Russian people were thrust into a world of democracy and capitalism. This change brought unexpected repercussions. Although capitalism brought an end to the infamous queues of people waiting to buy goods, it also brought wage arrears and inflation that destroyed the value of peoples' pensions. In addition, it brought corruption, crime and the rise of a "Robber Baron" class of capitalists, commonly known as the "Oligarchs."⁴ Russians have very little experience with these phenomena, and are hard pressed to deal with them in the infancy of their new Republic.

Second, the change substantially altered the Russian peoples' self-perception. Until recently, the Soviet Union was an acknowledged superpower consisting of fifteen republics, of which Russia was just one. Today, Russia is independent from the other fourteen former Soviet republics and is a sovereign nation in its own right.

The Russian Soviet Federated Socialist Republic (RSFSR)⁵ once dominated the former Soviet Union; however, post-Soviet Russia now pays a price for that domination. Russia affirmed the Soviet Union's treaty obligations and accepted responsibility for a majority of its foreign debt. In exchange, Russia retained the Soviet Union's seat in many international organizations, including the United Nations. Somewhere in the course of the handover, however, Russia lost the mantle of "superpower."

2. *Perestroika* and *Glasnost* were introduced by Mikhail Gorbachev at the 27th Party Congress in 1986. See ROBERT B. AHDIEH, *RUSSIA'S CONSTITUTIONAL REVOLUTION* 18 (1997) [hereinafter AHDIEH, *RUSSIA'S REVOLUTION*].

3. See KONST. USSR [Constitution, 1936] ch. I, art. I.

4. The Oligarchs are the group of rich bankers and businessmen who have been the main recipients of Russia's so-called "crony capitalism." This handful of men, led by Boris Berezovsky and Vladimir Potanin, now control much of the business and trade that takes place in Russia. See Alex Dehgan, *Federalism, Regionalism and Sovereignty in Russia*, 5 SETON HALL CONST. L. J. 1, 13 (1994).

5. See *id.* at 15.

Many Russians believe this was a poor trade-off. The loss of “superpower” status is a blow to the Russian peoples’ collective psyche. They are no longer feared on the world stage. Even worse, accepting responsibility for the Soviet Union’s foreign debt threatens to cripple the Russian economy within the next few years.⁶

Amidst this chaos, Russia has attempted to build a modern constitutional structure befitting of a large and still very powerful country. Its 1993 Constitution,⁷ adopted by popular referendum, was controversial, but seemed to address all of the major issues raised in a modern government and legal system.⁸ Soon, however, the “subjects,”⁹ or regions, of the newly constituted Russian Federation began to threaten this constitutional foundation. This threat instigated the signing of Power-Sharing Treaties between the federation and the regions. The first agreement was signed with Tatarstan¹⁰ in 1994. Today, Russia has agreements with over one-half of the regions recognized by the Russian Constitution.

This Article will analyze the effect of these Power-Sharing Treaties on the Russian Constitutional structure. To that end, Part I will examine the history of the regions from creation to their present-day existence as subjects of the Russian Federation. This section will also discuss the events that precipitated the central government’s decision to shore up its constitutional structure by signing Power-Sharing Treaties. Part II will present a detailed analysis of the Power-Sharing Treaties.¹¹ Moreover, this section

6. Russia made various agreements to forestall most of the payments on its foreign debt until 2002. At that time, the full burden will fall on the country. *See id.*

7. *See generally* KONST. RF (1993).

8. ROBERT AHDIEH, *RUSSIA’S CONSTITUTIONAL REVOLUTION* 73.

9. The term “subjects,” which will be used frequently throughout this Article, is a direct translation from the Russian term used in the Treaties.

10. *See* Steven Solnick, *Federal Bargaining in Russia*, 4 E. EUR. CONST. L. REV. 52 (1995).

11. As of the writing of this Article, the Russian Federation has signed “Dogovory o razgranichenii predmetov vedeniya i polnomochii mezhdru organami gosudarstvennoi vlasti Rossiiskoi Federatsii i organami gosudarstvennoi vlasti ee sub” ektov (Treaties on the delimitation of jurisdiction and powers between the organs of state power of the Russian Federation and the organs of governmental power of its subjects), or Power-Sharing Treaties with the following regions: Republics - Tatarstan, Kabardino-Balkar, Bashkortostan, Northern Ossetia-Alaniya, Sakha (Yakutiya), Buryatiya, Udmurtiya, Komi, Chuvash; *Krais* - Krasnodarsk, Khabarovsk, Altai; *Oblasts* - Kaliningrad, Sverdlovsk, Orenburg, Omsk, Irkutsk, Sakhalin, Perm, Nizhny Novgorod, Rostov, Leningrad, Tver, Vologda, Chelyabinsk, Saratov, Magadan, Bryansk, Ulyanovsk; Federal Cities - St. Petersburg; Autonomous *Okrugs* - Ust’-Ordinsk Buryat, Komi-Permyat. *See* Mikhail Gubo-

will examine the overlap of the Treaties with certain sections of the Russian Constitution, particularly articles 72 and 76. Finally, Part III will review these Treaties and the Russian Constitution within the framework of Russian federalism. Specifically, this section will examine the asymmetrical federalism created by the Russian Constitution and the impact of the Power-Sharing Treaties on that federalism.

I. THE BIRTH OF POWER-SHARING TREATIES

A. *The Creation of Regions*

On December 12, 1993, the Constitution of the Russian Federation was approved by a national referendum, supplanting the RSFSR's 1978 constitution.¹² The 1993 Constitution established a federal structure that accommodates eighty-nine subjects of the Russian Federation.¹³ This federal structure recognizes republics, *krais*,¹⁴ *oblasts*¹⁵ (including one autonomous *oblast*), federal cities, and autonomous *okrugs*.¹⁶

glo, *Federalizm Vlasti i Vlast' Federalizma*, in FEDERALIZM VLASTI I VLAST' FEDERALIZMA 108 (1997) [hereinafter FEDERALIZM].

12. This constitution will be referred to as the 1993 Constitution. See GORDON B. SMITH, REFORMING THE RUSSIAN LEGAL SYSTEM 281-82 (1996).

13. See KONST. RF (1993) art. 65. The subjects of the Russian Federation are as follows: Republics - Adygeya, Altai, Bashkortostan, Buryatiya, Dagestan, Ingush, Kabardin-Balkar, Kalmykia-Khalmg Tangch, Karachayevo-Cherkess, Karelia, Komi, Mari-el, Mordovia, Sakha (Yakutiya), North Ossetia, Tatarstan, Tuva, Udmurt, Khakasia, Chechnya, Chuvash. *Krais* - Altai, Krasnodar, Krasnoyarsk, Maritime (Primorskii), Stavropol, Khabarovsk. *Oblasts* - Amur, Arkhangelsk, Astrakhan, Belgorod, Bryansk, Vladimir, Volgograd, Vologda, Voronezh, Ivanovo, Irkutsk, Kaliningrad, Kaluga, Kamchatka, Kemerovo, Kirov, Kostroma, Kurgan, Kursk, Leningrad, Lipetsk, Magadan, Moscow, Murmansk, Nizhny Novgorod, Novgorod, Novosibirsk, Omsk, Orenburg, Oryol, Penza, Perm, Pskov, Rostov, Ryazan, Samara, Saratov, Sakhalin, Sverdlovsk, Smolensk, Tambov, Tver, Tomsk, Tula, Tyumen, Ulyanovsk, Chelyabinsk, Chita, Yaroslavl. Federal Cities - Moscow, St. Petersburg. Autonomous areas (*Oblasts* and *Okrugs*) - Jewish, Aginsky Buryat, Komi-Permyak, Koryak, Nenets, Taimyr (Dolgan-Nenets), Ust Ordynsky Buryat, Khanty-Mansi, Chukchi, Evenk, Yamal-Nenets. See *id.*

14. Throughout this Article, I will use the Russian term for the respective administrative division of the Russian Federation. While "territory" is often used as a definition for *krai*, the word *krai* is also acceptable when referring to the regional designation.

15. Oxford Russian-English Dictionary defines *oblast'* as a province, region, or district. See OXFORD RUSSIAN-ENGLISH DICTIONARY (1989).

16. *Okrug* can mean region or district. When differentiating between Autonomous *oblast* and Autonomous *okrug*, the latter is often referred to as area and the former a region. The *Avtonomnii Okrug* (Autonomous Area) is defined as a national - governmental formation in the USSR which is located within another administrative division, such as a

Generally speaking, the regions are the Russian successors to the Soviet Autonomous Soviet Socialist Republics (ASSRs).¹⁷ In the Soviet hierarchy of administrative divisions, the ASSRs were considered the most autonomous of the administrative regions.¹⁸ Republics, autonomous *oblasts*, and *okrugs* are determined primarily on the basis of the minority populations concentrated in the region. In contrast, *oblasts* and *krais* are generic administrative divisions and have no particular basis for their formation. *Krais* are located mostly in the East (except Krasnodarsk *krai* in the Northern Caucasus) and usually contain an autonomous *oblast* or *okrug*.¹⁹

As mentioned above, Russia created some subdivisions in response to the concentration of minority populations in the region. Russia adopted this strategy because both the original Russian Empire and, later, the Soviet Union, were comprised of approximately 130 nations and nationalities.²⁰ To keep minorities content within the Soviet Union, Russia gave some areas (republics, autonomous *oblasts* and *okrugs*) special designations and increased autonomy in the day-to-day operations of their "homeland."²¹

krai or *oblast*. *Avtonomnii Okrugs* were created as national areas in locations of concentrations of minority populations in the North and Far East. See KRATKII POLITICHESKII SLOVAR' (SHORT POLITICAL DICTIONARY) 8 (1989).

17. See Mordovian Republic (visited Oct. 6, 1998) <<http://www.rusline.com/oblast/mordovia/mordov.html>>; see also Encyclopaedia Iranica: Digorr (visited Oct. 6, 1998) <<http://internetserver.com/~iranica/articles/v7f4/v7f444.html>>; see also NATIONALITIES, *supra* note 1, at 31–32. Examples exist where regions formerly designated as ASSRs generally became republics. Before 1993, the Mordovian Republic was known as the Mordovian Autonomous Soviet Socialist Republic. Similarly, the North Ossetia-Alania Republic was formerly the North Ossetian Autonomous Soviet Socialist Republic. Furthermore, the Autonomous Tatar Soviet Socialist Republic is now known as the Tatarstan Republic. See also Alex Dehgan, Federalism, Regionalism, and Sovereignty in Russia, 5 Seton Hall Const. L.J. 1, at 16 (1994).

18. See Zeljko Heimer, *Russian Federation*, (last modified Aug. 9, 1997) <http://www.chez.com/fotw/flags/rsf.html>.

19. See *id.*

20. See NATIONALITIES, *supra* note 1, at 13; see also Robert Sharlet, *The Prospects for Federalism in Russian Constitutional Politics*, 24 PUBLIUS: THE JOURNAL OF FEDERALISM 118 (1994) [hereinafter Sharlet, Prospects].

21. See *Federalism*, *supra* note 11, at 108. Republics were divided by ethnicity or nationality and the other regions were created for territorial or national-territorial reasons. See *id.*

Although Russia has changed many of the designations over the years,²² the 1993 Constitution recognizes the same essential structure of republics, *krais*, *oblasts* and autonomous *okrugs* that existed within the RSFSR of the former Soviet Union. In fact, the 1993 Constitution embodies the same federal hierarchies as the previous Soviet (and RSFSR) constitutions. At the end of the Soviet period, and through four Soviet constitutions, the federal structure of the USSR remained comprised of fifteen union republics—Soviet Socialist Republics (“SSRs”); twenty autonomous republics—Autonomous Soviet Socialist Republics (“ASSRs”); eight autonomous *oblasts*; and ten autonomous *okrugs*.²³

The RSFSR began creating autonomous subdivisions before the Soviet Union was fully established. These subdivisions were also based upon the ethnic majority of their populations. For example, between 1920 and 1923, the RSFSR established several autonomous republics and *oblasts* on its territory.²⁴ Two of these autonomous regions are now countries or parts of countries: the Kirghiz ASSR is now Kirghiziya and Crimean ASSR is now part of Ukraine. Additionally, most of the other regions, which today enjoy republican status, were designated as autonomous *oblasts*. These include Chuvashiya, Mari(-el), Komi, (Mongol-) Buryatiya, and Kabardino-Balkariya.²⁵

22. Throughout the life of the Soviet Union, the transformation of regions from designation to designation took place quite a few times. For instance, in 1925, the Chuvash Autonomous Area became an autonomous republic, and in 1930, the Mordov National Area was transformed into an autonomous region, then in 1936 into an autonomous republic. See Marat Salikov, *Russian and American Federation: Comparative and Legal Analysis of Their Origins and Developments*, 3 TULSA J. COMP. & INT’L L. 161, 178 [hereinafter Salikov, *Federation*]; see also the footnotes on pages 244 to 245 on the deportation and reformation of the national republics of the Chechen and Ingushi peoples, as well as others.

23. See Nicholas Lynn & Alexei Novikov, REFEDERALIZING RUSSIA: DEBATES ON THE IDEA OF FEDERALISM IN RUSSIA, 27 PUBLIUS: J. FEDERALISM 187, 190 (1997) [hereinafter Lynn & Novikov, REFEDERALIZING].

24. See NATIONALITIES, *supra* note 1, at 31–32, 45. It is also interesting to note that in 1924, the Russian Turkestan ASSR was divided along ethnic lines into what later became the Soviet Central Asian republics: Kazakhstan, Uzbekhistan, Tadhikistan, Kirghiziya, and Turkmenistan. See *id.* at 45.

25. The other autonomous republics and *oblasts* are: Tatarstan ASSR, Karelia, Votyak Autonomous Region, Dagestan ASR, Gorskaya ASR, Karachai-Cherkess Autonomous Region, Yakut ASSR, Oirot Autonomous Region, Adygei Autonomous Region. *Id.*

The RSFSR enacted the first Soviet Socialist constitution.²⁶ While this constitution was mostly concerned with giving “all power to the people,” it also recognized the various nationalities within Post-revolutionary Russia.²⁷ Article 11 of the 1918 Constitution states:

The soviets of regions with a distinct mode of living and national composition can unite in autonomous regional unions at the head of which, as at the head of all regional unions that can be eventually formed, stand regional congresses of Soviets and their executive agencies. These autonomous regional unions form, on a federal basis, component parts of the Russian Socialist Federative Soviet Republic.²⁸

The 1918 Constitution incorporated the general principle of federalism,²⁹ but did little to establish the substantive relationship between the federal government and individual regions.³⁰ In fact, “the terms autonomous *oblasts*,³¹ [autonomous] republics and Soviet republics were used interchangeably.”³² In establishing separate regions for the different nationalities, the Russian government found it necessary and useful to differentiate among the national (non-Russian) areas. This was accomplished by determining whether the national areas were located on a border of the country.³³ Areas located on the periphery were designated Union Re-

26. See KONST. USSR (1918) (Aug. 31, 1998) <<http://www.bucknell.edu/departments/russian/const/18cons01.html>> [hereinafter KONST. USSR (1918)]. The Declaration of Rights of the Working and Exploited People, approved by the Third All-Russia Congress of Soviets in January 1918, together with the constitution of the Soviet Republic approved by the Fifth Congress, make up the single fundamental law of the RSFSR. See Salikov, *Federation*, *supra* note 22, at 171.

27. See KONST. USSR (1918) art. 22. The Constitution of the RSFSR specifically provides that “any oppression of national minorities or restriction of their equality [are] contraventions of the fundamental laws of the Republic.”

28. See *id.* art 11.

29. The Second Congress of the Comintern in 1920 adopted Lenin’s view that “federalism is a transitional form to complete the union of the toilers of different nations.” See NATIONALITIES, *supra* note 1, at 26.

30. The Resolution on the Federal Institutions of the Russian Republic was enacted by the Third Soviet Congress before the adoption of the 1918 constitution, on January 1918, but it also did nothing to clarify the federal situation. This Act did, though, determine the system of highest federal bodies. See Salikov, *Federation*, *supra* note 22, at 176.

31. The autonomous area (*okrug*) of later constitutions was referred to as a national area in this version. See *id.* at 177.

32. See NATIONALITIES, *supra* note 1, at 29.

33. See *id.* at 35.

publics.³⁴ Areas located completely within the boundaries of the RSFSR were declared autonomous republics, *oblasts* or *okrugs*.³⁵ The basis for this classification was that the 1918 Constitution allowed secession to Union Republics, but not to autonomous republics or other political subdivisions. Allowing for possible secession where the seceding sovereign nation would be completely surrounded by the RSFSR was considered imprudent.³⁶

In 1936, the Soviet Union adopted a new constitution.³⁷ This constitution set forth the federal structure of the Soviet Union in great detail. The Union (Soviet Socialist) Republics³⁸ made up the first level. These Republics exercised independent authority, limited only by the 1936 Constitution's reservation of certain powers and authority to the federal government.³⁹

The second level, consists of the Soviet Socialist Republics contained *krais*, *oblasts*, Autonomous Soviet Socialist Republics (ASSR)⁴⁰ and National Areas.⁴¹ These second level entities were

34. *See id.*

35. *See id.*

36. *See id.*; *see also* KONST. USSR (1977) <<http://www.bucknell.edu/departments/russian/const/77cons01.html>> [hereinafter KONST. USSR (1977)].

37. *See* KONST. USSR (1936) <<http://www.bucknell.edu/departments/russian/const/36cons01.html>> [hereinafter KONST. USSR (1936)]. As a member of the Soviet Union, Russia adopted constitutions in 1925, 1937, and 1978, all of which corresponded to and were adopted one year later than the corresponding (Soviet) Union Constitution. *See* Salikov, *Federation*, *supra* note 22, at 177; *see also* AHDIEH, *RUSSIA'S REVOLUTION*, *supra* note 2, at 49. To simplify the description, I will describe only the Soviet Constitution of a given year.

38. The Soviet Socialist Republics in 1936 were: The Russian Soviet Federated Socialist Republic, The Ukrainian Soviet Socialist Republic, The Byelorussian Soviet Socialist Republic, The Azerbaidjan Soviet Socialist Republic, The Georgian Soviet Socialist Republic, The Armenian Soviet Socialist Republic, The Turkmen Soviet Socialist Republic, The Uzbek Soviet Socialist Republic, The Tadzhik Soviet Socialist Republic, The Kazakh Soviet Socialist Republic, The Kirghiz Soviet Socialist Republic, The Karelo-Finnish Soviet Socialist Republic, The Moldavian Soviet Socialist Republic, The Lithuanian Soviet Socialist Republic, The Latvian Soviet Socialist Republic, and The Estonian Soviet Socialist Republic. *See* KONST. USSR (1936) art. 13. With the exception of the Karelo-Finnish Soviet Socialist Republic, these republics became sovereign states upon the breakup of the Soviet Union in 1991. The Karelo-Finnish Soviet Socialist Republic was eventually downgraded to one of the Autonomous Soviet Socialist Republics within the RSFSR. *See* KONST. USSR (1977) art. 85. The reasons may have been the Republic's location on the Finnish border and the fact that both the 1936 and 1977 Constitutions allowed a Union Republic, but not an ASSR, to freely secede from the Soviet Union.

39. *See* KONST. USSR (1936) arts. 14–15.

40. This region is basically equivalent to a republic in present-day Russia.

41. *See* KONST. USSR (1936) arts. 22–29.

not considered subdivisions of the Union (Soviet Socialist) Republics, but rather as subjects of the federal government, albeit lesser subjects.⁴²

The Supreme Soviet of the USSR, the Soviet Union's parliament, had two chambers.⁴³ The lower chamber was the Soviet of the Union. Soviet citizens throughout the country elected its deputies.⁴⁴ The upper chamber was the Soviet of Nationalities. Recognized bodies of the federal structure elected its deputies.⁴⁵ Each Soviet Socialist Republics elected twenty-five deputies to this chamber, while the Autonomous Republics elected eleven deputies. The Autonomous *oblasts* elected twenty-five deputies, and National Areas elected one deputy.⁴⁶

Not only did the 1936 Constitution detail the government structure for the Soviet Union as a whole,⁴⁷ it also detailed the structure for the Union Soviet Socialist Republics,⁴⁸ the Autonomous Soviet Socialist Republics,⁴⁹ and the local governments, including *krais*, *oblasts*, and *okrugs*.⁵⁰ The interaction between all of these federal divisions, however, did not extensively develop until the adoption of the 1977 Constitution. Nonetheless, the evolution and development of this federal structure was theoretically significant; the power always flowed from the center of the Soviet Union and constitutional delineations of authority and jurisdiction were observed only in the broadest sense.

On October 7, 1977, the Seventh (Special) Session of the Supreme Soviet of the USSR affirmed "the ideas and principles of the first Soviet Constitution of 1918, the 1924 Constitution of the U.S.S.R.,⁵¹ and the 1936 Constitution of the U.S.S.R." by adopting

42. See *id.* art. 35. The Russian Constitution of 1937 recognized autonomous republics and autonomous regions as members of its Federation. The autonomous regions had been within the structure of the territories that were not subjects of the Union. See Salikov, *Federation*, *supra* note 22, at 178.

43. See KONST. USSR (1936) art. 33.

44. See *id.* art. 34.

45. See *id.* art. 35. This chamber is analogous to Russia's present day upper chamber, the Federation Council.

46. See *id.*

47. See *id.* ch. V.

48. See *id.* ch. VI.

49. See *id.* ch. VII.

50. See *id.* ch. VIII.

51. The 1924 Constitution was closely modeled after the 1918 RSFSR constitution, but went beyond the point of being a Russian constitution and became a constitution of the Soviet Union. See NATIONALITIES, *supra* note 1, at 43.

an amended and revised constitution.⁵² The federal structure of the 1977 Constitution is strikingly similar to the structure of the 1936 Constitution, but more complete. Under the new constitution, the Union Republics increased their influence in the Soviet of Nationalities by electing thirty-two deputies each.⁵³ The autonomous *oblasts* and autonomous *okrugs* became constituent parts of the Union Republic within which they were located.⁵⁴ Their laws, however, were given force only if the Supreme Soviet of the Union Republic adopted them.⁵⁵ Autonomous Soviet Socialist Republics, gaining a clear definition of their autonomy, increased the preferential treatment they received with respect to the secondary federal subjects within the Soviet Union's federal structure.⁵⁶

B. *The Birth of the Power-Sharing Treaty*

Mikhail Gorbachev assumed power in the Soviet Union during the March of 1985.⁵⁷ By the end of 1991, however, the Soviet Union no longer existed and Russia had declared itself a sovereign nation.⁵⁸ Gorbachev resigned in 1991, and was replaced by President Boris Yeltsin. The Russian government wasted no time trying to establish a constitutional structure. In 1990, the Russian Congress established a Constitutional Commission, which produced constitutional drafts in November 1990, October 1991, and February 1992.⁵⁹ President Yeltsin, however, did not like the Congressional Commission's drafts so he commissioned his own

52. See KONST. USSR (1977) art. 85.

53. See *id.* art. 110. The deputies elected from the other regions remained the same: Autonomous Republics-eleven, Autonomous *Oblasts*-five, and Autonomous *Okrugs*-one.

54. See *id.* arts. 82-88. Under the first edition of the 1978 (RSFSR) Constitution the autonomous areas were recognized as Federation members. By that time, there were sixteen autonomous republics, five autonomous regions, and ten autonomous areas in the Russian Federation structure. See Salikov, *Federation*, *supra* note 22, at 178.

55. See KONST. USSR (1977), *supra* note 36, art. 86.

56. See *id.* arts. 82-83.

57. Leonid Brezhnev was General Secretary of the U.S.S.R. until 1982. Andropov served from 1982-84. Chernenko served until his death in early 1985. He was replaced by Mikhail Gorbachev. See AHDIEH, *RUSSIA'S REVOLUTION*, *supra* note 2, at 17-18.

58. Mikhail Gorbachev resigned from the Presidency of the U.S.S.R. on December 25, 1991. See *id.* at 17.

59. See *id.* at 49-52. The Constitutional Commission was chaired by Parliament Chairman, Boris Yeltsin. He was an infrequent visitor to the Commission, however. Robert Sharlet, *Transitional Constitutionalism: Politics and Law in the Second Russian Republic*, 14 WIS. INT'L L.J. 495, 496 (Summer 1996) [hereinafter Sharlet, *Transitional*]. See also Sharlet, *Prospects*, *supra* note 20, at 118.

draft of the Constitution.⁶⁰ By June of 1993, President Yeltsin decided to proceed with his version. President Yeltsin established a Constitutional Conference to bring together people from all over the country to discuss and amend the proposed constitution.⁶¹

Once the Constitution passed through the Constitutional Conference, President Yeltsin realized that he faced difficulties in adopting the new constitution. Because he had earlier spurned the congressional draft of the constitution, he initially dismissed the idea of adopting the constitution by congressional vote. On the other hand, adopting the Constitution by vote of the Constitutional Conference or Presidential decree lacked sufficient democratic legitimacy.⁶²

Yeltsin eventually decided to present the constitution to each of the eighty-nine republics of the Federation. Support from two-thirds of the regions was required to adopt the draft.⁶³ It soon became apparent, however, that the President would be unable to get two-thirds of the subjects to approve the proposed constitution. Consequently, Yeltsin thought that if the upper house of Russia's Parliament, which included deputies from all of the subjects of the Federation, approved the constitution, this would lend the same legitimacy as approval by the subjects themselves.⁶⁴ The upper house, nevertheless, declined to consider the matter.⁶⁵

The last route of legitimate adoption was to obtain the approval of the people of Russia. While the outcome remained uncertain, President Yeltsin decided to put the adoption of the proposed constitution to a referendum.⁶⁶ The referendum took place on December 12, 1993, along with elections to the State Duma⁶⁷ and the Federation Council.⁶⁸ Fifty-eight percent of the people approved the Constitution.⁶⁹ Thus on December 25, 1993, two

60. See AHDIEH, *RUSSIA'S REVOLUTION*, *supra* note 2, at 53.

61. *See id.* at 56-57.

62. *See id.* at 63.

63. *See id.*

64. *See id.* at 64.

65. *See id.*

66. *See id.* at 72.

67. The Duma, Russia's first elected Parliamentary Body, was originally created in the Russian Constitution of 1906. *See id.* at 14.

68. *See id.*

69. The First Russian Republic is considered to have begun upon the declaration of sovereignty by Russia in 1990 and ended on October 4, 1993 with President Yeltsin's military assault on Parliament. *See Sharlet, Prospects*, *supra* note 20, at 115.

years to the day after the resignation of Mikhail Gorbachev, the second Russian Republic was born.⁷⁰ Despite (or perhaps because of) the efforts and machinations of President Yeltsin, the legitimacy of the 1993 Constitution was challenged. First, previous referendums required support by a majority of voters in a majority of subjects, as well as a majority of the total popular vote for approval. Yeltsin, on the other hand, required only a majority of the total vote.⁷¹ Second, accusations surfaced that the referendum was fraudulently tallied and that some ballots throughout the country were falsified.⁷² Finally, the Electoral Commission and President Yeltsin were suspected of using incorrect base numbers of the total electorate in determining the percentage of electoral participation in the referendum.⁷³

In order for the referendum to be considered legitimate, at least fifty percent of the total electorate must participate. Officials calculated that fifty-five percent of the electorate participated in the referendum. Some critics of the referendum, however, allege that total electoral participation may have been as low as forty-six percent and that errors, or even fraud, by the Electoral Commission resulted in an over-inflated estimation of electoral participation.⁷⁴

Yeltsin's methods, though less than forthright and democratic, may be justified. As the former republics of the Soviet Union were declaring sovereignty from the Soviet Union, a comparable situation was occurring in Russia on a smaller scale.⁷⁵ Many of the previously autonomous regions within Russia declared or threatened to declare their outright independence from

70. See AHDIEH, *RUSSIA'S REVOLUTION*, *supra* note 2, at 76-78. Implementation of activities under the Constitution began with the convening of the new Federal Assembly in January 1994, as constitutionally required on the thirtieth day following its election (art 99). See Sharlet, *Transitional*, *supra* note 59, at 506. The Constitution entered into force on the day the official results of the referendum were published (12/25/93).

71. See AHDIEH, *RUSSIA'S REVOLUTION*, *supra* note 2, at 65.

72. See *id.* at 73-74.

73. See *id.*

74. See *id.*

75. "The rising regional nationalism which followed the dismantling of the Soviet Union in 1991 increased the already broadening divisions within Russia. This phenomenon creates further concern that the newly independent states would disintegrate due to resurgent ethnic and political tension." Elliot Stanton Berke, *The Chechnya Inquiry: Constitutional Commitment or Abandonment?*, 10 EMORY INT'L L. REV. 879, 897 (1996) [hereinafter Berke, *Chechnya*].

the Russian Federation.⁷⁶ Russia would have suffered a fate similar to that of the former Soviet Union had the central authorities not taken extraordinary steps to prevent it. In addition, allegations that President Yeltsin obliterated the old, Soviet-era Russian Constitution and laws can be countered with the argument that it was not possible to replace the old system any other way.

The signing of the Federation Treaty on March 13, 1992, was one of the first steps toward adopting the 1993 Constitution.⁷⁷ Before Yeltsin modified the draft constitution, this Treaty was appended to the 1993 Constitution as Part II. It also confirmed and consolidated the special status of the republics within the federal structure.⁷⁸ In fact, the provisions from the Federation Treaty served as a starting point for the early Power-Sharing Treaties, including Tatarstan's treaty. The Federation Treaty gave the Republics greater political and economic rights over other subjects of the Federation.⁷⁹

This began a battle between the subjects that Yeltsin thought he ended when he equalized the subject's status in the 1993 Constitution.⁸⁰ While Republics still had the right to a republican flag, a constitution, and their own language, the adopted version of the 1993 Constitution excludes the Federation Treaty.⁸¹ Where the treaty and Constitution overlapped, the Constitution trumped.⁸²

76. After cracking down on the regional legislatures, Moscow realized the need for a revised constitution. On December 12, 1993, the current Constitution of Russia was approved by national referendum. *See id.* at 898.

77. RUSSIA AND THE REPUBLICS: LEGAL MATERIALS (John Hazard & Vratslav Pechota eds., 1997). The Federation Treaty was one of a series of treaties signed with the ethnic republics (except Tatarstan and Chechnya), the *oblasts* and *krais* and the federal cities of the Russian Federation. *See Sharlet, Prospects, supra* note 20, at 119; *see also Salikov, Federation, supra* note 22, at 179. Chechnya and Tatarstan, both predominately Islamic republics, refused to sign the 1992 Treaty and declared independence. *See Berke, Chechnya, supra* note 75, at 898.

78. *See Sharlet, Prospects, supra* note 20, at 119; *see also* AHDIEH, RUSSIA'S REVOLUTION, *supra* note 2, at 134.

79. *See Sharlet, Prospects, supra* note 20, at 119. The 1992 Federation Treaty, attempting to subdue such tension, did much to advance the Russian constitutional cause. The Treaty attempted to mend the rift by defining the division of powers and relations between the center and the regions; *see also Berke, Chechnya, supra* note 75, at 897.

80. The 1993 constitution declares that all subjects of the Russian Federation, in relation to the federal bodies of state power, are legally equal among themselves. *See* KONST. RF (1993) art. 5(4).

81. *See Sharlet, Prospects, supra* note 20, at 123.

82. *See id.*

On February 15, 1994, the Russian Federation finalized its first Power-Sharing Treaty with one of its subjects, Tatarstan.⁸³ Government officials interpreted Tatarstan's refusal to sign the Federation Treaty as the key to halting the early secessionist movement. The officials, therefore, felt it necessary to accede to some of the republic's demands to keep the Federation together. This encouraged other regions to seek similar accommodations from the central government.

Throughout 1994 and 1995, six more republics negotiated and signed Power-Sharing Treaties with Moscow.⁸⁴ The *krais*, *oblasts* and *okrugs* began negotiating their own agreements with the government once they discovered the extra consideration that the republics were receiving because of their Power-Sharing Treaties.⁸⁵ Under the aegis of a Presidential Commission that is specifically responsible for the negotiation of the Power-Sharing Treaties, this process has continued.⁸⁶ There are currently forty-six Power-Sharing Treaties in force.⁸⁷

II. THE SUBSTANCE OF THE AGREEMENTS

The principal goal (of the Federation) must be the dividing of power between the center and regions . . . [but it seems the] fragile veneer of unity is being strained by . . . [the regions'] demands to chart their own political course, mine their own riches, spend

83. See *Federalizm*, *supra* note 11, at 247.

84. Kabardino-Balkar, Bashkortostan, Northern Ossetia-Alaniya, Sakha (Yakutiya), Buryatiya, and Udmurt republics. See *id.* at 854.

85. Vasily Kononenko, *Eduard Rossel Materializes At Last His Idea Of Partial Sovereignty Of Sverdlovsk Region*, RUSSIAN PRESS DIG., Jan. 13, 1996. The first Power-Sharing Treaty signed between Moscow and a Russian Federation subject other than a republic was on January 12, 1996, with Sverdlovsk and Kaliningrad *Oblasts*. It was reported at the time that "Boris Yeltsin hailed the treaties, saying that this practice only strengthens Russian federalism and will be continued." *Id.*

86. See AHDIEH, *RUSSIA'S REVOLUTION*, *supra* note 2, at 136. Yeltsin sought to ensure the process will continue even when he has gone. At the signing of the Power-Sharing Treaty with Krasnoyarsk *krai*, Yeltsin brought Boris Nemtsov, deputy Prime Minister and a leading reformer from Nizhny Novgorod, and anointed him "guarantor of the accords." Sebastian Smith, *Role of Yeltsin's heir apparent grows for Nemtsov*, AGENCE FRANCE-PRESSE, Nov. 2, 1997.

87. *Yeltsin Signs More Power-Sharing Treaties*, 3 IEWS RUSSIAN REGIONAL REPORT 4; *Federal Government Signs Power-Sharing Treaty with Moscow*, 3 IEWS RUSSIAN REGIONAL REPORT 4. On May 21, 1998, the central government signed five more agreements (the texts of which were not immediately available) with the Republic of Mari-El, and Kostromo, Ivanovo, Voronezh and Amur *oblasts*. On June 16, 1998, a Power-Sharing Treaty was signed with (the federal city) Moscow. See *id.*

their own money and define their own values. - Valery Shamshurov, Deputy Minister in Russia's Ministry of Nationalities Affairs and Regional Policy.⁸⁸

In the past four and a half years, the Power-Sharing Treaties between the Russian Federation and its various subjects have undergone an evolution. The treaties were first used in 1994 as a bridge to stabilize the federal structure. Now, the current treaties greatly resemble the earliest treaties. Nonetheless, there is a marked change from the very first treaties signed, i.e., with Tatarstan, Bashkortostan and Northern Ossetia, to the treaties signed with most of the regions since then.

For example, Russia developed a "model" language for many of the necessary provisions. This evolution is the result of changed circumstances. The first treaties were signed to forestall the growing desire for independence. In contrast, current treaties focus on positive relations between the center and the regions.

The following section analyzes the provisions of a model Power-Sharing Treaty.⁸⁹ This section is divided into five parts. First, it examines the presidential decrees, which implemented the Commission on the Power-Sharing Treaty process. Second, it compares nearly all of the Treaty provisions to treaties signed during various points in the treaty-signing process. Third, it discusses the key provisions of the Treaties, especially those that significantly interact with the Constitution. Fourth, it looks at the Supplemental Agreements signed alongside the Power-Sharing Treaties. Finally, it examines the federal law that represents the culmination of this process and, possibly, its downfall.

A. Pre-Agreement Legislation

Just a few months after the central government successfully negotiated its first Power-Sharing Treaty with Tatarstan, President Yeltsin realized that this treaty-signing process might continue for a long time. To this end, he established a Commission to oversee the treaty preparation and to "implement a constitutional founda-

88. See Berke, *Chechnya*, *supra* note 75, at 903.

89. The texts of most of the Power-Sharing Treaties are available in one of two places. All of the treaties signed up to June 1997 are included in the work *Federalizm Vlasti i Vlast' Federalizma* (Mikhail H. Guboglo et al. eds., 1997). See generally *Federalizm*, *supra* note 11. Many of these same treaties are also available at <http://www.region.rags.ru>.

tion of the federal structure of the Russian Federation” and to ensure “cooperation and coordination in the preparation of the treaties”⁹⁰

Although the Commission performs “preliminary examination of the questions relating to the delimitation of jurisdiction,”⁹¹ its main tasks involve consultation after the treaty is signed.⁹² In March, 1996, a presidential decree established new regulations.⁹³ These regulations evenly distributed the main tasks of the Commission between pre-treaty preparations and post-treaty implementation.⁹⁴

B. The Similar Provisions

While the “Party of Power”⁹⁵ never published a “model treaty,” all treaties share common provisions. For example, the first article in each of the Power-Sharing Treaties almost always seeks to establish the boundaries of the treaty. The most common language states: “This treaty delimits the jurisdiction and powers between organs of state power of the Russian Federation and organs of state power of [the region].”⁹⁶

90. *See id.* at 236.

91. Regulations of the Commission under the auspices of the President of the Russian Federation on Preparation of the Treaties on Delimitation of Jurisdiction and Powers between the Federal Organs of State Power and the Organs of State Power of the Subjects of the Russian Federation, para. 1. *See id.* at 237.

92. *Id.*

93. Decree of the President of the Russian Federation on the Confirmation of the Regulations on the Order of Work in Delimitation of Jurisdiction and Powers between the Federal Organs of State Power and the Organs of State Power of the Subjects of the Russian Federation and on Joint Transfer of Implementation of Part of its Powers by the Federal Organs of Executive Power and the Organs of Executive Power of the Subjects of the Russian Federation. *See id.* at 239.

94. Regulations on the Order of Work in Delimitation of Jurisdiction and Powers between the Federal Organs of State Power and the Organs of State Power of the Subjects of the Russian Federation and on Joint Transfer of Implementation of Part of its Powers by the Federal Organs of Executive Power and the Organs of Executive Power of the Subjects of the Russian Federation. *See id.* at 240.

95. The media in Russia has begun to call Yeltsin’s administration, the “Party of Power.” This stems in part from the fact that President Yeltsin has tried to remain above the fray by staying out of party politics. Many commentators think that President Yeltsin made a huge mistake by not building a party of reformers around himself which could have continued democratic reforms after he is gone. *See* Robert W. Orttung, *Russia’s “Party Of Power” Troubled by Regional Election Results* (Analytical Brief #442), Open Media Research Institute <<http://www.iews.org>>.

96. *See Federalism, supra* note 11, at 287.

Some of the agreements make reference to the fact that this delimitation is made in accordance with both the Russian and the republican constitutions.⁹⁷ Other agreements, much like the 10th Amendment of the United States' Constitution, go so far as to reserve the "fullness of state power" for subjects in all areas "outside the limits of the jurisdiction of the Russian Federation," both in its sole capacity and in the areas of joint jurisdiction with the subjects.⁹⁸

From the perspective of the federal government, one of the most important issues in the Power-Sharing Treaties is the supremacy of federal law over regional law. In fact, Article 4 of the Constitution provides: "The Constitution of the Russian Federation and federal laws shall have supremacy throughout the entire territory of the Russian Federation."⁹⁹ Consequently, the treaties provide for supremacy of federal legislation, leaving the subject free to regulate any areas not covered by federal jurisdiction. The most common provision in these treaties has three components: (1) Absent federal legislation in areas of joint jurisdiction, the subject may legislate freely (implicitly leaving solely federal and solely regional jurisdiction to their respective "organs of state power."); (2) After the center has legislated in an area of joint jurisdiction, the region may regulate that area only in accordance with federal law; and (3) Any laws not in accordance with federal law are automatically considered inapplicable, or void.¹⁰⁰

Another important provision of the Power-Sharing Treaties allows federal legislation to supersede the treaty under certain circumstances. If the federal legislation applies to all subjects of the Federation and gives greater powers or privileges to the subjects than those given in the treaty, then the federal legislation applies.¹⁰¹ On the other hand, if the federal executive branch unilaterally adopts rules or regulations that contradict the treaty, then

97. *See id.* at 247.

98. *See id.* at 260.

99. KONST. RF (1993) art. 4(2).

100. *See Federalizm, supra* note 11, at 338. The regions with this type of provision include: Republics: Buryatiya, Chuvashiya, Komi, Udmurt; *Oblasts*: Ulyanovsk, Sakhalin, Perm, Omsk, Irkutsk, Sverdlovsk, Tver; and Krasnodar *krai*. The early versions of this provision, in treaties with Tatarstan, Bashkortostan and Northern Ossetia simply stated: "Organs of state power of the Russian Federation, just as the organs of power of the Republic of Tatarstan, may not introduce legislative acts on questions not relating to its authority." *See id.*

101. *See id.* at 376.

the treaty remains supreme.¹⁰² Finally, if the subject adopts legislation that contradicts the treaty, the treaty, and not the legislation, shall apply.¹⁰³

Many of the later treaties contain a provision regarding the subject's right to establish "international and foreign economic ties."¹⁰⁴ The main point in this provision is that the subject may act independently in pursuing international and foreign economic ties (with foreign governments) unless doing so contradicts the Constitution of the Russian Federation, the federal law or the international treaties of the Russian Federation.¹⁰⁵ Most important for the federal government, however, is that the "organs of state power of the Russian Federation, in accordance with federal law," shall coordinate the international and foreign economic ties" of the region in question.¹⁰⁶ This area is within the joint jurisdiction of the central and regional governments and is a fact that is examined in more detail in supplemental agreements with many regions.¹⁰⁷

Another consistent provision in Power-Sharing Treaties concerns regional government reactions to legal acts of federal executive power outside its jurisdiction. The first part of this provision allows the subject to bring an action in a federal court to invalidate these legal acts. The regional organs of state power can bring suit against legal acts of the federal executive branch which: (1) regulate questions within the jurisdiction of the region; (2) do not correspond to the executive branch's powers within the area of joint jurisdiction; or (3) unilaterally redistribute powers set forth in the Constitution or the Power-Sharing Treaty.¹⁰⁸

The second part of this provision allows the regional government to make "recommendations" to the federal government regarding the repeal or suspension of legal acts that affect the region.¹⁰⁹ Furthermore, some of the treaties expand this provision to allow the federal government to repeal or suspend the activity in question one month after submitting the "recommendation." If

102. *See id.*

103. *See id.*

104. *See* RUSSIA & THE REPUBLICS: LEGAL MATERIALS, *supra* note 77, at 1.

105. *See Federalism*, *supra* note 11, at 381.

106. *See id.*

107. *See id.* at 206-10.

108. *See id.* at 379.

109. *See id.*

the federal government does not act on the “recommendation” after one month, the legal acts in question will not apply to the regional organs of state power until the appropriate court has rendered a decision in the matter.¹¹⁰

Some of the early Treaties included a provision concerning juridical documents, but it has since fallen into disuse. This provision acknowledges regional autonomy by providing that “juridical documents, issued by organs of power . . . of the Russian Federation and [the region], within the limits of the powers of these organs . . . shall have force on the territory of [the region] and all of the Russian Federation.”¹¹¹ Although this provision was probably important early in the Power-Sharing Treaty process because of the uncertain governmental structure of the time, this provision most likely fell out of use when the governmental structure became more stabilized.

Dispute resolution is one of the most important points in the Power-Sharing Treaties. Typically, the central government and the region will not definitively decide this point in the Treaty itself, but will instead leave it for future agreement. Normally, a provision will state the following: “Arguments and disagreements arising in the course of the realization of this Treaty, and also arguments about competence between organs of state power of the Russian Federation and organs of state power of [the region] in areas of joint jurisdiction shall be settled according to agreed procedures”¹¹² Some provisions also additionally state the following: “or in a manner established by the Constitution of the Russian Federation and legislation of the Russian Federation,” to ensure that disputes between the federal government and the regions are resolved within the constitutional system of the courts.¹¹³

Earlier treaties were more limited in their coverage of dispute resolution. The Agreements with Tatarstan, Northern Ossetia and Bashkortostan only covered disputes arising in the areas of joint jurisdiction.¹¹⁴ For example, Tatarstan’s provision simply states: “Arguments on implementation of powers in the sphere of joint jurisdiction of organs of state power of the Russian Federation and of organs of state power of the Republic of Tatarstan shall be re-

110. *See id.* at 348.

111. *See id.* at 251.

112. *Id.* at 341.

113. *See id.*

114. *See id.* at 252.

solved in a manner agreed upon by them.”¹¹⁵ Most of the later provisions in this area are broader in scope, and cover disagreements not only in the “sphere of joint jurisdiction,” but also in the “realization of . . . [the] treaty” in general.¹¹⁶

Many of the dispute resolution provisions of the Power-Sharing Treaties include an important connection to the Constitution. These provisions allow dispute resolution by “the Constitutional Court of the Russian Federation in accordance with parts two and three of article 125 of the Constitution of the Russian Federation, and also the Supreme Court of the Russian Federation, and the High Arbitration Court of the Russian Federation according to their competencies.”¹¹⁷

Article 125 of the 1993 Constitution defines the Constitutional Court’s role within the Russian Federation.¹¹⁸ Part two of Article 125 allows certain bodies within the hierarchy of the federal and regional governments, including “bodies of legislative and executive power of the subjects,” to ask the Constitutional Court to decide the constitutionality of a point of contention.¹¹⁹ The points of contention may come from “agreements between organs of state power of the Russian Federation and organs of state power of subjects of the Russian Federation.”¹²⁰ Part three of Article 125 allows the Constitutional Court to resolve disputes over jurisdiction between, *inter alia*, “state organs of the Russian Federation and state organs of the subjects . . .”¹²¹

Another Power-Sharing Treaty provision related to the foregoing allows the laws of the regional government to have “state protection.”¹²² In other words, regional laws and “other normative acts” can be enforced within the court system of the Russian

115. *See id.*

116. Generally, the earlier treaties (with Tatarstan, Udmurtiya, Bashkortostan, Northern Ossetia and Chuvashiya) address only joint jurisdiction in this provision, while later treaties treat this idea more broadly, including the treaties with Sverdlovsk, Perm, Krasnodarsk, Komi Republic, Buryat Republic, Irkutsk, Omsk, Tver, and Sakhalin.

117. *Federalizm, supra* note 11, at 414.

118. *See* KONST. RF (1993), art. 125. Article 126 addresses the Supreme Court and Article 127 addresses the Supreme (High) Arbitration Court. *See* KONST. RF (1993), arts. 125–26.

119. *See* KONST. RF (1993), art. 125(2).

120. *Id.* art. 125(2)(c).

121. KONST. RF (1993), art. 125(3)(b).

122. *See Federalizm, supra* note 11, at 325. “Laws and other normative acts of Omsk oblast are subject to state protection and are subject to the courts in accordance with their competences, as established by the law of RUSSIAN FEDERATION.” *Id.*

Federation.¹²³

To enhance the cooperation between the central government and the regional governments, the Constitution provides that federal organs of executive power may delegate their powers to the executive power of the regions, with the agreement of the latter.¹²⁴ Similarly, the subjects may also delegate to the federal government, if both agree.¹²⁵ Using language nearly identical to that in the Constitution, the Power-Sharing Treaties include these same ideas, allowing: "Transfer by federal bodies of executive power of implementation of a part of its powers to bodies of executive power of [the region], in accordance with article 78 of the Constitution of the Russian Federation, . . . unless the Constitution of the Russian Federation or federal law directly prohibits the transfer . . ." ¹²⁶ A supplemental agreement would carry out the "necessary conditions" for transferring power from the federal to the regional level, or vice versa.¹²⁷

Another article in many of the Power-Sharing Treaties concerns the regions' desire to keep control of solely regional property. The regions regulate any control, use or disposal of regional governmental property in accordance with federal law.¹²⁸ The regional government will also independently assign control of regional governmental property to its own "organs of state power."¹²⁹ This provision is critical to the regions' desire to control the enormous mineral wealth of Russia. In the end, definite resolution of the question of natural resources, however, has been left for future agreement.¹³⁰

Taxation is another area covered by some Power-Sharing Treaties. This is critical to both the regions and the federal government. The resolution of most of this question is left up to fu-

123. *See id.* at 325.

124. *See* KONST. RF (1993), art. 78(2).

125. *See id.* art. 7(3).

126. *Federalizm, supra* note 11, at 345. Another version states: "Organs of executive power of [the region] may be endowed by powers of territorial subdivisions of federal organs of executive power by agreement, concluded by the administration [of the region] with the government of the Russian Federation or federal organs of executive power empowered by it." *Id.*

127. *See id.*

128. *See id.* at 326. "Questions of control, use, disposal of objects related to governmental property of Omsk *oblast* are regulated by *oblast* legal acts in accordance with federal law." *Id.*

129. *Id.*

130. *See id.*

ture agreement.¹³¹ A provision in this area provides that the region will "independently determine and introduce . . . [regional] taxes . . . in accordance with general principles of taxation and collection, *as established by the Constitution of the Russian Federation and federal law* [emphasis added]."¹³² This provision also allows for the establishment of "territorial bodies of the federal treasury" in the region, although details are left for future agreement.¹³³

Finally, every treaty signed includes minor provisions, which do not add much substantively to the negotiated subject matter, but are nevertheless critical to the proper procedural implementation of the treaty. Most of the Agreements include minor provisions on subjects such as the creation of commissions,¹³⁴ empowered representatives in Moscow and the regional capital,¹³⁵ changes or additions to the treaty,¹³⁶ and entry into force of the treaty.¹³⁷

C. The Key Provisions - Delimiting Jurisdiction

Each of the Power-Sharing Treaties includes vital sections delineating the jurisdiction of the Russian Federation, the jurisdiction of the region and the joint jurisdiction to be shared between the central government and the subject. Not coincidentally, the

131. See *id.* at 400. "The makeup and amount of income of credits from federal taxes to the budget of Saratov *oblast*, shall be determined by agreement of Russian Federation and Saratovoblast, unless directly provided for in federal law." *Id.*

132. *Id.*

133. See *id.* at 380.

134. See *id.* at 414. "With the goal of effective realization of this Treaty, the organs of state power of the Russian Federation and the organs of state power of Bryansk *oblast* may create joint commissions and other working bodies on equal footing." *Id.*

135. See *id.* at 387. "Organs of state power of the Russian Federation and organs of state power of Vologda *oblast* may have their own representatives respectively in the city of Vologda and in Moscow." *Id.*

136. See *id.* at 408. "Additions and changes shall be introduced into this treaty by mutual agreement of the sides by way of additions to this treaty or the conclusion of a new treaty. This Treaty or separate provisions may not be abrogated, changed or supplemented unilaterally, unless otherwise provided for by federal law." *Id.*

137. See *id.* at 394.

This treaty is subject to publication in official edition and enters into force from the moment of publication. From the moment of entry into force of this treaty earlier concluded treaties and agreements between the organs of state power of the Russian Federation and organs of state power of Chelyabinsk *oblast* shall operate in part to the extent that they do not contradict this treaty.

Id.

Constitution also includes articles that list the areas of federal jurisdiction and the areas of joint jurisdiction.¹³⁸ Moreover, the Constitution also provides: "Outside of the jurisdiction of the Russian Federation and the powers of the Russian Federation on issues within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, the subjects of the Russian Federation shall exercise the entire spectrum of state power."¹³⁹

Delineating the areas of jurisdiction as solely federal, solely regional or joint is critical for determining how federal and regional laws interact. Article 76 of the Russian Constitution provides the guidelines for this interaction.¹⁴⁰ If the federal government passes a law within an area of its sole jurisdiction, this law will, much like a regulation in the European Union, have direct effect throughout the federation.¹⁴¹ On the other hand, if the law is passed in an area of joint jurisdiction, the subjects are required to pass laws in their own territory bringing into effect the federal law, as with a directive in the European Union.¹⁴² In accordance with Article 73, the regions pass their own laws in areas of their sole jurisdiction.¹⁴³

The laws of a subject may not contravene a federal law, if the latter was passed in areas of federal or joint jurisdiction as set forth in Article 78.¹⁴⁴ In such a case, the conflict between federal and regional law is resolved in favor of federal law.¹⁴⁵ Appropriately, in a case where a federal law contradicts a regional law, in an area of sole regional jurisdiction, the regional law applies.¹⁴⁶

1. Federal Jurisdiction

For a federation to succeed in modern-day Russia, the central government is the most important area of jurisdiction.¹⁴⁷ The rights and responsibilities of the regions depend on the amount of power retained by the central government. A federation must be-

138. See KONST. RF (1993) arts. 71–72.

139. See *id.* art. 73.

140. See *id.* art. 78.

141. See *id.* art. 78(1).

142. See *id.* art. 78(2).

143. See *id.* art. 78(4).

144. See *id.* art. 78(5).

145. See *id.*

146. See *id.* art. 78(6).

147. See Peter Krug, *Departure from the Centralized Model: The Russian Supreme Court and Constitutional Control of Legislation*, 37 VA. J. INT'L L. 725, 726–27 (1997).

gin with distinct and defined federal powers to enable cohesiveness between the regions.

In theory, the Russian Constitution provides for this definition. Article 71 sets forth the areas of sole federal jurisdiction.¹⁴⁸ Article 72 defines the jurisdictional areas that the central and regional governments share.¹⁴⁹ Article 73 states that an area not covered by either Article 71 or Article 72 falls within Russian Federation subjects' jurisdiction.¹⁵⁰

Article 71 of the Russian Constitution provides an illustrative list of 18 areas over which the Russian Federation exerts sole jurisdiction.¹⁵¹ This list encompasses a wide range of topics necessary and appropriate for central control in a federal setting. These areas include: adoption of the Constitution; definition of the federal structure; determination of basic federal policy in areas such as the economy and the environment; establishment of the framework for a single market; issues concerning the federal budget, taxes, and trade relations; national defense; federal judicial system; and regulation of intellectual property.¹⁵² Not surprisingly, the Constitution's list of areas of federal jurisdiction is borrowed entirely from the Federation Treaty.¹⁵³

It is questionable today whether these areas are firmly within the federal government's sole jurisdiction. Initially, the Power-Sharing Treaties included a provision that detailed the areas of sole central government jurisdiction.¹⁵⁴ These provisions were nearly identical to the list of areas already established in Article 71 of the Constitution. In subsequent agreements, however, the provision changed. Instead of detailing the areas of central government jurisdiction, the Russian Federation's responsibilities to the region are listed under the respective Power-Sharing Treaty.¹⁵⁵

148. See KONST. RF (1993) art. 71; see also GORDON B. SMITH, REFORMING THE RUSSIAN LEGAL SYSTEM 99 (1996).

149. See *id.* art. 72.

150. See *id.* art. 73. Article 76(4), read in conjunction with Article 73, allows the subjects to legislate in areas not enumerated in Articles 71 or 72. See Peter Krug, *Departure from the Centralized Model: The Russian Supreme Court and Constitutional Control of Legislation*, 37 VA. J. INT'L L. 725, 764 (1997).

151. See KONST. RF (1993) art 71(a)-(r).

152. See *id.*

153. See Sharlet, *Prospects*, *supra* note 20, at 119.

154. This version of the provision was included in the first four treaties with Tatarstan, Kabardino-Balkar, Bashkortostan, and Northern Ossetia. See *Federalism*, *supra* note 11, at 262.

155. See *id.*

The later provisions provide that both the federal government and regional governments will implement all necessary measures in areas of joint jurisdiction.¹⁵⁶ In addition, the federal government is expected to enact all other laws or regulations required by the Power-Sharing Treaty and participate in the development of programs for social and economic development of the region. Unless federal law provides otherwise, both the federal and regional governments select the candidates for heads of territorial subdivisions located on regional territory.¹⁵⁷ This same provision in other Power-Sharing Treaties assigned federal responsibility to such areas as regional programs of national language and culture and national originality, conversion of defense enterprises, and the structural rebuilding of the economy.

2. Regional Jurisdiction

The provisions on the jurisdiction of the regions in the Power-Sharing Treaties mirror the provisions concerning federal jurisdiction. In the early Agreements, the provision on the regional government's jurisdiction included a long list of regionally controlled areas, similar to that of the federal government's jurisdiction.¹⁵⁸ This list tended to be a miniature version of the federal government's authority. For example, where the federal government's jurisdiction extended to the federal constitution, federal healthcare programs or nomination of federal judges and prosecutors, the regional government's authority would cover the regional constitution, regional programs of healthcare or nomination of regional judges and prosecutors.

Some of the early Power-Sharing Treaties also included the Article 73 language, giving all power outside of federal and joint jurisdiction areas to the subjects.¹⁵⁹ Later treaties, however, tend to assume the existence of Article 73. In these treaties, the subjects' responsibilities again mirror those of the federal provision in that they require the region to cooperate with the central government in implementing the provisions of the Power-Sharing Treaty

156. *See id.* at 297.

157. *See id.*

158. *See id.* at 254.

159. *See id.* at 266. "The jurisdiction of the Republic of Northern Ossetia includes . . . other jurisdiction, not related to the authority of the Russian Federation and joint authority of the Russian Federation and the Republic of Northern Ossetia." *Id.*

in areas of joint jurisdiction.¹⁶⁰ This provision of the subjects' responsibilities under the Power-Sharing Treaty also included topics similar to the federal jurisdiction provision. The regional government participated in programs for social and economic development of the region, support for defense enterprises, and development of culture and languages.¹⁶¹

3. Joint Jurisdiction

Where the federal and regional governments share jurisdiction, the Power-Sharing Treaties include two important provisions. The first provision lists the areas of joint jurisdiction shared between the central and regional governments. The second provision addresses how the powers of joint jurisdiction will be shared between the executive branches of the federal and regional governments.

The list of joint jurisdiction areas underwent an interesting transformation throughout treaty signing process. Early treaties primarily reiterated the list of areas of joint jurisdiction that were already enumerated in article 72 of the Constitution. Later in the process, however, the regions began to reference and affirm the existence of the areas of joint jurisdiction as enumerated in the Constitution and then listed further areas of particular concern to the individual region.¹⁶² Moreover, the provision has begun to read like a preamble. It states:

Proceeding from geographic, economic, social, national-cultural and other peculiarities [of the region], the following issues, beyond those established by article 72 of the Constitution of the Russian Federation, fall within the joint jurisdiction of the organs of state power of the Russian Federation and the organs of state power [of the region].¹⁶³

A more recent version of the provision keeps the preamble and omits the reference to Article 72. It then adds this final paragraph after listing the areas of joint jurisdiction:

Further questions of joint jurisdiction of the Russian Federation and [the region] may be addressed by supplements to this treaty or the signing of a new treaty on the delimitation of jurisdiction

160. *See id.* at 358.

161. *See id.*

162. *See id.* at 335.

163. *See id.*

and powers; [when this takes place, though,] there shall be no withdrawal or revision of the jurisdiction of the Russian Federation or the joint jurisdiction of the Russian Federation and the subjects, established accordingly by articles 71 and 72 of the Constitution of the Russian Federation.¹⁶⁴

The list of joint jurisdiction areas enumerated in the Federation Treaty and Constitution were meant to apply to a group of republics and regions. Therefore, it is natural that the areas are broad in scope and generally defined. The areas include: ensuring regional and federal constitutions (or charters) and laws in accordance with one another; protecting the rights and freedoms of people, citizens and national minorities; ensuring lawfulness (law and order); addressing general issues of development, education, science, culture, sport and tourism; social security and health care; protecting the institutions of family, parenthood and childhood; controlling the use and disposal of natural resources on the territory of the region; cooperation and coordination in fighting catastrophes, natural disasters and epidemics; and establishing the general principles of taxation.¹⁶⁵

Later Power-Sharing Treaties, on the other hand, focused on economic development or specific concerns of the region in question. Examples of these include: provisions aimed at structural rebuilding of the economy of the region; functionality of the fuel/energy (or defense) complex of the region; the creation of a free economic zone on the territory of the region; the cultivation and realization of federal special purpose programs of social-economic development of the region; inter-budgetary relations between the central government and the region; questions of the protection of military personnel and resettlement of those leaving military service; and questions of migration of population onto the territory of region.¹⁶⁶

Most of the time, the specific concerns of the regions relate to problems with the transition from communism to capitalism, or are environmental or geographic in nature. Some regions are concerned about the effect of destruction of nuclear or chemical warheads.¹⁶⁷ The Republics of Buryatiya and Irkutsk *oblast*, on the

164. See *id.* at 382.

165. See KONST. RF (1993), art 72; *Federalizm*, *supra* note 11, at 255.

166. See *id.* at 329, 336, 342, 356.

167. See *id.* at 280.

other hand, are concerned about the environmental degradation of Lake Baikal, on which they border.¹⁶⁸ The Republic of Northern Ossetia is seeking to work with the central government on the border situation with Georgia and Southern Ossetia.¹⁶⁹

The second provision concerns the areas of joint jurisdiction that are included in every Power-Sharing Treaty, with the exception of three of the earliest: Northern Ossetia, Bashkortostan and Tatarstan.¹⁷⁰ This provision states:

The power of organs of executive power of the Russian Federation and organs of executive power of [the region] on concrete issues of joint jurisdiction, established by article 72 of the Constitution of the Russian Federation and listed in . . . this Treaty, shall be determined by corresponding agreements, unless otherwise established by federal law.¹⁷¹

Furthermore, the supplemental agreements are treated as "indivisible components" of the Power-Sharing Treaty and may be signed simultaneously with the signing (by the Federation's Representative and the region's administrative head) of the Power-Sharing Treaty, and also at any time after its entry into force.¹⁷²

D. The Supplemental Agreements

From the federal government's perspective, it was important for Power-Sharing Treaties to provide for the regions' acquiescence to the federal structure as embodied by the 1993 Constitution. Inevitably, it was necessary to have separate negotiations on particularly difficult points. This kept the Power-Sharing Treaty from being too large and unwieldy, and allowed present and future topics of negotiation to be conducted within the Power-Sharing Treaty framework. Therefore, most of the Treaties state that the Power-Sharing Treaty and future agreements will cover certain areas.

168. See *id.* at 277, 329.

169. See *id.* at 266.

170. Even Tatarstan's Agreement includes a provision which allows supplemental agreements to be signed after the entry into force of the initial Power-Sharing Treaty. *Treaty Between the Russian Federation and the Republic of Tatarstan: "On Delimitation of Jurisdictional Subjects and Mutual Delegation of Authority Between the State Bodies of the Russian Federation and the State Bodies of the Republic Tatarstan"*, (visited Nov. 3, 1998) <<http://www.tatar.ru/english/append20.html>>.

171. *Federalism*, *supra* note 11, at 383.

172. See *id.*

Another important distinction between the Power-Sharing Treaty and the supplemental agreements is the expiration periods. The latter have a specific time period of five years, after which either side may give notice to end the Agreement.¹⁷³ The term begins on the date the agreement is signed and automatically renews for another five-year period unless a party gives notice within six months of the end of the term.¹⁷⁴ The Power-Sharing Treaty, on the other hand, has no set term and no express means for either side to withdraw.

Of the thirty agreements this paper examined (covering thirty-two of the eighty-nine subjects of the Russian Federation), seventeen include supplemental agreements.¹⁷⁵ These supplemental agreements cover topics ranging from universally important issues (economic cooperation, budgetary cooperation, and protection of the environment and use of natural resources) to issues important only to a lone region (e.g., delimitation of powers in the system of control of the Northern sea lanes - Sakha, development of hop-growing - Chuvashiya, and use and protection of water sources - Khabarovsk). In addition, the number of supplemental agreements per region ranges from as few as three to as many as eighteen.

1. The Supplementary Agreements in General

The supplementary agreements cover topics that can be broadly grouped into four major categories: (1) the economy/finances of the subjects; (2) the control, use and division of natural resources in the region between federal and regional governments; (3) present and future environmental problems of the region; and (4) the social welfare of the citizens/residents of the region. Any set of agreements for a given region will have one or more agreements on topics falling within these general groups.

A good example of the broad sweep of topics within a region's supplemental agreements is that of Tatarstan. Tatarstan's agreements, the first signed by any of the regions, provided a

173. See *id.* at 671.

174. See *id.*

175. This paper analyzes supplemental agreements from the following regions: Tatarstan, Bashkortostan, Yakutiya, Buryatiya, Udmurt Republic, Komi Republic, Chuvash Republic, Krasnodarsk *krai*, Khabarovsk *krai*, Kaliningrad *oblast*, Sverdlovsk *oblast*, Orenburg *oblast*, Irkutsk *oblast*, Sakhalin *oblast*, Nizhegorod *oblast*, Rostov *oblast* and St. Petersburg *oblast*.

model for future agreements. The first agreement provides an overview of all of the agreements and concerns economic cooperation.¹⁷⁶ This agreement generally sets forth the areas in which the federal and regional government will cooperate. Another important point seen in both the Tatarstan agreement and other agreements is the affirmation of a single open market and free movement of goods and services.¹⁷⁷

Moreover, this agreement also provides an alternative to the typical expiration clause found in nearly every other supplemental agreement signed by the federal government. Most clauses have a five-year term that is automatically renewed unless one party gives written notice at least six months prior to the expiration of the term.¹⁷⁸ This clause has a five-year term (with no automatic renewal) and allows a party to terminate the agreement (with one year's notice) if the other party does not fulfill its obligations.¹⁷⁹ This latter clause is included in only one other agreement made with the Republic of Sakha on economic questions.¹⁸⁰ These two agreements were both signed in early 1992, so it may be assumed that the federal government no longer uses such a clause in its negotiations.

Because Tatarstan is a big oil producing region, one of its agreements concerns cooperation in the areas of transport of oil and oil by-products. This agreement, which was signed in 1993, sets forth the principle that Tatarstan and its oil-producing enterprises will exercise as much autonomy as possible under federal law in producing and transporting oil from the territory of the republic.¹⁸¹

In many of its supplementary agreements, Tatarstan does not seek any definitive advantage, but merely attempts to include in the agreements general statements or expressions of its sovereignty. These agreements tend to be somewhat hortatory in nature. They include the agreements on protection of the environ-

176. See *Federalism*, *supra* note 11, at 416. Similar agreements are signed with Bashkortostan, Yakutiya (Sakha), Krasnodar, and Orenburg. See *id.*

177. See *id.* at 692. "The Parties shall ensure the unity of the economic area, free movement of goods, services and financial resources in accordance with the legislation of the Russian Federation." *Id.*

178. See *id.* at 671.

179. See *id.* at 418.

180. See *id.* at 487.

181. See *id.* at 419.

ment;¹⁸² higher education;¹⁸³ joint delegation of jurisdiction and powers in the defense industry;¹⁸⁴ the war on crime;¹⁸⁵ and military matters.¹⁸⁶

Other agreements are very general in nature, reading like a long list of areas for future cooperation. These agreements, nonetheless, generally include one main provision fundamental to relations in that area. For instance, Tatarstan's agreement on property states that government property on the territory of Tatarstan belongs to the government of Tatarstan, unless it belongs to one of the Russian Ministries for Defense or Security.¹⁸⁷

Another example of these single-idea agreements demonstrates that these agreements are generally in accordance with the federal constitution and federal law. The agreement on customs with Tatarstan states that the republic is part of a single Russian customs area and the head of the Tatarstan regional customs administration will be named by the Russian Customs Committee in agreement with the Tatarstan government.¹⁸⁸ This provision corresponds to article 74 of the 1993 Constitution. Paragraph 1 states: "No customs frontiers, duties, levies, or any other barriers for free movement of goods, services, or financial means may be established on the territory of the Russian Federation."¹⁸⁹

182. The agreements in this area cover the following: Protection of the environment and use of natural resources - Bashkortostan, Northern Ossetia, Yakutiya, Udmurtiya, Komi, Sverdlovsk, Irkutsk, Nizhny Novgorod, St. Petersburg; Establishment of conditions of economic activities on the territory of the reservoir zone of Lake Baikal - Buryatiya, Irkutsk; Destruction or conversion of objects for production of chemical weapons and liquidation of the after-effects of production of chemical weapons - Chuvashiya. *See id.* at 442, 480, 492, 527, 540, 572, 584, 653, 714, 743, 827.

183. Similar agreements are signed with Bashkortostan, Yakutiya, Komi, Krasnodarsk, Rostov, and St. Petersburg. *See id.* at 465, 498, 570, 592, 805, 829.

184. Similar agreements are signed with Bashkortostan, Northern Ossetia, Udmurtiya, Sverdlovsk, Orenburg, Irkutsk, Nizhny Novgorod, and St. Petersburg. *See id.* at 451, 472, 542, 656, 700, 705, 745, 815.

185. Similar agreements are signed with Bashkortostan, Udmurtiya, Krasnodarsk, Khabarovsk, Kaliningrad, Sverdlovsk, and Rostov. *See id.* at 454, 551, 603, 621, 648, 678, 773.

186. *See id.* at 420, 423, 429, 432, 438.

187. *See id.* at 425. Similar agreements are found with Northern Ossetia, Bashkortostan, Udmurtiya, Krasnodarsk, Sverdlovsk, Rostov, and St. Petersburg. *See id.* at 448, 470, 536, 606, 682, 804, 835.

188. *See id.* at 427. Similar agreements have been signed with Bashkortostan, Yakutiya, Udmurtiya, Krasnodarsk, and Rostov. *See id.* at 456, 496, 553, 612, 799.

189. KONST. RF (1993), art. 74(1).

Another very important agreement for the Republic of Tatarstan, demonstrating one of the advantages of the republics over the other federal subjects, is the agreement on bank affairs, monetary-credit and currency policies.¹⁹⁰ Unlike the similar agreements signed by other regions, this agreement establishes the basis for the relationship between the Central Bank of the Russian Federation and the National Bank of the Republic of Tatarstan.¹⁹¹ The Power-Sharing Treaty grants Tatarstan the right to establish a national bank.¹⁹² The Republic of Bashkortostan is the only other region that has this right. Unlike Tatarstan, Bashkortostan has not yet followed up on this right with the required separate agreement.¹⁹³

2. Some Specific Agreements

a. Budgets and Taxes

The Russian federal government signed a supplemental agreement with nearly every Power-Sharing Treaty region concerning the relationship of the federal and the regional budgets.¹⁹⁴ This is a key area for agreement between the central government and the subjects. Many of Russia's current critical economic problems are a result of the budgetary problems poor tax collection created throughout the country.¹⁹⁵

One purpose of these supplementary agreements is to accelerate the settling up process between budgets.¹⁹⁶ In fact, these supplementary agreements are only a first step toward establishing the system of tax receipts sharing at the federal and regional level. Moreover, recent events show the ineffectiveness of this system. A recent presidential decree stated the federal government will sign a new type of agreement on finances with all of the regions by

190. *See id.* at 435.

191. *See id.*

192. *See id.* at 248.

193. *See id.* at 261.

194. This type of agreement is signed with Tatarstan, Bashkortostan, Yakutiya, Udmurtiya, Komi, Krasnodarsk, Khabarovsk, Sverdlovsk, Irkutsk, Nizhny Novgorod, Rostov, and St. Petersburg. *See id.*

195. The tax system is established by the Constitution. In this system, the federal government collects taxes and, with part of the proceeds, helps fund regional development programs. The regional governments also levy taxes to make up shortfalls in their budgets. *See Berke, Chechnya, supra* note 75, at 879.

196. *See Federalizm, supra* note 11, at 576.

July 5, 1998.¹⁹⁷

The present supplemental agreements are still useful as part of the Power-Sharing Treaty process. As with many other steps in this process, they demonstrate the federal government's supremacy in certain areas. As seen previously, many provisions in agreements that have been signed in more than one region are the same or similar. Two of the provisions are key because they bring the budgetary process firmly under federal control.

The first avers that "the general principles of taxation . . . are determined according to the legislation of the Russian Federation."¹⁹⁸ The second provision provides: "The formation of the budget [of the region], and also the joint relations between the federal budget and the budget [of the region] shall be implemented in accordance with the legislation of the Russian Federation."¹⁹⁹

A "federal fund for financial support of the regions" forms the basis for the budgetary relationship between the federal and regional governments."²⁰⁰ Each region pays its share into this fund, the amount of which is determined yearly on the basis of certain economic criteria. This fund is the basis for payments into federally sponsored social welfare programs in each region.²⁰¹ This set-up has naturally led to a situation where some regions pay more into the fund than what they receive (donor regions) and some pay less (recipient regions). Since some donor regions consider this situation inequitable, these budget agreements are a way for them to minimize (as much as possible) the payments they need to make.

The first couple of budget agreements (with Tatarstan and Bashkortostan) actually spelled out the taxes from which the region's payments into the fund would come. These included a profit tax of thirteen percent, income tax on individuals of one percent, a value-added tax of up to seventy five percent, and an income tax of up to one hundred percent on foreign economic activities.²⁰² Later agreements, however, have merely stated that the

197. Khristenko, *Chelyabinsk Sign First Treaty on Improving Finances*, 3 IEWS RUSSIAN REGIONAL REPORT, June 6, 1998, at 10.

198. See *Federalism*, *supra* note 11, at 750.

199. See *id.* art. 2.

200. See *Federalism*, *supra* note 11, at 513.

201. See *id.*

202. See *Federalism*, *supra* note 11, at 434.

region will fulfill the obligation of "its powers, [delegated] to the Russian Federation, [by making] payments into the federal budget . . . [from sources and in amounts], yearly established by the Federal law on the federal budget for the corresponding year."²⁰³

b. Natural Resources

Russia is one of the world's largest potential suppliers of oil, natural gas and many other natural resources. Due to its federation system, control over those resources is not solely in the hands of the federal government. As many Western oil companies can attest, regional governments largely control the development and distribution of these resources. Naturally, oil, gas, mining and logging industries are important for economic development in the regions and in Russia as a whole. It is no surprise, then, that many of the regions have signed supplementary agreements in the area of natural resources.²⁰⁴

Many of the Power-Sharing Treaties leave to future agreements, the question of "the division of natural resources on the territory [of the region]" between federal and local governmental control.²⁰⁵ Some supplementary agreements include lists of crude oil deposits that fall under federal and state control.²⁰⁶ For the most part, however, the agreements on natural resources are based on the premise that "[t]he land, the depths of the earth, the waters, and other natural resources, located on the territory [of the region], being the property of the people, shall be used and protected as the basis of their life and activities."²⁰⁷ The parties to the agreements generally accept that the presence of natural resources on the territory concerns federal, regional and joint jurisdic-

203. *Id.* at 576.

204. Agreements on various aspects of the natural resources of the regions have been signed. They include the following: Protection of the environment and use of natural resources - Bashkortostan, Northern Ossetia, Yakutiya, Udmurtiya, Komi, Sverdlovsk, Irkutsk, Nizhny Novgorod, St. Petersburg; Fuel-energy complex - Bashkortostan, Yakutiya, Komi, Khabarovsk, Sverdlovsk, Rostov; Control, use and disposal of lands and other natural resources - Northern Ossetia, Udmurtiya, Khabarovsk, Sverdlovsk, Orenburg, Irkutsk, Sakhalin, Rostov, St. Petersburg; Mining industry - Yakutiya; Mineral-raw material base - Buryatiya; Mineral use - Irkutsk, Rostov; Control, use and disposal of forest resources - Udmurtiya, Sverdlovsk, Sakhalin; Development of hop-growing - Chuvashiya; Use and protection of bodies of water - Khabarovsk. *See generally id.*

205. *See id.* at 322.

206. *See id.* at 547.

207. *Id.* at 483.

tions.²⁰⁸

While the natural resources covered in the agreements range as widely as a list of natural resources in Russia, including oil and oil by-products, mining (coal, tin, antimony), territorial seas and rivers, and forests, the agreements mostly focus on the oil (fuel)-energy complex. Many of these agreements contain declarations of future cooperation with assistance to and support for energy industries in the regions.²⁰⁹ The agreements also include several substantive points of interest in this area.

Since the energy industries were, and for the most part still are, state owned, many of the agreements include provisions concerning the possible privatization of these enterprises. Specifically, any privatization of energy enterprises located in the region must take into account the privatization programs of the regional government and any agreements the region may have reached with the Federation Ministry of fuel and energy.²¹⁰

Although rights to oil and natural gas are important, the transport of these resources to their final destination is just as important. Consequently, many of the key provisions in these natural resources agreements concern the regions' rights to distribute their product freely. A major consideration for the regions is non-discrimination in access to the federally controlled system of pipelines.²¹¹

The regions want to ensure that their oil and gas enterprises have "equal access" to the pipeline system and uniform rates for the "transport of oil, oil products and natural gas on the territory [of the region] and the Russian Federation" regardless of whether the enterprise is sending crude oil, refined oil, or natural gas.²¹² The regions also seek to eliminate discrimination in government procurement of oil and gas so that "[t]he enterprises of the fuel-energy complex [of the region] have an equal right to receive government orders for delivery and shipment of oil and oil products

208. *See id.*

209. *See id.* at 446.

210. *See id.*

211. *See id.* art. 6. "The transport of oil and oil products by main oil pipelines and oil product pipelines shall be implemented on the basis of calculated balances and schedules of output, deliveries, refinement of oil, production of oil products, and confirmation by the Ministry of fuel and energy of Russia." *Id.*

212. *See id.* art. 7.

for government needs."²¹³

Since the Russian government still subsidizes the cost of energy for its citizens, it is hard for oil and gas companies to make money selling their products only to the government. Therefore, energy companies seek to sell their oil and gas to other countries at world prices so that they can earn a profit and receive payments in currencies other than the ruble.

There are two important provisions regulating this area. Because both provisions benefit the federal government, there is fear that oil and gas producers will sell all of their output at world market prices.²¹⁴ First, the federal and regional authorities must agree yearly on the volume of oil and gas output that may be sold outside of the Russian Federation.²¹⁵ Second, both regional and federal law will regulate the regional oil and gas producers who sell their products beyond either regional or Russian borders.²¹⁶

c. International and Foreign Economic Ties

The supplementary agreements regarding international and foreign economic ties are important for two reasons. First, they foster economic recovery in the regions. The regions are geographically situated to attract desired foreign investments, and provide the opportunity to sign economic agreements with foreign enterprises and governments. Second, they demonstrate the increasing importance of this provision to the regions. Over the course of signing Power-Sharing Treaties and their associated supplementary agreements, the provision on international and economic ties has had progressively more influence on the structure of the federal/regional relationships.

The agreements on international and foreign economic ties demonstrate three main points. First, international and foreign economic relations issues are within the joint jurisdiction of the federal and regional governments.²¹⁷ In fact, most of the supple-

213. See *id.* art. 6(2).

214. This scenario is similar to that which happened in Nigeria under General Sani Abacha. The people of Nigeria could not easily obtain fuel in their country, or paid handsomely for it, because the oil was sold outside of the country at world prices. JOHN VICKERS & GEORGE YARROW, *PRIVATIZATION: AN ECONOMIC ANALYSIS*, 243 (1988).

215. See Bashkortostan Agreement on the Fuel-Energy Complex, art. 5; *Federalizm*, *supra* note 11, at 446.

216. See *id.* art. 9.

217. Supplementary agreements in this area are found with the following: Tatarstan, Bashkortostan, Northern Ossetia, Yakutiya, Buryatiya, Komi, Sverdlovsk, Orenburg,

mentary agreements involving international economic ties include provisions that separate the powers into either sole regional control or joint jurisdiction.²¹⁸

The agreements also allow for cooperation between the federal and regional governments on the concepts underlying the international and foreign economic ties in question.²¹⁹ The agreements also require regular annual meetings of the representatives of the federal and regional Ministries of Foreign Economic Affairs.²²⁰

Finally, while the Power-Sharing Treaty provisions have given the "organs of state power of the Russian Federation" the right to coordinate the foreign economic ties of the region, the supplementary agreements allow more participation by the region in this process in that:

The control of implementation of foreign trade activities shall be performed by the corresponding federal organs of executive power and the organs of executive power [of the region] with the goal of observing the provisions of federal law . . . of the Russian Federation on foreign trade activities and with the goal of protecting the economic and political interests of the Russian Federation and [the region].²²¹

Notably, the subject's right to sign international and foreign economic agreements has gained more prominence in the negotiations of the Power-Sharing Treaties and their supplemental agreements. In the earliest treaties, reference to this right was included in the list of areas subject to joint federal and regional jurisdiction. Tatarstan, Bashkortostan, Buryatiya, Northern Ossetia, and Komi have developed that right and signed a more detailed supplementary agreement on international economic ties. The later treaties, however, have included a specific provision for international and foreign economic ties. The separate provision of

Sakhalin, Nizhny Novgorod. See *Federalizm*, *supra* note 11, at 437, 463, 478, 518, 529, 559, 674, 698, 733, 748.

218. See Orenburg Oblast Agreement on International and Foreign Economic Ties, art. 1, 2; *Federalizm*, *supra* note 11, at 698.

219. See Northern Ossetia Agreement on Foreign Economic Ties, art. 1; *Federalizm*, *supra* note 11, at 478. "The government of the Russian Federation and the government of the Republic of Northern Ossetia - Alaniya shall agree upon the concepts and programs of development of foreign economic ties and coordinate them within the framework of issues falling within the sphere of joint jurisdiction." *Id.*

220. See Northern Ossetia Agreement on foreign economic ties, art. 4.

221. See *id.* at 676.

the later treaties generally included sufficient detail such that no supplemental agreement on the topic was necessary. As a result, it is unlikely that regions signing later treaties also signed supplemental agreements.

E. The Federal Law on the Treaties and Agreements

On April 25, 1997, the Russian Duma legitimized the process of signing Power-Sharing Treaties and their supplemental agreements even more by adopting the "Federal Law on the Principle and Order of the Delimitation of Jurisdiction and Powers between the Organs of State power of the Russian Federation and the Organs of State Power of the Subjects of the Russian Federation (Federal Law)."²²² Arguably, this law could either help federalize Russia or undermine the entire treaty process.²²³

This law sets forth eight basic principles to guide all future negotiations for Power-Sharing Treaties or supplementary agreements.²²⁴ These eight principles are:

1. Constitutionalism, i.e., no federal laws or regional constitutions or laws may redistribute or exclude the division of jurisdiction established in the Federal Constitution.²²⁵
2. Supremacy of the Constitution of the Russian Federation and federal law over any treaties or agreements signed.²²⁶
3. Equality of the Russian Federation's subjects in the preparation and conclusion of treaties and agreements.²²⁷
4. The signing of a treaty or agreement with one subject should not intolerably harm the rights or interests of the other subjects of the Federation.²²⁸
5. Coordination of the Russian Federation's interests and the interests of the subjects of the Russian Federation.²²⁹

222. See Federal Law on the Principle and Order of the Delimitation of Jurisdiction and Powers between the Organs of State power of the Russian Federation and the Organs of State Power of the Subjects of the Russian Federation [hereinafter Federal Law], (Mar. 15, 1994) <http://www.friends-partners.org/oldfriends/constitution/russian-const-conclud.html>; see also *Federalism*, *supra* note 11, at 838.

223. See *Federalism*, *supra* note 11, at 142.

224. See *id.*

225. See Federal Law, *supra* note 222, art. 3.

226. See *id.* art. 4.

227. See *id.* art. 5.

228. See *id.* art. 6.

229. See *id.* art. 7.

6. Voluntariness of concluding a treaty or agreement.²³⁰
7. The principle of being provided with financial, material-technical and other resources.²³¹
8. Openness in concluding treaties or agreements.²³²

Federal law provides procedures for concluding treaties and agreements, e.g. language (Russian) and terms of the parties to the treaties or agreements.²³³ The law also addresses the adoption or rejection of the treaties or agreements, as well as signatures, publication and entry into force.²³⁴ Most interestingly, this law prescribes the issues, which may be covered by the treaties or agreements.

The authority of a Power-Sharing Treaty is three-fold. It may: (1) actualize the jurisdiction and powers that the Constitution and federal law establish; (2) address the conditions and implementation procedures of the powers delimited by the treaty; and (3) cover the forms of cooperation and coordination (and any other related questions) during the execution of the provisions of the treaty.²³⁵

Additionally, supplemental agreements address other concerns. A supplemental agreement can cover the following issues: (1) the transfer of powers; (2) the conditions and procedure for transfer of implementation of powers; (3) the material-financial basis of transfer of powers; and (4) the forms of cooperation and coordination (and other related questions) during the execution of the provisions of the agreement.²³⁶

Similar to many of the Power-Sharing Treaties themselves, this federal law provides guidance for resolving disputes arising from a treaty or agreement. Simply, the parties should negotiate disputes using the agreed conciliatory procedures.²³⁷ If this process does not resolve the matter, the dispute should be referred to the appropriate court, including the Constitutional Court, when necessary.²³⁸

230. *See id.* art. 8.

231. *See id.* art. 9.

232. *See id.* art. 10.

233. *See id.* arts. 15, 16, 19, 20.

234. *See id.* arts. 23, 24, 25, 26, 28.

235. *See id.* art. 17.

236. *See id.* art. 18.

237. *See id.* art. 29(1).

238. *See id.* arts. 29(3), 30.

This law sets the stage for examining the effect of signing Power-Sharing Treaties on federal-regional relations and the federal structure that binds them. Moreover, this law can be viewed as a proper structure for, and the next logical step in, the treaty-signing process by allowing the supremacy of the Constitution to be utmost in all negotiations. Such a detailed law, however, may end up taking away the administration's flexibility in negotiation. This may lead to a stalling or disintegration of the Power-Sharing Treaty process.

III. HOW THE POWER-SHARING TREATIES AFFECT RUSSIA'S FEDERALISM

"Federalism [is] no longer an issue" - soon after the adoption of the 1993 Constitution, Yeltsin's nationalities adviser Emil Paen.²³⁹

A. *The Constitutional Federal Structure*

*"The multinational people of the Russian Federation shall be the vehicle of sovereignty and the only source of power in the Russian Federation."*²⁴⁰

In examining the asymmetry of the Russian Constitution, it is important to remember the history of this vast and multinational country. The forces of history have built a country through and around hundreds of different ethnic groups.²⁴¹ It is, perhaps, unavoidable that the Russian Constitution gives some of the Federation's subjects greater autonomy within the federal structure than others.²⁴²

A federal state has been defined as consisting of "two levels of government ruling the same land and people, each having at least one area of action in which it has guaranteed autonomy."²⁴³ Many countries, including the United States, Canada, Brazil, Germany, Australia, India and Nigeria use the federal system of government.²⁴⁴ As in Russia, it is not uncommon to find that the

239. See AHDIEH, *RUSSIA'S REVOLUTION*, *supra* note 2, at 133.

240. KONST. RF (1993) art. 3(1).

241. See Robert Sharlet, *The Prospects of Federalism In Russian Constitutional Politics*, 24 PUBLIUS J. FED. 115, 118 (1994).

242. See *id.*

243. See Lynn & Novikov, *REFEDERALIZING*, *supra* note 23, at 188 (citing WILLIAM H. RIKER, *FEDERALISM: ORIGIN, OPERATION, SIGNIFICANCE* (1964)).

244. See Ronald L. Watts, *The Contemporary Relevance of the Federal Idea*, 1995 ST.

federal state is composed of many nationalities.²⁴⁵ It is thought that the federal system may allow “a close institutional approximation to the multinational reality of the contemporary world” by acknowledging “the need for large-scale political and economic organization with the recognition and protection of ethnic, linguistic, or historically-derived diversity.”²⁴⁶

Moreover, the trend in federalism is to accept asymmetry in the governmental structure in order to further the integration of regional units into the Federation.²⁴⁷ There are a number of examples in present day systems of such accommodation. The autonomous communities of Spain and the European Union with different speeds for different members are examples of such accommodation.²⁴⁸ Perhaps the most pertinent example for the Russian Federation, and one that has been looked to as a guiding light for Russia’s federal system, is Canada.²⁴⁹ From the beginning, Canada’s system has included an asymmetrical relationship with Quebec, which is considered a “distinct society” within the country.²⁵⁰

On the basis of the definition of a federal system and the trend toward including asymmetries in a federal system, it is easy to see how Russia came to its current state of federalism. Yet even for a typical constitutional form, the Russian Constitution shows very early on that it has mixed feelings about granting some regions special treatment.

Article 5 is a perfect example, since it declares the regions equal, yet gives greater recognition to the republics.²⁵¹ The republics, *krais*, *oblasts*, *okrugs* and federal cities are considered to be equal subjects of the Federation.²⁵² All of the subjects are also considered to “be equal among themselves in relations with the

LOUIS-WARSAW TRANSATLANTIC L.J. 109, 110 (1995). Others include Venezuela, Argentina, Mexico, Austria, Belgium, Switzerland, and Malaysia. *See id.*

245. *See id.* at 116.

246. *See id.* at 110.

247. *See id.* at 111.

248. *See id.*

249. *See id.* at 118.

250. *See id.* Quebec still may opt out of Canada, although recent years have seen the Meech Lake Accord and Charlottetown Consensus which have tried to find an acceptable level (to both Quebec and the other provinces) of special treatment. *See id.*

251. KONST. RF (1993), art. 5(1).

252. *See id.*

Federal organs of state power.”²⁵³ The same constitutional article, however, allows republics to have their own constitution, while the other subjects may have only a charter.²⁵⁴ This inequity is further reinforced in Article 66 that states that the Russian Constitution and the subject’s constitution, in the case of a republic, or charter, for every other region define the status of a region.²⁵⁵

The Russian Constitution also recognizes the special status of the republics by allowing them the “right to institute their own state languages,” to be used alongside the Russian language, the state language of the Russian Federation, in all official proceedings.²⁵⁶ The constitutional asymmetries are not as drastic as they were before. The republics had previously enjoyed a more privileged status than other regions in areas such as taxation and natural resources and even authority for dual citizenship.²⁵⁷

B. *The Treaties’ Effect on the Federal Structure*

“The jurisdiction and powers of the organs of state power of the Russian Federation and the organs of state power of the subjects of the Russian Federation shall be delimited under this Constitution, Federal and *other Treaties on the delimitation of jurisdiction and powers* (emphasis added).”²⁵⁸

In examining the Power-Sharing Treaties, it is important to look at their purpose. The Russian central government is concerned with preserving a Federation. The subjects of that Federation are trying to establish their autonomy within the federal structure. Although both sides may have gotten most of what they each want thus far, the concern is whether the two sides can reconcile and accommodate their further wishes in the future as well.

It is important to note that this is not the first time in history that Russia has used Power-Sharing Treaties to consolidate the position of its government. In the early years after the Revolution, the RSFSR needed to use a series of treaties with some of the later Union Republics to bring together the Union Republics into what would later become the Soviet Union.²⁵⁹ The first treaty was with

253. *See id.* art. 5(4).

254. *See id.* art. 5(2).

255. *See id.* art. 66(1), (2).

256. *See id.* art. 68(2).

257. *See* AHDIEH, *RUSSIA’S REVOLUTION*, *supra* note 2, at 133.

258. KONST. RF (1993), art. 11(3).

259. *See* NATIONALITIES, *supra* note 1, at 36.

Azerbaijan in September 1920.²⁶⁰ Later in 1920, the Russian government signed a treaty with Ukraine and then in 1921, it signed treaties with Byelorussia, Georgia and Armenia.²⁶¹ Furthermore, the treaties that the RSFSR signed with these governments were not identical. The 1921 treaties were based on either the model of Azerbaijan or of Ukraine.²⁶²

The parallels between the 1920 and 1921 treaties and the present-day Power-Sharing Treaties are very close. The RSFSR was embroiled in the post-revolutionary civil war between the "red" communists and the "white" nationalists. It needed to keep or bring certain areas into the RSFSR (future Soviet Union) governmental structure. It used treaties, tailored to the individual (future Union) republics to secure their acquiescence to ally with the RSFSR.²⁶³

While the situation in Russia today cannot truly be called a civil war, the violence in breakaway Chechnya and the atmosphere of sovereignty declarations since Russia left the Soviet Union is very similar to that of post-revolutionary times.²⁶⁴ Furthermore, the present-day Russian Federation has used a series of unique treaties to keep many of its regions allied to its governmental structure.²⁶⁵

The Russian Federation crossed two major hurdles through the use of the Power-Sharing Treaty. First, despite the controversial birth of the Russian Constitution, the government generated some tacit support for the current Constitution. Over half of the regions of the Federation have signed a Power-Sharing Treaty with the federal government.²⁶⁶ Each of these treaties establishes the supremacy of the federal constitution and federal law over regional law.²⁶⁷ Variances between regions only occur when jurisdictional areas are under partial or full control of the regional government.²⁶⁸ The supremacy of the Constitution and federal law,

260. *See id.*

261. *See id.* at 37.

262. *See id.*

263. *See id.*

264. *See Moscow Rules Out Independence for Chechnya* [hereinafter *Moscow*], AGENCE FRANCE PRESSE, Aug. 19, 1997.

265. *See Lynn & Novikov, REFEDERALIZING, supra* note 23, at 199.

266. *See Marat S. Salikov, Russian and American Federation: Comparative and Legal Analysis of their Origins and Developments*, 3 TULSA J. COMP. & INT'L L. 161, 179 (1996).

267. *See id.* at 181; *see also Lynn & Novikov, REFEDERALIZING, supra* note 23.

268. *See Lynn & Novikov, REFEDERALIZING, supra* note 23, at 201-02.

however, remains constant.

In this respect, it is important to remember the controversy surrounding the adoption of the Constitution in 1993. President Yeltsin turned to a popular referendum only after every other means of adoption was deemed too undemocratic or unworkable.²⁶⁹ One of the unworkable means was the idea of getting two-thirds of the regions to approve the Constitution.²⁷⁰ At the time, there was too much resistance to the Constitution and to the manner that it provided for regional authority.²⁷¹ Now, however, forty-six of the eighty-nine regions have submitted to the authority of the federal Constitution.²⁷² If the federal government signs thirteen more Power-Sharing Treaties, it will surpass that magical two-thirds mark, albeit perhaps unintentionally.

Resorting to Power-Sharing Treaties resolved a second major problem facing the federal government: disintegrating the federation. At the time of the break-up of the former Soviet Union, many of the Russian regions began to make noises about declaring outright independence, just as the former Union Republics of the Soviet Union had done. To placate the restive regions, the Russian government signed a Federation Treaty with the Republics and signed other similar treaties with the other regions of the soon-to-be federation.

This strategy worked for a short time. Once the Constitution was adopted, however, the republics once again threatened independence. The clamor only subsided when the federal government decided to sign individual Power-Sharing Treaties with the republics.²⁷³ Targeting the most independence-minded regions and giving them more powers than provided by the Constitution kept the federation together.²⁷⁴ The process has now spread to nearly all of the regions, rather than just independence-seeking regions. Although this has made the Power-Sharing Treaty process appear more just, there are treaties that still affirm and widen the Constitution's unequal treatment of regions.

To the regions, the Power-Sharing Treaties may be considered a success. The regions were politically empowered by the at-

269. See AHDIEH, *RUSSIA REVOLUTION*, *supra* note 2, at 72.

270. *See id.* at 63.

271. *See id.*

272. *See generally* Lynn & Novikov, *REFEDERALIZING*, *supra* note 23, at 190-91.

273. *See id.* at 199.

274. *See id.* at 192.

tention that the federal government was paying to the regions' problems. Furthermore, many of the regions gained significant legal concessions from the federal government in exchange for signing the Power-Sharing Treaty. For many of the regions, these gains were made at little or no expense. The alternative of becoming independent states is much less desirable because most *oblasts*, *krais* or even republics could not survive as such. For giving up this untenable position, these regions ended up in a much better position, vis-à-vis the other regions.

Chechnya and Tatarstan provide the best examples of successfully implemented Power-Sharing Treaties. Both of these republics entered into agreements with the federal government granting them greater autonomy while remaining within the Federation. Tatarstan and Chechnya refused to sign the Federation Treaty because it gave insufficient autonomy to the republics. Chechnya resorted to a vicious guerilla war to gain its independence while Tatarstan remained within the Federation because of the federal government's promise of further autonomy.

Chechnya and Tatarstan share a common history as homelands for displaced minorities. During World War II, seven nationalities, including the Chechens and the Tatars, were deported from their homes and dispersed throughout Siberia and Central Asia.²⁷⁵ In 1941, the Volga Germans were deported to Siberia for fear that they would conspire with Hitler's army.²⁷⁶ A few years later, the Crimean Tatars were relocated because of similar fears.²⁷⁷ Soon thereafter, the Caucasus nationalities (Chechens, Ingushi, Kalmyks, Karachai and Balkars) were displaced.²⁷⁸ The Soviet authorities did not resettle most of the nationalities until the late 1950s, when Stalin's acts were repudiated.²⁷⁹ The Volga Germans and the Tatars never resettled, but were kept in their relocated "homeland."²⁸⁰

Despite their similar histories, these two republics have different cultures. The Chechen people have always been fiercely independent and had conflicts with the Soviet government. This may be a result of their geographic location. Chechnya lies on

275. See NATIONALITIES, *supra* note 1, at 102.

276. See *id.*

277. See *id.*

278. See *id.*

279. See *id.* at 105.

280. See *id.*

Russia's periphery, where, if it became an independent state, it would share borders with two sovereign states, Russia and Georgia. Conversely, the Russian Federation surrounds Tatarstan on all sides. Moreover, Chechnya is a republic that is predominantly Muslim with a population of about 1,100,000 people; approximately two-thirds of which are Chechens and one-third Russian.²⁸¹

The conflict in Chechnya began when President Yeltsin sent troops into the republic and instituted an economic blockade in response to Chechen nationalists declaring independence in late 1991.²⁸² Neither side wanted to give in, feeling confident that it had the moral and international law upper hand.²⁸³ The conflict continued until the Yeltsin administration, responding to pressure from without Russia, agreed to a peaceful resolution with the Chechen Republic.²⁸⁴

This agreement is embodied in the "Treaty on Peace and the Principles of Joint Relations between the Russian Federation and the Chechen Republic Ichkeriya" of May 12, 1997.²⁸⁵ This Treaty consists of three broad and powerful provisions. First, the Parties agreed to refrain from using force or the threat of force to solve their problems.²⁸⁶ Second, the Parties agreed to build their relations on the basis of international law.²⁸⁷ Third, the Parties agreed to cooperate in areas that are to be determined by future agreements. This Treaty is the basis for all future agreements between the Russian Federation and Chechnya.²⁸⁸

Russia and Chechnya signed two additional agreements on May 12, 1997.²⁸⁹ The overall goal of these agreements is to improve the overall economic situation in Chechnya. The goals of the first agreement are to improve the lives of the Chechen residents, and to provide compensation to the victims of the Chechen conflict and to re-establish the social-economic system in the Re-

281. See Berke, *Chechnya*, *supra* note 75, at 882.

282. See *id.* at 881.

283. Chechnya based its claim to independence on international principles of self-determination. Russia, meanwhile, relied on the right to the territorial integrity of the Russian Federation. See *id.*

284. See Berke, *Chechnya*, *supra* note 75, at 888.

285. See Chechnya Treaty; *Federalizm*, *supra* note 11, at 292.

286. See Chechnya Treaty, art. 1.

287. See *id.* art. 2.

288. See *id.* arts. 2-3.

289. See *Federalizm*, *supra* note 11, at 588-89.

public.²⁹⁰ The goals of the second agreement are the federal and republic government Parties and their banks.²⁹¹ The goal of the agreement is twofold: (1) establish the Russian ruble as the only legal currency for "monetary payments" within Chechnya; and (2) strictly limiting the power of the Central Bank of Chechnya within the Russian system of Banks.

Unfortunately, these agreements have not assisted Chechnya in benefiting from remaining a republic within the Russian Federation. Chechnya has failed to gain recognition as a sovereign state in the West and politically, it remains a renegade republic within the Russian Federation. Additionally, the agreement on currency and banking has curtailed much-needed financial support.²⁹²

In contrast, Tatarstan's situation differs greatly from that of Chechnya. Tatarstan declared independence in 1990. In 1992, nationalist Tatars began to seek more economic autonomy, including total independence.²⁹³ Tatarstan eventually agreed to abandon total independence in exchange for greater autonomy within the Russian Federation. The Tatarstan negotiations became the model for future Power-Sharing Treaties. Tatarstan eventually agreed to sign a Power-Sharing Treaty because it more clearly defined the relationship of the center to the regions.²⁹⁴ Tatarstan was given responsibility for developing its own budget, creating its own national bank, and concluding agreements with foreign governments.²⁹⁵

Tatarstan and Chechnya exemplify the advantage to the federal government implementing Power-Sharing Treaties. The federal government, by persuading Tatarstan to remain within the federation, arguably defused a chain reaction of Chechnya-like conflicts throughout the country and established express constitutional relations with over half of the republics.²⁹⁶ The advantage to the regions of implementing Power-Sharing Treaties includes avoiding armed conflict and increasing their autonomy beyond the

290. See Agreement between the Government of the Russian Federation and the Government of the Chechen Republic Ichkeriya; *Federalism*, *supra* note 11, at 588.

291. See Agreement on the Peculiarities of the Organization of Circulation of Money and Payments by Check; *Federalism*, *supra* note 11, at 589.

292. See *id.*

293. See generally Sharlet, *supra* note 241, at 119.

294. See Lynn & Novikov, REFEDERALIZING, *supra* note 23, at 199.

295. See *Moscow*, *supra* note 264.

296. See Lynn & Novikov, REFEDERALIZING, *supra* note 23, at 200.

power conferred to them by the federal constitution.

C. The Future of the Agreements and Federalism in Russia.

I feel that if we actually want to have a truly federative state, Russia must sign bilateral treaties with all the republics forming the Federation. Because it is not the krais and oblasts that form the Federation . . . there are those among us who want to make the republics, oblasts, and krais completely equal politically. That cannot be allowed. Economically they must all be identical But there are questions that arise, for instance, in Bashkiria and Tatarstan, that do not arise in the oblasts. In Sverdlovsk oblast, for example, the nationality question does not arise. - Muraza Rakhimov, President of Bashkortostan in 1994.²⁹⁷

The future of the Power-Sharing agreements and federalism in Russia is fraught with a number of problems. One problem is establishing a stable form of federation. Even though the federal government and the regions have made positive steps in creating a workable federation, the regions' relationships with the center are constantly subject to negotiation (and coercion), creating an element of uncertainty on every level.

A second problem is the adoption by regional and local governments of legislation that contradicts federal law. This is what Anatoly Chubais, former Russian Deputy Prime Minister, has called "legal separatism."²⁹⁸ The Power-Sharing Treaties establish the supremacy of federal law. Many of the republics, however, have constitutional provisions that violate the federal constitution.²⁹⁹ Some say this is due, in part, to the inability of the center to pay its debts to the regions.³⁰⁰ Thus, the regions adopt legislation that contradicts federal laws in an attempt to improve their economic situation. By compromising the integrity of the Federation with concessions to the regions, the federal government may have facilitated "legal separatism." The regions are pursuing a policy to "withdraw from close ties with the rest of the federation

297. Steven Solnick, *Federal Bargaining in Russia*, 4 E. EUR. CONST. L. REV. 52, citing the Russian newspaper, *Segodnya* (Today), Aug. 12, 1994, at 10 [hereinafter Solnick, *Federal Bargaining*].

298. See Anna Paretskaya, *Russian Central Authorities Seek New Formula for Relations with the Regions* (Analytical Brief #460), Open Media Research Institute <<http://www.iewe.org>> [hereinafter Paretskaya, *Central Authorities*].

299. See *id.*; see also RUSSIA'S REVOLUTION, *supra* note 2, at 139.

300. See generally Paretskaya, *Central Authorities*, *supra* note 298.

and establish autarkic political and economic systems on their territories."³⁰¹ This policy has been called "internal emigration."³⁰²

A third problem is the evolving system of federation. This includes movements to increase or decrease the number of subjects of the Federation. For example, Khanti-Mansi and Yamal-Nenets, autonomous *okrugs* with large amounts of natural resources, are seeking to disassociate from the *oblast* in order to receive more proceeds from the sale of their natural resources.³⁰³ In addition, St. Petersburg and the *oblast* within which it is located, Leningrad *oblast*, seek to combine into one larger region.³⁰⁴

One suggested resolution to this problem is to redesign the boundaries of the federation to reduce the number of regions.³⁰⁵ A redesign may lessen the administrative burden and bring equity to the Federation, where republics wield more power even though the majority of Russia's population lives in the *krais* and *oblasts*.³⁰⁶ Unfortunately, this solution would require many regional leaders to give up their power. A change from 89 to 10 or 12 regions would significantly decrease the number of regional leaders, thus, losing their jobs, power and influence.

Another proposed solution was to establish regional associations similar to the eight such associations that already exist: the Northwest Association, Russia's Central Area Association, the

301. *See id.*

302. *See id.* Citing Dmitrii Badovskii's Article, published in the November 10, 1997, issue of *Segodnya*.

303. Judith Perera & Andrei Ivanov, *Russia: Resource-Rich Tyumen Region Faces Breakup and Poverty*, INTER PRESS SERVICE, Dec. 3, 1996. Yamal-Nenets Autonomous *okrug* and Khanty-Mansi Autonomous *okrug* control 90 percent of Russia's natural gas and 53 percent of its oil reserves. Enterprises in Tyumen *oblast* would pay up to 70 percent of the income they gain from pumping oil and gas out of the ground to the federal and regional budgets. Sixty percent of this money goes into the *okrug* and local budgets while the federal and *oblast* (regional) governments get 20 percent each. The *okrugs* want to secede from Tyumen *oblast* so that they can claim the 20 percent that would otherwise go to the regional government. At present, Tyumen *oblast* is the richest region in the Russian Federation, but if its three parts are divided, Khanty-Mansi becomes the richest, while Yamal-Nenets drops to 15th, and the part of Tyumen *oblast* not included in the *okrugs* falls to 50th (out of 89). *See id.*

304. *See* Paretskaya, *Central Authorities*, *supra* note 298.

305. *See* Lynn & Novikov, *REFEDERALIZING*, *supra* note 23, at 192.

306. *See* Solnick, *Federal Bargaining*, *supra* note 297, at 52-58. Professor Solnick points out the fact that Russians constitute a majority in nine of the 20 ethnic republics. The titular minority group represents an absolute majority of the population in just six of them. These statistics further weaken the avowed reason (they represent ethnic "homelands") that republics get extra concessions. *See id.* at 55.

“Black Earth” Association, the Association of Northern Caucasus Regions, the “Big Volga” Association, the Urals Regional Association, the “Siberian Accord” Association, and the Far East Association.³⁰⁷ These associations are politically and economically heterogeneous and may make it easier for the federal government to meet regional needs and demands. On the other hand, at least one commentator has remarked that the federal government’s use of Power-Sharing Treaties has weakened, to the center’s benefit, inter-regional cooperation, especially among the republics.³⁰⁸ If this sort of divide and conquer strategy has helped Moscow keep the upper hand with the regions, then the organization of so many associations may have negative implications for the center and, consequently, for the Federation’s continued viability.

The federal government might channel resources into local governments, where practical politics dominate as another way of solving the problems between it and the regions.³⁰⁹ It is, of course, practical politics that bring the federal government to the point where it is willing to make concessions in the first place. Just recently, Moscow made its first attempt to implement this strategy. President Yeltsin gives broad-based federal support to the creation of the Congress of Municipalities, a grouping of municipalities and associations of municipalities.³¹⁰ The federal government often seeks to work with local officials in order to keep regional authorities in check, so this is a natural step on its part.³¹¹

If this strategy is implemented correctly, it could lead to a Russian version of the European Union’s principle of subsidiarity. If the federal government can tolerate the idea of economic and political decision-making at the lowest possible level, then the problem of asymmetry in the Russian Federation may turn out to be moot. In such a federation, the regions would have a large amount of autonomy and the federal government would only control the issues that only the central government can properly address, such as defense, currency, communications and foreign policy. The danger, however, is that if the central government

307. *See id.*

308. *See id.*

309. *See* AHDIEH, RUSSIA’S REVOLUTION, *supra* note 2, at 135.

310. Congress of Municipalities Founded, IEWS RUSSIAN REGIONAL REPORT, June 25, 1998, at 2.

311. *Governor versus Mayor: The Conflict between the Sverdlovsk Governor and the Yekaterinburg Mayor*, IEWS RUSSIAN REGIONAL REPORT, Vol. 3, June 25, 1998, at 7.

devolves so much power to the regions and municipalities, localism will grip the country and it will be almost impossible to implement any political or economic policies at any level higher than that of the town or city.³¹²

CONCLUSION

"It is yet too early to tell." - Chinese Prime Minister Zhu Enlai, when asked by Henry Kissinger what he thought about the French Revolution.³¹³

Zhu Enlai's observation about the French Revolution also applies to the break-up of the Soviet Union or the future of the second Russian Republic. The political situation in Russia is so chaotic that it is impossible to predict whether Russia will eventually succeed in becoming a true federal democracy or whether it will fall apart completely. There is also the possibility of the country falling back under the sway of a strong leader, who would come to power on promises of an end to corruption, crime and capitalism and a return to the country's former status as a superpower. Rather than dread the Communist party's return to power, many look at certain politicians like Alexander Lebed in Krasnoyarsk or Yurii Luzhkov in Moscow and see the portent of fascism on the horizon.³¹⁴

Optimism still reigns in many quarters, however. News reports contain as many stories of entrepreneurial success in Russia as they do of corruption and poverty among the people. As each crisis passes, democracy and free-market ideas become more entrenched in the public mind. Likewise, the false nostalgia for the "security and stability" of the former Soviet Union fades further into the past.

This argument of "entrenchment" can also be used in favor of the role of the Power-Sharing Treaties in developing Russia's federalism. As the present governmental system succeeds in resolving the problems that are at the root of any particular crisis, that governmental system becomes more familiar and secure to the people. With time, it too will become entrenched in the public mind.

312. See Stephan Kux, *Confederalism and Stability in the Commonwealth of Independent States*, 1 NEW EUR. L. REV. 387, 395 (Spring 1993).

313. *Id.* at 389.

314. See *Russia's Crisis: Could it lead to fascism?*, THE ECONOMIST, July 11, 1998, at 19.

Even with the chaos that still exists to a large degree in Russia, there have been some recent events in the Power-Sharing Treaty arena that may bear out the main points of this thesis.

A Presidential decree of May 5, 1998 stated that the federal government would sign "agreements on finances" with all of the subjects by July 5, 1998.³¹⁵ Predictably, this deadline passed seeing only a couple of agreements actually signed. Some regional governments even made headlines by refusing to sign a new agreement.³¹⁶ The steps taken to introduce this new type of agreement, however, may show the proper resolve in the "Party of power" to begin to solve Russia's underlying financial and economic problems.

These new agreements are a qualitatively new kind of agreement between the federal government and the regions, intended to help the economic situation in Russia overall.

This type of agreement will force the regions to follow federal standards in credit agreements, housing issues, wage levels and restructuring of tax debts. The agreement will require the *oblast* to pay its wage debts to all public sector employees and avoid similar problems in the future. If the region meets the terms of the agreement, it will have access to additional federal funding in the future.

It is also important to note that the President's administration is seeking to keep this "new agreement" within the framework of the constitutional relationship established between the center and the region by its Power-Sharing Treaty. In one instance, the agreement signed with Chelyabinsk *oblast* on June 14, 1998, the new agreement on finances was signed alongside a number of supplemental agreements, which were themselves signed in accordance with the region's Power-Sharing Treaty.

Sergei Kirienko, Russia's former Prime Minister, recently stated that he is "positively inclined toward treaty-based relationships between Moscow and the regions, as they provide a civilized way of negotiating differences while adhering to the basic body of law."³¹⁷ This is the point of the Power-Sharing Treaties in the first

315. See *Khristenko, Chelyabinsk Sign First Treaty on Improving Finances*, IEWS RUSSIAN REGIONAL REPORT, Vol. 3, No. 24, June 18, 1998, at 10.

316. See *Petersburg Refuses to Sign Federal Treaty*, IEWS RUSSIAN REGIONAL REPORT, July 30, 1998, at 4. St. Petersburg, Perm *oblast* and Krasnoyarsk *krai* have refused to sign the agreements. Khakasiya and Chelyabinsk have signed. See *id.*

317. *Kirienko Seeks Constructive Relations with Tatarstan* [hereinafter *Kirienko*],

place—to bring all of Russia's regions, either expressly or implicitly within that “basic body of law,” the Constitution.

Another recent announcement holds the key to the future of the present federal structure. Soon, the government of Tatarstan will begin negotiation on a new supplemental agreement on joint budgetary relations with the central government.³¹⁸ The course of these negotiations may determine the course of the next phase of the Power-Sharing Treaty process. President Yeltsin has already met with many republican leaders and told them that he “would accept revised Power-Sharing Treaties with the republics in a way that would give them more power than the *oblasts* and *krais* have received.”³¹⁹

If President Yeltsin embarks on a round of revision of the Power-Sharing Treaties and redefines the difference between republics and the other regions, yet again, it may eventually lead the *oblasts* and *krais* to seek the same. This sort of back and forth between different groups of subjects could lead to the disintegration of the Russian Federation.

There may still be hope that Yeltsin's administration will not embark on this populist pandering to the regions. Former Prime Minister Sergei Kirienko recently pronounced that when the agreement expires, he would seek to negotiate a new agreement that takes into account “fairness and the criteria used in relations with other regions.”³²⁰ This may be what it takes to stabilize the present situation.

IEWS RUSSIAN REGIONAL REPORT, May 7, 1998, at 6.

318. See *id.*; *Tatarstan's Leadership Reshuffle Shows Incipient Pluralism*, IEWS RUSSIAN REGIONAL REPORT, June 4, 1998, at 8. The actual Power-Sharing Treaty signed with Tatarstan has no express expiration date. Most of the supplementary agreements signed with Tatarstan have the standard five year term which is automatically renewed unless six months notice of cancellation is given. The five year term of four of these agreements comes up on February 15, 1999. Six month notice must be given by August 15, 1998, to cancel these agreements on: the battle with crime; bank affairs, money and currency; foreign economic ties; and military questions. The agreement with Tatarstan on joint budget relations has a simple term of five years, with no automatic renewal provision. This agreement expires on February 15, 1999. See *id.*

319. See *Yeltsin Meets With Republican Presidents*, IEWS RUSSIAN REGIONAL REPORT, June 11, 1998, at 4.

320. See Kirienko, *supra* note 317.

