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PREFACE

Stepan Sulakshin

This collection of specialists' comments on Russian laws on the security sector and civil-military relations is another result of teamwork between the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Russian Foundation for the Development of Political Centrism.

As an intellectual product resulting from the collaboration of European and Russian specialists with differing scientific traditions, social and political and legal experience, it is extremely interesting. Various opinions, points of views, and traditions may be compared, providing a new level of analysis and, in this case, possibilities of expert support of Russian parliamentarians.

It is a great pleasure to appraise the usefulness of the Geneva Centre for Democratic Control of Armed Forces' activities for the practical process of Russian reforms. The problematic sphere encompassed by their efforts includes one of those most critical and significant to the experiences of various states. It concerns military structuring and safety in all senses and the complete content of this category. Each country worries about its safety, each country is interested in protection its residents against external threats, threats of terrorism, threats of imperfect state government and the phenomena of incompetence, corruption, the prevalence of ideological principles over balanced, professional criteria in decision-making and in the practice of effective state governance.

These problems are especially sharp in Russia as it passes through a historic period of very quick, intense, and, at times, unprecedented reforms. Private companies and property laws are being reformed, as are the political system, state structure, multinational character, of a geographically large state which remains overburdened with a number of conflicts. The army and special services are also the subject of reform programmes. Russian society, despite the suppression of gainful activity for decades, begins to takes its shapes in a number of directions and enlarge the parameters for a

civil society; society has also obtained the possibility of involvement in and intensified its influence upon national-significant decisions of state bodies and political powers. But its experience, knowledge, and standing in these processes is poor. Realizing that the Russian situation is unique, a lot of precedents, recommendations, and advice from foreign partners is not always applied to the Russian reality: but the usefulness of these contacts and the work of bipartite expert groups on the problems at hand is, nevertheless, obvious.

The collection is the product of scientific and scientific-practical papers of expert western and Russian scientists and practitioners. Not all the comments are equivalent, and tend to an academic style, reflecting subject specialisations and ideological principles of analysis. But the overwhelming mass of the analysis is constructive, proffers solutions and will undoubtedly be useful for the practice of Russian parliamentarism. Many mentioned legislative acts have now been perfected, changed, and amended, and a number of legislative problems are now included on the agenda of parliamentarians. We hope that experience of mutual expert support of Russian efforts will be continued further. I would like to thank authors of articles of the collection, both Russian and foreign, and to appraise highly and to thank DCAF, whose partnership activity in Russia is of a humanitarian and professional character.

Stepan Sulakshin
Director,
Foundation for Political Centrism,
Moscow
December 2003

PREFACE

Philipp H. Fluri

The Geneva Centre for the Democratic Control of Armed Forces (DCAF)[1] is honoured to present this collection of commentaries on Russian legislation on the security sector and the democratic oversight of the defence and security sphere to a wider interested public. The collection is intended to assist the critical debate begun with the publication, by DCAF and the Foundation for Political Centrism, of the collection of Russian security sector laws in Russian[2] and English[3], and represents the fulfillment of the third phase of the original scheme of planned publications on this subject.

The emergence of the concept of security sector reform in the OSCE area suggested the growing acceptance of a definition of security broader than the traditional definition focused solely on military security of the state. According to this broader definition, security has non-military elements as well : the object of security includes not only the state but also, more widely, individuals and society, as well as, in fact, the security, rights and obligations of civil servants and (military) servicemen.

Security sector reform also has a very significant emphasis on good governance, an emphasis encompassing the rule of law, predictable, transparent and open policy-making, a professional bureaucracy that serves the public good, and a vibrant civil society that actively engages in public affairs. When applied to the security sector, good governance would thus mean the effective, efficient, participatory, accountable and transparent functioning of state institutions that have a monopoly of legitimate use of coercion.

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[1] The Geneva Centre for the Democratic Control of Armed Forces was founded in 2000 as a Swiss initiative with the active cooperation of the Russian Federation (for more information see www.dcaf.ch).

[2] А. Г. Арбатов & Е. Л. Черников, *Правовыеакты Российской Федерации в сфере военно гражданских отношениим*, (Москва, 2002).

[3] Philipp H. Fluri, Alexei G. Arbatov and Evgeny I. Chernikov (eds.), *The Legal Acts of the Russian Federation in the Sphere of Civil-Military Relations*, (Geneva/Moscow: DCAF/Foundation for Political Centrism, 2002). Please see http://www.dcaf.ch/publications/e-publications/Rus_legal_acts/coverp1.jpg For other publications please see http://www.dcaf.ch/publications/publications2/electronic_versions.html

In cooperation with the State Duma Defence Committee, the Geneva Centre set up a Legal-Political Assistance Group (representing leading constitutional lawyers and security policy experts from the OSCE area). This Assistance Group supports the legislative process in the said fields, and brings in expertise from other European and North American parliaments.[4]

The cooperation agreement entails publication of the relevant laws and 'law projects' in the Russian and English languages, completed with annotations and comments by leading experts from the Russian Federation and abroad. The Assistance Group further organises conferences in Russia and abroad, inviting Russian experts to meet their Western counterparts. The first such cooperation conference took place in Moscow in October 2001.

Again DCAF was able to count on the amiable and competent services of one of its main cooperation partners in Russia, the Foundation for Democratic Centrism. Regular updates on emerging legislative projects are planned in continuation of this series.

Philipp Fluri, DDr.
Deputy Director DCAF
Geneva, December 2003

[4] Further information about the LPAG can be found on the DCAF website at http://www.dcaf.ch/partners/LPAG.html

INTRODUCTION

Philipp H. Fluri & Eden Cole

This volume contains a collection of commentaries by Russian and Western experts as an accompaniment to the previous Russian and English language collections of translated Russian security sector laws, doctrines and concepts contained in the DCAF – Foundation for Political Centrism volume on 'Russian Federation Legal Acts on Civil-Military Relations'.[5] The collections comprise all the available post-Soviet legislation in the security field to the present day. This volume is intended to serve as an initial English-language resource, for interested parties in Russia and the West, that will promote further constructive debate on the subject of Russian security sector laws. The laws referred to in this Introduction are also available on the DCAF website as part of the DCAF Legal Database.[6]

The number of Russian security sector laws now extant reflect the evolution of Russia's security policy in the post-Soviet period and the political, social and economic landscapes surrounding it. The various effects of conflicts which emerged within the former Soviet Union (FSU) from 1992 onwards, the first Chechen war in 1994, the different phases of the military reform debate, the security environment engendered by the 1996 Chechen peace accords, the subsequent second Chechen war, and the wider legislative tempo dictated by the variegated phases of political development during the Yeltsin era can all be collectively perceived in the legislative output. Against this background, an initially small core of legislation allowed, as circumstances permitted, the substantial growth thereafter of the body of security sector law as a whole.

The laws are underpinned by the perception of security: '*bezopasnost*' (literally 'without danger'); a reflection of Russia's historical perception of continual security threats.

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[5] Russian version: А. Г. Арбатов & Е. Л. Черников, *Правовыеакты Российской Федерации в сфере военно гражданских отношенийм*, (Москва, 2002); English version: Philipp H. Fluri, Alexei G. Arbatov and Evgeny I. Chernikov (eds.), *The Legal Acts of the Russian Federation in the Sphere of Civil-Military Relations*, (Geneva/Moscow: DCAF/Foundation for Political Centrism, 2002), also available online at: http://www.dcaf.ch/publications/e-publications/Rus_legal_acts/coverp1.jpg

[6] http://www.dcaf.ch/legal/intro.htm

Pursuant to this, the assertion of the state's security over that of the individual is inherent to the social relations depicted in the laws. The laws consistently specify the relationship between citizen and state in many contingencies: in certain instances the limits of state power vis-à-vis the individual, are overtly prescribed. Underpinning this development is the role of the post-Soviet Constitution in redressing the balance between state and citizen.

Turning to the earliest Russian security sector laws, the effects of events after independence can be seen *prima facie* on the initial legislative output. The repercussions of Russia's armed interventions as precipitated by emergencies throughout the FSU in 1992-1993 and the concomitant concern about the emergence of other conflicts in a deteriorating security environment are evident in the 1993 law 'On Additional Guarantees and Compensations for Military Persons Carrying Out Military Service on the Territories of the Caucasus and Baltic States and the Republic of Tajikistan, and the Fulfilment of Tasks Related to Defending the Constitutional Rights of Citizens Under the State of Emergency Conditions And During Armed Conflicts.'[7] Whilst dealing with the practical issues of adequately compensating the contract and conscript personnel serving in the regions, the document notably singles out the situation in Chechnya as on a par with other more immediate emergencies a year before the major intervention in 1994. In the same year, the 'Law On the State Border', which remained the basis for all subsequent amendments, was promulgated: a reflection of the immediate security-oriented concerns across the political and institutional spectrums at the time.

Another reflection of the same security environment is the 1995 law on 'The Procedure of Providing Civil and Military Personnel for Participation in the Activity on Maintenance and Restoration of the International Peace and Security.' As peacekeeping formed a key component of Russia's international involvement in the FSU and Balkan conflicts at that critical time, it is notable that their role was defined in law during a *de facto* legislative impasse between the president and federal assemblies.

[7] The persistence of this theme is reflected in the re-iterated specification of these first post-independence conflict zones, with additions, in the 2002 draft law 'On the Status of Participants of Combat Operations' which, similarly, is primarily concerned with the compensation of current and past military personnel who have served outside Russia.

Similarly, other laws with an immediate relevance were passed before Yeltsin's second term, with a tendency to focus on pragmatic issues where a lowest common denominator consensus could be created between the legislature and the executive: the laws 'On Martial Law Courts and Bodies of Military Justice', 'Railway Troops', 'On State Defence Orders', and the key document mapping the azimuths and mentalité of Russia's security policy, the law 'On Defence'.

However, during Yeltsin's second term the body of security sector law and related documents grew and consolidated and this Introduction now turns to a thematic treatment of the security legislation. Whether the increased output of laws was the result of the initial momentum provided by the new figures brought into government in 1996, the stabilisation of military, social and economic reform debates, the security stability afforded by the retreat from Chechnya, the increased stability in former 'hotspots' in the FSU, or the introspection afforded by a period of political stability relative to that of the earlier 1990s is unclear, but the systematic development and enunciation of security sector laws added a depth and coherence that had previously been lacking. In the same vein, the conceptual material incorporated in the previous law collections date from the late-Yeltsin and early-Putin eras. The seamlessness of the transition between presidencies is indicative of the consistent interest in and consolidation of security sector laws across the administrations.

The inclusion of concepts and doctrines is warranted by their inter-relationship with the legislation promulgated in the post-Soviet period and their formal approval by the President and the corresponding *de facto* legal status afforded. Whilst asserting an ideal of the means and ends of Russia's national interests, the National Security Concept, Military Doctrine, Foreign Policy Concept, Information Security Doctrine, Sea Doctrine, and Frontier Policy Principles (and dating in their current form from the late 1990s onwards) they collectively iterate the principles guiding the laws 'On Defence', 'On Military Service', 'On the Fight Against Terrorism', 'On the State Border', 'On Civil Defence', 'On the Military Technical Cooperation of the Russian Federation with Foreign States', 'On Mobilisation Preparations and Mobilisation', the draft 'On the Creation and Application of Space Means in the Interests of Defence and Security of the Russian Federation', and international treaties such as the 'Ratification of the Treaty Between the Russian Federation and the United States of America On Further Reduction and

Limitation of Strategic Offensive Weapons'. The intention of ensuring a coherent framework for security is clear in each document.

Proceeding from the comprehensive doctrinal focus on defence and the thoroughgoing specifications of the law 'On Defence', the onerous demand on the individual to perform military service for the state is defined in the law 'On Military Duty and Military Service' and the 'Statute on the Performing of Military Service'. The performance of conscript or contract service for the parties concerned is comprehensively described in these documents. The legal status of enrolled military personnel is elaborated upon in the law on 'The Status of Military Persons'. It is notable that, despite the continued emphasis on compulsory military service, its limits have been envisaged: the draft law 'On Alternative Civil Service' elaborates the means of allowing an alternative form of service in keeping with the provisions of Council of Europe membership.

The legal enforcement and regulation of military service is also underpinned by the laws 'On Military Duty and Military Service', 'On Status of Military Persons', 'On The Material Liability of Military Persons', and the section 'On Crimes Against Military Service' in the Criminal Code. Whereas they elaborate the sanctions against personnel for non-performance of their role and the prohibitions on conduct, the means of enforcement are detailed in the law 'On Courts Martial'. In terms of the relationship between the state and the individual in the security field it is notable that the laws 'On the Fight Against Terrorism', 'On the State Border', 'On Civil Defence', and the 'State of Emergency' all envisage circumstances where the private citizen must assist the state's agents. The relationship between the individual, society, the state and the military is at the heart of the draft law 'On Civilian Control and Management of Military Organisation and Activity in the Russian Federation' which deals with the issue of civilian oversight of the armed forces.

Balanced against the demands made on the individual are their rights pursuant to their performance of military service. Particular attention is paid to pension provision and social security for personnel and their families. Foremost among these is the law 'On Compulsory State Insurance of Life and Health of Military Persons, Citizens Called Up for Military Training … the Staff of Internal Affairs Penitentiary Institutions … and … Federal Tax Police Organisations', an accompaniment to the earlier 'Law on Pension

Provision for Persons who Served in the Armed Forces, Internal Affairs Bodies, Penitentiary Facilities, and their Families' of 1993. The further laws on the 'Comprehensive State Insurance of Military Persons', the 'Guarantee and Compensation of Military Persons', and elements of the 'Status of Military Persons' deal with related issues. The comprehensiveness of the amendments contained in the law 'On the Introduction of Amendments to Some Legal Acts of the Russian Federation Regarding Matters of the Money Allowance to Military Persons and Provision of Certain Privileges' indicate the detail with which the laws detailing soldiers' rights have been re-examined over time. Notably, the theme of social security and adequate compensation for injuries have another detailed refrain in the draft law 'On the Status of Participants of Combat Operations'. The social security of serving and retired personnel and/or their legal heirs are, in an ideal form, of high priority to the state.

Also extant are laws that deal with the more practical side of maintaining military forces: the procurement of materiel, of which the law on the 'State Defence Order' provides the foundation. The emphasis on the maintenance of a strategic Russian nuclear deterrent during the 1990s is reflected in the complementary law 'On Financing of the State Defence Order for the Strategic Nuclear Forces' with its emphasis on defining the payment procedures for relevant materiel in this field. In contrast, the current draft 'On Provision of Military Persons and Equated Special Users with Agricultural Products, Raw Materials, and Foodstuffs' elaborates the more immediate need of ensuring a reliable supply of basic supplies to units through legal enforcement. In this vein, the draft law 'On the Legal Position and the Financial and Economic Activities of Military Organisations' contains a complementary solution to the problem: by giving military units a defined legal status comparable to that of an incorporated limited company (with the exception that the state creates and dissolves such a status in common with its monopoly on violence) the transparent operation of the legal mechanisms allow a unit's interaction with society economically, the determination of the state's property rights as vested in the unit, its responsibilities, and the rights and duties of its contractors.

The multi-faceted nature of Russia's security apparatus beyond the armed forces is also notable: the ordinances 'On the Railway Troops', 'On Internal Troops of the Ministry of Internal Affairs', and 'On the Border Guard Service' reflect the militarised status of other federal agencies operating in society. As indicated in the laws on insurance and

compensation, the substantive militarization of many state agencies is an intrinsic feature of contemporary life and the laws reflect the depth of that phenomenon.

The security sector laws also include international treaties, signed by the executive and later ratified by the federal assemblies, notably: 'On Ratification of the Treaty Between the Russian Federation and the United States of America On Further Reduction and Limitation of Strategic Offensive Weapons'; and 'On Ratification of the Comprehensive Nuclear Test Ban Treaty'. Their content is indicative of Russia's commitment to international law in terms of strategic stability at the highest levels, and their eventual ratification the increased stability of the federal assemblies.

Other documents reflect the preoccupations of the earlier post-independence period but reflect the perennial pre-occupation with security themes. The state powers and procedures enunciated in the laws 'On The State of Emergency' (2001) and 'On Martial Law' (2002) register the recurrent concern about micro- and macro- emergencies within the state from internal or external threats.

Thus, the debate on security sector reform has begun. The editors hope that further discussion will profit from this collection of commentaries, and encourage a thoroughgoing and all encompassing study of security sector reform in Russia in the next years.

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Geneva

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THE CONSTITUTION OF THE RUSSIAN FEDERATION

Russian Expert Commentary[8]

The adoption of the Constitution of the Russian Federation in 1993 witnessed a radical break with the whole tradition of the Soviet constitutional system and its class theory of law. The 1993 Constitution is an obvious achievement, particularly when compared with the former nominal constitutional system which lacked legitimacy and was of limited democratic character. The current constitution has created prerequisites for both building civil society and forming a legal state.

As the basic law of the Russian Federation, the Constitution is applied to the entire Russian Federation. Laws and other legal decisions adopted in the Russian Federation should not be contrary to the constitution. The Constitution regulates relations in the country's security and defence sectors.

The constitutional laws that lay down that the sovereignty of the Russian Federation extending to the whole of its territory is of fundamental importance. The Russian Federation ensures its territorial integrity and inviolability. Matters of war and peace are under the exclusive jurisdiction of the Federation. It is the duty and responsibility of citizens of the Russian Federation to defend the Motherland.

International law recognizes the inalienable right of a state to its individual and collective self-defence if there has been armed attack upon it (Art. 51, UN Charter), as well as the duty of its government to use all legal means to maintain or restore law and order or to defend its national solidarity and territorial integrity (The 2nd Additional Protocol to Geneva Conventions, August 12, 1977, concerning the defence of victims of non-international armed conflicts, June 8, 1977, Art. 3.1). In full accord with these norms, the Constitution allows for the declaration of martial law or a state of emergency on the territory of the Russian Federation or in its individual areas.

[8] A cumulative list of all the Russian experts who contributed to these Russian commentaries may be found at the back of this volume.

At the same time, the Constitution lays down the general procedure and rules for imposing martial law or a state of emergency. Firstly, martial law shall be introduced in the case of aggression against the Russian Federation, or, in the case of a direct threat of aggression. A state of emergency shall be declared under the circumstances and in accordance with the established procedures laid down in the federal constitutional law. Secondly, its stipulated special regime allows for the restriction of the rights and freedoms of a human being and citizen exclusively by federal law and only to the extent that it is necessary for protecting the bases of the constitutional system, ethical principles, health, civil rights, and legal interests of other persons, to ensure the defence of the country and its security. Thirdly, martial law or a state of emergency shall be declared by the President of the Russian Federation, who shall immediately notify the Council of Federation and the State Duma about this.

However, it is not evident from the Constitution that the refusal of the Council of Federation to approve the appropriate decree of the President automatically involves the lifting of martial law or a state of emergency. If the President imposes a state of emergency, a relevant federal constitution may set down some restrictions of rights and freedoms with the limits and duration indicated, but if the state of emergency is not declared, the rights and freedoms may be limited by the federal law *sine die*. This provides the feasibility of implementing all measures against the state of emergency without its unofficial declaration. The President, therefore, has dormant powers implicit in the Constitution, which may be applied via a broad interpretation of his powers.

Many experts note, for good reason, that the Constitution gives excessive, almost absolute, centralization and concentration of powers in the military sphere to the President. At the same time, the Constitution lays down the positions implying the division of military powers amongst different branches and levels of power. Thus, to decide whether the Armed Forces of the Russian Federation may be used outside its territory is within the competence of the Council of Federation. The Government of the Russian Federation shall carry out measures to ensure the defence of state security. The Constitution stipulates that defence and security, the defence industry, the determination of a procedure for selling and purchasing arms, ammunition, military equipment, and other military property, the definition of the status and defence of the state boundary are under the jurisdiction of the Russian Federation. At the same time, it

lays down that federal executive bodies may transfer a part of their powers to the subjects of the Federation.

In the Russian Federation, a human being, his/her rights and freedoms are supreme values. The duties of the state are to recognize, observe, and protect the rights and freedoms of man and citizen. This fundamental principle of state building is also under way in the military sphere. The Constitution provides that a citizen of the Russian Federation shall do his military service in accordance with the federal law. At the same time, it allows for the replacement of military service by an alternative civilian service if his military service runs counter to a citizen's beliefs or faiths, as well as in other circumstances established by federal cases. Until recently, this norm has been practically inactive and this right could not have been asserted in court in view of the absence of a federal law on alternative military service.

The current Russian Constitution is the expression of social compromise in a society split by confrontations between democracy and authoritarianism. Its provisions, including those concerning the military sphere, are formalized and developed in federal law, and most of them are presented in the present Collection.

THE CONCEPT OF NATIONAL SECURITY OF THE RUSSIAN FEDERATION

Russian Expert Commentary

Strictly speaking, the National Security Contept of the Russian Federation is not a legislative act: it does not contain direct prescriptions of immediate application. The text of the Concept underlines that authorities of bodies and service departments of national security, their composition, principles, and adherence to precedents, are defined by the corresponding legislative acts of the Russian Federation. Nevertheless, the document, approved by the President's Edict, is very important for regulation of relations in the sphere of security and defence of the state. It formulates the most important trends in the state policy of the Russian Federation defining content and forms of the corresponding activity of state power and administrative bodies.

The main thing is that the Concept adapts characteristics of Russia's national interest and existing threats to the same measures to provide national security with consideration of the changed national and international economic and social conditions. In letter and intent, it makes the Russian Federation security policy comprehensible and predictable. The document bluntly states that the importance of military power remains considerable and the level and scale of threats in the military sphere increases when efforts of particular countries to weaken Russian positions are stirred up.

Keeping this in mind, the Concept qualifies facilitation of military security as the most important trend of state activity. The Concept positively rejects the prevalence of the Soviet orientation to force in the past. The Russian Federation prefers political, diplomatic, economic and other non-military methods in war and conflict prevention. Moreover, Russia stands for the strengthening of key mechanisms for the multi-faceted management of world political and economic processes under the aegis of the UN Security Council for preservation of global and regional stability. It expresses interest in effecting measures to strengthen trust and stability and to develop new agreements in the field.

Application of military force for effectuation of its own security is strictly limited. In the case of foreign policy, its application to repulse aggression is possible, specifically when all other measures for crisis resolution have been exhausted. The internal application of military forces is subject to strict compliance with Constitutional and Federal laws in the case of threats to the life of national citizens, to the territorial integrity of the country or to the constitutional organization of the state. Such limitations are in conformity with provisions of the Security Code related to military and political aspects of security.

The Concept defines authorities of various state power bodies in forming the security policy according to the democratic principles of power division, which is of a principle importance. “Wide scale participation of political parties and public amalgamations in realization of the Concept of National Security of the Russian Federation” is especially underlined. Yet, mechanisms and forms of such participation have not been stipulated. It is only mentioned that subjects of the Russian Federation along with organs of local self-governing should perform measures to engage citizens from public amalgamations and organizations in providing assistance for solving problems of national security according to legislation of the Russian Federation. It is not hard to understand that the possibility of civil control over activities of the state is quite obscure in the proposed wording.

THE MILITARY DOCTRINE OF THE RUSSIAN FEDERATION

Russian Expert Commentary

The Military Doctrine of the Russian Federation refers to a number of the most important documents defining the military-political, strategic and economic principles of security in the Russian Federation. It represents a body of official points of views, disclosing the aims of creation, principles of functioning and development of the military establishment and the official directions regulating the tasks of the State and society in the military domain. The legal sources of the Doctrine are the Constitution of the Russian Federation, federal laws, other legal acts of the Russian Federation and the international treaties of the Russian Federation concerning military security.

The provision on defence aspects of the Military Doctrine seems to be of fundamental importance. Guaranteed protection of the Federation's national interests and military security of the Russian Federation and its allies is proclaimed as the main development target of the national military establishment. The preference is given to political, diplomatic and other non-military means of counteraction to military threats. This counteraction is considered in the context of construction of a democratic legal state, implementation of social-economic reforms, successive forming of the general and comprehensive system of the international security and the maintenance and strengthening of global peace.

The Military Doctrine stressed the necessity of adjusting the structure, composition and quantity of the armed forces in accordance with the tasks of protection of military security; self-limitation of the potential use of nuclear weaponry and its reduction to minimal levels, with the principle of military policy being the safeguarding of international and national security.

The full text of the Military Doctrine published in the present collection releases us from the need to retell its content. Nevertheless, we would like to note that the document under analysis is important not only for those who are professionally engaged in the domain of defence. It possesses a wider social-political value. It represents a public

declaration of the State's goals, intentions and priorities in the military domain, an area traditionally hidden from society. At the same time, the authority, pursuing legitimization of its actions, is motivated by public opinion to a much greater extent.

An attempt has been made to define the powers and competences of various actors – from the President and Federal State authorities to enterprises, public associations and citizens. This definition has been given a very general, abstract form: "under the procedure fixed by the Federal Legislation". Nevertheless, the military-doctrinal aims highlight that development and realization of the military policy of the State cannot be an exclusive prerogative of a narrow circle of anonymous persons.

The objectives, procedures and rules of the active application of the Armed Forces and other troops found a rather clear definition in the Doctrine. The relevant aims intend to prevent any arbitrary manipulation or shifting of the functions of one force structure by another.

These and other subjects are evidence of the fact that the provisions of the Doctrine correspond to the standards and procedures of the UN and OSCE, in particular, to the recommendations and norms, worded in the European 'Code of Conduct for Military-Political Aspects of Security' and targeted at integration of the armed forces with civil society. The Military Doctrine of the Russian Federation both reflects the conditions of military-civil relations in our country and lays the foundation for their enhancement. It is obvious that the Doctrine itself cannot be regarded as the final body of these regulations. They might be updated, added to and specified by taking into account the changes of the military-political situation, character and content of military threats, conditions of construction, development and application of the military establishment of the State.

In particular, the doctrinal distribution of powers is especially needed amongst the various branches of authority in the domains of defence, delimitation of competence of civil and military authorities in accomplishing the tasks of protection of security and defence of the country, as well as the administrative and operational functions in the system of military management.

The Military Doctrine should have determined those sides of the military construction and military activity, which are to have clear and detailed legal support. A lot has been done by us in this area but much is still to be done. There is a lack of, and even an insufficient clarity, of the corresponding legal acts, leaving too much room for arbitrary action.

Civil control over the military establishment and its activities can serve to prevent such situations. It is one of the forms of political participation and, by estimation of the OSCE, an essential element of stability and security. The Doctrinal definition of the contents, functions and mechanisms of civil control could effectively promote its strengthening in the interest of both State and society alike.

THE MILITARY DOCTRINE OF THE RUSSIAN FEDERATION

Theo van den Doel

General Remarks

It is remarkable that the internal civil violence of the national laws (organised crime, smuggling of drugs and arms etc.) is part of the Military Doctrine. This means that the armed forces have a task to combat 'civil' violence. There is no clear distinction between 'civil' and 'military' matters. When there is no clear division of tasks, it is more difficult to control counter-actions and the resulting confusion can even lead to misunderstanding and the misuse of authority.

The military threats are defined in a very open way, for example in terms of how 'regional' and 'global' stability are included and discussed. As a result, according to the military doctrine, there can always be a reason for military action.

The use of nuclear weapons is not only restricted and linked to the use of WMD by the 'aggressor' but the Russian Federation does not exclude the use of nuclear weapons in the case of a large-scale aggression by conventional forces.

The industrial and scientific complexes of the country are regarded as part of the national military establishment.

The military doctrine is very detailed and all the demands laid down in the doctrine, which have to be fulfilled, will definitely lead to a large, complex and bureaucratic organization.

The doctrine is a mixture of principles and a summary of operational tasks, missions to be accomplished, principles of war (which you would normally expect in a military handbook rather than in the law) and descriptions of kind of conflicts and various definitions.

It can be questioned whether the military doctrine is actually a stone blocking the way to a market economy and to more prosperity and welfare for the population. The doctrine dominates not only the military economic sector but also the civil economic sector.

Detailed Remarks

In Art. 3 of Chapter One, there is no reference to a mandate of the OSCE for approval of a military action. In western countries, such an approval is mostly implemented in their national policies.

In Art. 4, the main external threats are defined. It is remarkable that the introduction of foreign troops in countries in the vicinity of the Russian territory is related to the UN Charter. Territorial integrity is the 'heart' of the UN Charter but the Charter does not exclude that countries on a bilateral or multilateral basis accept the presence of foreign troops on their territory. The article perhaps intends to exclude the possibility that former Soviet republics accept foreign troops on their territory which is not regarded as in the interest of the Russian Federation.

THE FOREIGN POLICY CONCEPT OF THE RUSSIAN FEDERATION

Russian Expert Commentary

The international situation of the 21st century demanded re-analysis of the Russian Federation, of its foreign policy priorities and resource support opportunities. Such necessity was also provoked by the adoption in early 2000 of the new National Security Concept - a document that discloses the character of external threats to the security of Russia and the means of response to them. The Conception of Foreign Policy formalizes and fixes the renewed foreign-policy platform of the State. Approved by the Decree of the President it represents a system of official opinions on the contents and major guidelines of the foreign-policy activity of the Russian Federation.

The Concept has no normative-legal character. Its aim is not to decree specific requirements or rules of State activity in the domain of foreign policy, but to declare its aims, content and approaches. This is the message of the Russian State to all members of the international community - establishing clear reference points for its activity in the world arena and its position as a reliable partner in international relations.

The legal base of the present Concept is formed with the Constitution of the Russian Federation, laws and other legal acts of the Russian Federation, as well as the generally recognized principles and norms of international law and treaties. With the protection of individuals, society and the State as its supreme priority, the Russian Federation pursues an independent and constructive foreign policy, based on consistency, predictability and mutually beneficial pragmatism. This policy is maximally transparent, accounts for the legal interests of other States and is aimed at joint decisions.

Regardless of the social-economic difficulties that have confronted Russia in the course of its democratisation, its foreign policy remains geared towards constructive participation in the interests of resolving the multiple regional crises and global problems

of international security. The priority tasks are as follows: forming of the new global structure, strengthening international security, developing international economic relations, respect for human rights and freedoms and providing information support for foreign-policy activity.

Disclosing positive progress in the world arena and deepening the international economic contacts that provide global character to the interdependency of the States promotes a more stable and crisis-resistant global system. It also marks the tendencies in international relations which are likely to trigger destabilization, tension and arms buildups: employment of the use of force as opposed to application of the existing international legal mechanisms. This involves denying the UN Charter, degrading the role of the Council of Security whilst intensifying military-political competition of regional powers, separatism, ethnic-national and religious extremism, proliferation of the weapons of mass destruction and its delivery vehicles, unsettled or potential regional and local armed conflicts, the growth of international terrorism, transnational organized criminality, as well as the illegal turnover of drugs and weapons.

The main efforts of the Russian Federation concern national security, maintenance and strengthening of Russian sovereignty and territorial integrity alongside the strengthening of its position in the world. In this context, the foreign policy of the Russian Federation is tied to its defence policy. On the one hand, it is aimed at the protection of national security, outlining reference points for the pursuit of defence policy and, on the other hand, it relies on the realization of its defence policy in the struggle for its foreign-policy objectives set out above.

At the same time, Russia stands for the further decrease of force in international relations with the simultaneous strengthening of strategic and regional stability. For these purposes, Russia is open to the conclusion of treaties and agreements in the domain of limitation and reduction of armaments, to further reduce its nuclear potential on the basis of agreements, to participate jointly with other States in the prevention of proliferation of nuclear weapons and other weapons of mass destruction, to strengthen the legal fundamentals of international peace-making activity and to support measures for the build-up and modernization of the UN rapid anti-crisis response potential. Russia

regards the struggle against international terrorism, the illegal turnover of drugs and organized criminality as the most important foreign-policy tasks.

This Concept makes Russian foreign policy clear and palpable. It formalizes and fixes its positions and aims as settled and justified. It selects new horizons in the construction of the system of partnership and proposes a strengthening of allied relations for the purpose of bolstering international peace and security. In the course of approaching these aims, a significant role is assigned to the structures of civil society. In deciding on the future course of foreign-policy, federal executive authorities must necessarily interact with the non-governmental organizations of Russia. Their wider involvement in the domain of the foreign policy of the country corresponds to the task of providing maximum civil society support to the foreign policy of the State, thus contributing greatly to its realization.

THE FOREIGN POLICY CONCEPT OF THE RUSSIAN FEDERATION

Pal Dunay

The Russian Federation adopted a new foreign policy concept on 10 January 2000 immediately after the end of the era of President Boris N. Yeltsin. Due to the existence of a former, legally binding concept it was practically unavoidable to pass a new one unless the new leadership would have been willing to stick to the old concept. It is for this reason one can state that this has neither been the first nor the last such concept in the history of Russia. This has resulted in a situation that the Russian leadership had no choice if it wanted to terminate the former concept. This must be the reason why the new concept takes the same legal form as the preceding one adopted not long after the collapse of the Soviet Union or, to put it differently, after the Russian Federation regained its full independence.

In case one surveys the international practice it can be concluded that some countries deem it necessary to approve such a document and hence Russia is far from unique in this respect.[9] It is a separate matter how many states are satisfied with a politically binding document and how many deem it necessary to codify the main objectives and interests of foreign policy in legally binding form. There are advantages and disadvantages to the legally as well as to the politically binding codification. In case of the former the document represents legal obligation to the subjects of Russian law, including the central administration of the Russian state. If the rules are not obeyed it could be regarded a violation of law. It should be noted, however that it is difficult to draw legal consequences, like sanctions when the "norms" of such a document are programmatic, hence cannot be put into practice *stricti jure* or for that matter *stricto sensu*. The foreign policy concept should be regarded an analysis of the international situation and Russia's role in it and a set of objectives. In case of violation of such a norm, with particular reference to the limited number and the position of persons who

[9] I compare the Foreign Policy Concept of Russia only with those documents of other countries, which similarly to Russia codify the foreign political interests. Hence, countries like the United States, which address this matter in several political documents do not serve as basis of comparison.

implement such laws the responsibility will remain political and in cases administrative. Furthermore, it is more difficult to revise legally binding norms than politically binding ones. This means that it is more difficult to revise a legally binding concept than a politically binding one. This means that there may well be a “de facto” modification of the concept. It is difficult to draw a line between “de facto” modification and violation, which may undermine some basic functions of the legal system: predictability and stability.

1. Assessment of the Document in light of international “good practice”

The applicability of good practice is strictly limited in this field as there are very few countries, which have adopted similarly detailed documents on their foreign policy (e.g. Mongolia). There are countries, which have adopted “principles” of their foreign policy in order to avoid that short term re-arrangements of national interests would undermine the relevance and credibility of the document (e.g. Hungary). There are others, which outline their foreign policy in a detailed political document (e.g. Germany). There are states, which do not adopt such a unitary document on foreign policy but have a national security strategy, which outlines many of those issues, which are included in the foreign policy concept of Russia (e.g. Poland and the U.S.). Last but not least, there are many countries, which make their foreign policy strategy available in the form of government statements or speeches to the legislative.

There are two aspects, which have to be analysed when considering whether the Russian document can be regarded to represent good practice. As the document starts out from an analysis of the current international situation, its development trend and the dangers regarded threatening and then sets out objectives it is the most important to pay attention to the relationship of description, analysis and prescription. It is the starting point whether the description reflects the international situation correctly or it is biased and whether the analysis is solid, well founded. The next is to conclude whether prescriptions logically follow from the analysis. The last one is whether the time scale of the prescriptions is logical. Don’t the uncertainties surrounding short-term prescriptions undermine the long-term objectives? Without paying attention to these questions it is impossible to conclude whether the Russian foreign policy concept could be regarded an expression of “good practice”.

2. Principles that should be reflected in the concept

As far as the principles, which should be either *expressis verbis* or tacitly reflected in the document they represent a broad array of the foundations of international relations. In their totality the principles should make clear the philosophy of the international relations of Russia. Some principles appear, some don't and it is possible to draw conclusions only by invoking some rules of formal logic as well as expanding the analysis to the evolution of the international relations of Russia over the last decade. The picture reflected in the concept is that of a great power, which attempts to preserve its status in the international system. Its efforts focus on influencing the international environment so as to make this possible.

1. The concept reflects an agenda more clearly based on the realist thought of international relations than most other European countries. This is partly a reflection of the fact that Russia is a country, which neither has been integrated to regional institutions, like the EU, nor has belonged to alliances, like NATO. It follows logically from this that Russia struggles to maintain (or regain?) its status in international relations on the basis of state sovereignty. It rejects "attempts to depreciate the role of the sovereign state". It is possible to derive two trends from this: 1. Russia has noticed that it is integration, which contributes to the increase of influence internationally. 2. It does not count on the change of the position of Russia through its adherence to such processes with other major power centres, like the EU or NATO in the foreseeable future. Hence, Russia relies on sovereignty, the ultimate guarantor to avoid inferiority in this situation. Although the Russian foreign policy concept reflects those values, to which democracies have adhered traditionally it is more often the case that behind the principles it becomes crystal clear that the most important is the protection of the national interests of the country. It is seldom the case that actual foreign policy activity guidelines are derived from liberal, universal principles.

2. It is an eloquent demonstration of this effort that Russia rejects uni-polarity of the international system, and advocates multi-polarity. It is not specified in the Russian concept of the foreign policy anywhere, which are the poles or more precisely put, which

are those powers Russia perceives as the other poles of the international system. There is only one exception to this, the concept recognises the U.S. as such a pole when it speaks about the “powerful domination of the USA”. Even though Russia does not identify itself as one of the poles the references of the text to it “as a great power” and “one of the influential centres of the modern world” as well as Russian political practice makes it clear that it does not have any doubt about its own status. It is emphasised that Russia pursues “independent … foreign policy”. The Russian Federation for a long period of time has nurtured the illusion that its status has been identical with that of the Soviet Union on a reduced territory and with smaller population. Even though this illusion has been given up it has not been replaced by a systematic valuation of the potential of Russia in international relations.

3. It stems logically from the above said that the Russian Federation intends to maintain those institutional structures and its role in them, which may contribute to its global importance and status in the system. It is an eloquent demonstration of this that Russia resolutely opposes attempts to degrade “the role of the UN and its Security Council in world affairs”. The idea of “restricted sovereignty” and “humanitarian intervention”, which present the danger that those bodies where the Russian Federation is one of the key players, most notably the UN Security Council, are not acceptable to Moscow. It is unfortunately not clear from this whether it is the stance of Russia in order to contribute to the common interest of the international community, which should be based on the separation of independent actors and their equality under international law or because the restriction of the sovereign quality of states would endanger Russia as then power relations and material inequalities would prevail, which would reduce the role of Russia. It is most probably in the context of retaining (or regaining) multi-polarity and the role of the UN as an expression of such multi-polarity that the concept speaks about the “coincidence of the fundamental approaches of Russia and the People’s Republic of China”. The bottom line of Russia is to maintain “the status of the permanent members of the UN Security Council”.

4. It is obvious that different elements of international relations are inter-related. Consequently, the foreign policy concept has to address international economic matters to the extent they can be affected by sovereign activity. In spite of this the attention paid

to the economic aspect of the international relations of Russia has remained strictly limited. This is somewhat surprising in light of that Russia has demonstrated the "economisation" of its foreign policy under President Putin's term in office. It is understandable that Russia declares to "be ready to use all economic levers at its disposal" and that it intends to use the "resources for the protection of its national interests". The link is insufficiently established either between international economic relations and other spheres of the international activity of Russia or between the former and its main objective to create a favourable environment for the development of Russia, growth of its economy and the improvement of the living standard of the population. There is only a passing mention of this matter of major importance in the document (see p. 2).

According to my impression it would have been to the benefit of the concept if it had put more emphasis on common values of democracies, to their commitment to contribute to positive international processes, to the "common good" and to their joint activity to underline these objectives. It is not so much missing principles that present themselves as problems, rather an orientation, which, although may represent the genuine interests of Russia, does not give the impression that it is in every respect in line with the mainstream of the current post-Cold War development of international relations.

3. Missing elements, flaws and shortcomings of the concept

Academic analysis could find several shortcomings in the concept. A closer political analysis would conclude, however that such a high level official document cannot clearly spell out many of those elements, which any intellectual without governmental responsibility would find necessary. Anybody who has drafted similar document knows, however that factors other than intellectual consistency has to be taken into account when such documents are drafted. First and foremost it has to be taken into account that it should address multiple audiences. They can be divided into domestic and foreign ones, both of them structured further. Namely, the domestic audience includes the entirety of the political spectrum ranging from political parties to interest groups. It also has to reach out to the wider domestic public. It has to furthermore determine the foreign policy activity of the country, including the diplomatic service. Internationally it has to

take into account the sensitivities of the country's partners, including those, which might have adversarial intentions as well as those, which are friends or allies and expect reassurance from the Russian state. Hence, it is a difficult balancing act to adopt a document, which satisfies each partner or at least does not cause complications on either the domestic or the international front. Even though it does not happen particularly frequently that the wider public analysis closely such documents the document also has to take into account the foreign policy convictions of the populations.

Even though there are many valuable thoughts reflected in the concept let me focus on those points, which may eventually be regarded as flaws and shortcomings.

The principles of the document are somewhat indirectly reflected in the "operative", "prescriptive" parts. Although there are no contradictions between them, their points of emphasis are not in full harmony.

1. A shift of emphasis is noticeable in the way human rights are tackled as a foreign policy issue. The whole idea is presented sketchily and integrated under the slogan that Russia is "devoted to the values of democratic society". The concept puts it on the foreign policy agenda partly as a request that human rights would be observed "all over the world" without any particular demonstration of Russia to contribute to the attainment of this objective and partly as a narrowly defined legal prerogative to expand the participation of Russia in the international conventions and agreements in this domain. The emphasis is clearly put on the "protection of the rights and interests of the Russian citizens and compatriots abroad". The same is explored in more details and it is stated that Russia will protect the rights and interests on the basis of international law and effective bilateral agreements. It is important that the concept emphasises that Russia will strive for adequate guarantee of the rights and freedoms of compatriots "in the states of their permanent residence, maintain and develop all-round ties with them and their organisations". It means that Moscow does not seek a policy of resettlement of ethnic Russians to the Russian Federation. The double asymmetry (Russia, a regional great power enjoys superiority vis-à-vis most states, which host ethnic Russian population and Russia is in the status of *demandeur* as most CIS countries host more ethnic Russians

than Russia hosts e.g. ethnic Kazakhs, Georgians, Ukrainians, etc. on her territory) gives a premium to Russia. It is obviously a very delicate matter for Russia to practise sufficient resolve without giving the impression to the world at large of an intolerant regional hegemonic power in these bilateral relations. This issue, and the role of Russia as party to some regional conflicts, is not reflected in the concept.

A remark made elsewhere makes it clear that Russia attributes central importance to the matter specifically in relation to the three former Baltic Soviet republics: “Respect for Russian interests…, including the core matter of observance of the rights of the Russian-speaking population, is the indispensable condition” of good neighbourliness and mutually beneficial co-operation. The difference made between these three states and members of the CIS gives the impression that Russia has some doubts as far as its ability to enforce the requested respect for the rights of the Russian speaking minorities in Estonia, Latvia and Lithuania.

2 The short mention of the international economic relations of Russia does not address a main objective of the country: To gain membership in the World Trade Organisation. It is “wall-papered” by the need “to assist in the formation of a fair international trade system with the full participation of the Russian Federation in international economic organisations”, which either reflects the doubts of Russia whether the concrete goal (WTO membership) is attainable or it reflects broader aspirations to join more international economic organisations than just the WTO.

3 The analysis of the regional policy of Russia is clear with priority given to the CIS, then to Europe and Asia.

It is interesting to note that the document devotes little attention to the United States in this section whereas it was pointing to the U.S. when the principles of foreign policy were outlined (uni-polarity). It is apparent that Russia attributes great importance to maintaining the intensity (though not the orientation) of the relationship with the U.S. once established between Washington and the Soviet Union. It has a problem with the

rearrangement of power relations in the international system since the end of the Cold War, which disadvantaged Russia as far as power relations.

It is interesting that the document already in the beginning of 2000 paid significant attention to the risks and threats presented by Afghanistan, including terrorism and extremism generally and the challenge to the southern border of the CIS concretely. It is logical to conclude that the Russian leadership acted in accordance with the foreign policy concept following the 11 September 2001 terrorist attack.

It is also worthy of mention that the concept expresses strong Russian reservations concerning the “re-profiling of” … the activity of the OSCE to the post-Soviet area and the Balkans. These words have reappeared at the so-called Vienna OSCE Council meeting of 2000 and serve as foundation of Russian policy ever since.

As far as the NATO policy of Russia it contains all those elements, which had been known earlier with some variation. Namely, the way it has expressed the dissatisfaction of Moscow concerning the functioning of the co-operation between the Atlantic Alliance and Russia under the Founding Act of 27 May 1997 was an open invitation to the Atlantic partners to consider a more agreeable framework of co-operation. This attempt has apparently been successful as the road led to the NATO-Russia Council of 20 in May 2002.

Overall one gets the impression that even though there are areas of potential improvement and eventual updating of the concept it represents sufficient foundation for the long run.

THE FOREIGN POLICY CONCEPT OF THE RUSSIAN FEDERATION

David Law

According to the Foreign Policy Concept of the Russian Federation, the priority of Russian foreign policy is the 'protection of the interests of individuals, the society and the State'. As such, it complements the National Security Conception of the Russian Federation (approved by decree No.24 of the President of the Russian Federation) and has a number of implications for the way the country approaches its security sector and, in particular, the question of its reform.

First, it is to be noted that the foreign policy concept has been made public and rendered widely accessible through the press and over the internet. That Russian and non-Russian citizens alike can easily consult the text, as can foreign governments, is significant. This contributes to transparency about the way Russia perceives its foreign policy interests and priorities, and constitutes a confidence-building measure in itself.

A second and related point is that the document recognizes the importance of nurturing favourable attitudes towards Russia abroad. To this end, it commits the Russian Federation to ensuring that an active information policy about developments in Russia is an integral part of its foreign policy. As long as the information policy is approached in a spirit of openness and integrity, this will also contribute to greater transparency.

Third, the concept makes clear that Russia is a *status quo* power largely content to maintain UN structures and procedures as they are, and wary of concepts such as 'humanitarian intervention' and 'restricted sovereignty'. At the same time, the document states that Russia is prepared to engage in a dialogue on 'perfecting the legal aspects of force application in international relations under the conditions of globalization'. This is highly encouraging: how countries work together internationally is an important dimension of security sector reform, and an especially challenging one in the post-9/11 world.

Fourth, while the document marks substantial progress in several respects over the 1993 concept, in certain areas it would seem that Russia's thinking about its role in the world is still in a transitional phase. Of particular relevance to security sector reform is the way the concept refers to, as mentioned above, the 'interests of the individual, society and the State'. This suggests that society and the state may have different interests, which is rather different from the notion that the State is there to serve the interests of its citizens. There is a danger that this kind of approach could compromise the prospects for security sector reform.

A final consideration concerns discrepancies between some of the principles laid down in this document and the way they are implemented in practice. For example, the document commits Russia to respecting human rights and freedoms at home and abroad. There is much evidence to suggest that Russian military and paramilitary forces have not always honoured this commitment in Chechnya. Similarly, while the document refers to the Federation Council and the State Duma as having a role in the area of foreign policy, the ability of the legislature to exercise its oversight function leaves much to be desired. As long as such deficits have not been effectively addressed, progress in the area of security sector reform is likely to continue to be difficult.

THE INFORMATION SECURITY DOCTRINE

Russian Expert Commentary

The 'Doctrine of Information Security of the Russian Federation' is a totality of official views on the aims, tasks, principles and main directions for ensuring information security of the Russian Federation. It develops the Conception of National Security with respect to the information sphere and it serves as a basis for shaping government policy in this field. It is the first post-Soviet political document in which the matter of preservation of spiritual and moral values, implicit in Russian society, had been raised.

It remains highly important to prioritise general democratic principles and interests of individuals, society and state in the Doctrine. It is well understood that a lack of access to information and manipulation of information produce negative sentiments amongst the population, and, in some cases, lead to destabilization of the social and political situation. With this in mind, the Doctrine intends to strengthen the legitimacy of the mass media and to broaden its capabilities with respect to the delivery of timely and trustworthy information. The Doctrine aims to open government information resources to the public and to develop the support activities of public unions. The Doctrine wishes to protect society from untrustworthy information. In doing so, the State should create conditions for the observance of the constitutional rights and freedoms of human beings in the field of the acquisition of information and its usage, prohibition of censorship and the reliable delivery of information to both Russian and international publics. Trustworthy information about the government policy of the Russian Federation, its official position on socially significant events.

The Doctrine describes in detail the legal, organizational, technical and economic methods of ensuring information security. In particular, it draws attention to the legislative differentiation of powers in the field of ensuring information security between federal executive authorities and other executive authorities on the subjects of the

Russian Federation and the determination of aims, tasks and mechanisms of participation in the activities of public unions, organizations and citizens.

An important aspect of the Doctrine relates to the condition of the defence sphere and to military and civil relations through the prism of information security. Possible information and propaganda activity undermines the prestige and combat readiness of the Armed Forces as do unsettled matters of social security of military persons and their family members. These elements represent internal threats to the field of defence; that modern civil society in Russia must avoid in order to is ensure the maintenance of necessary moral values, patriotism and civil responsibility.

There are, however, problems within the Doctrine itself. The problem of information and psychological security in comparison with information and technical security is described insufficiently. Differences, in the specific tasks of ensuring the supply of information, are rather significant and technical aspects (i.e. the subject field – information resources and processes in technical means and systems) and information and psychological security (subject field – individual psychology, collective psychology, social conscience) should have been more clearly reflected in the Doctrine, at least by means of corresponding grouping of threats, their sources, tasks, etc.

Unfortunately, the Doctrine still does not present a system of official views on the ensuring of information security. This considerably diminishes its normative significance for forming government policy in the sphere of information security. In many ways, information security is explained by a weak methodological development of the key definitions. Information security is determined in the Doctrine as a condition for the protection of national interests in the information sphere. The term “international interests” might represent the struggle and competition of states, but not for ensuring security. National, social, personal values (material and spiritual), with respect to information security, should be emphasised. In this sense, information security reflects the information resource of the subject as a self-value, or, as a factor materially influencing the results and expenditures of its activities (economic, political, military, etc.). The word combination “information sphere” itself does not permit a clear outline in the field of the subject of information security. “Sphere” appears more as a journalistic

metaphor as opposed to a scientific term. Its usage leads to an extremely expanded interpretation of information security.

As the influence and power of public information is delivered mostly through mass media, the most important purpose of the Doctrine as a political document should centre on the conditions and mechanisms of responsibility for any damages incurred (for manipulating social conscience, “black PR” during election campaigns, undermining public moral, etc.). However, the Doctrine says very little about this. It underlines the freedom of mass media as opposed to issues of censorship. The Doctrine briefly speaks of the possibility of a constitutional limitation of the freedom of mass information and the necessity of the prohibition of usage of broadcasting time by the electronic mass media for programs that propagate violence, cruelty and anti-social behaviour. Democratic countries have an experience of establishing tough mechanisms of responsibility for the mass media, including those in private property. All of this should have been clearly addressed by the Doctrine particularly in the section devoted to priority measures for the realization of government policy of ensuring information security of the Russian Federation.

THE INFORMATION SECURITY DOCTRINE OF THE RUSSIAN FEDERATION

Ian Leigh

The Doctrine gives an analysis the existing state of policy and law governing 'information security' in the Russian Federation and makes suggestions for areas where reform is necessary. 'Information security', while not actually defined, is conceived very widely. It covers not only individuals', but also societal and state, interests. In scope the doctrine ranges over many policy areas, from data protection, personal privacy, copyright and computer misuse (hacking) through to state secrets, access to information and the control of the media. Inevitably, in view of the wide compass, the policy is in places highly generalized.

Part I ("Information Security of the Russian Federation") describes in detail the individual, social and state interests underlying the policy. Individual interests focus on the importance of civil rights and the benefits of access to information in terms of personal development. Social interests include consolidating the democratic process and strengthening social consent. The national interests are described in greater detail and they focus on four issues: strengthening democratic values as the rule of law in this policy field; using information technology to keep Russian people informed of government policy; promotion of domestic developments and capabilities in information technology; and providing a secure environment for information in the public and private sectors.

Threats to information security are identified. With commendable frankness, the Doctrine acknowledges government policy and legislation can pose a threat, just as much as private monopolies and organised criminals. The Doctrine distinguishes between foreign threats (mentioning particularly aggressive foreign corporations and international terrorists) and domestic threats. Among the latter it rightly stresses that the under-development of the legal regime can constitute a barrier to full exploitation of information technology – particularly, where e-commerce s concerned.

It is acknowledged that, despite legal progress in laws concerned with *state* information, much remains to be done, both in giving individuals access to information and protection for their personal privacy and in creating the legal and technical infrastructure to allow an information society to flourish.

Part II describes the "Methods of Ensuring Information Security of the Russian Federation" and focuses on legal and economic reform. Some domestic aspects of this analysis suggest that freedom of expression has not been fully embraced as a democratic value. For example, 'public unions' are identified as a threat because of 'stirring up social, racial, national and religious hostilities, as well as dissemination of these ideas in mass media' (sic). Consequently, 'activation of counter-propagation (sic, propaganda?) activities, aimed at the prevention of negative consequences of dissemination of misinformation about home policy' is suggested as a main means of ensuring information security. Similarly, it is suggested that a contribution to ensuring information security in the spiritual sphere can be made by countering the spreading growth of mass consumerism through the media, censorship of broadcasting propagating anti-social behaviour and 'opposition to negative influence of foreign religious organizations and missionaries'. This degree of control over the media that these comments envisage would be unacceptable in many democracies, which leave such decisions to the individual recipient of the information, rather than to the state. Other aspects of Part II deal with policies for the protection of telecommunications and security from so-called 'cyber-warfare' for government bodies.

Parts III and IV deal with the contribution of government. Part III sets out – at a high level of generality – the policy of government. This ranges from observing the Constitution to supporting the development of new technologies. Part IV maps the broad contributions of different constitutional actors to the policy.

Overall, the Doctrine is a comprehensive document. It enunciates many aspects of information policy. It fails, however, to give concrete examples of specific reforms to address the various dangers and shortcomings that it identifies. In view of the broad range of information security under review little practical guidance is given of how the state intends to resolve potentially conflicting policy objectives. For example, is access

to information or privacy to take priority in relation to access to personal files, containing sensitive details on other people? Will individuals be permitted unrestricted use of cryptology to protect their privacy, but potentially sheltering illegal or fraudulent computer activities? Will legislation on intellectual property rights in information technology encourage innovation or be act as a barrier to the benefits of new technologies? Hard questions like these receive no analysis or discussion. It appears that more specific policies on the range of issues covered, such as telecommunications, broadcasting, intellectual property rights, electronic commerce, the use of personal files and so on, would be more useful than an all-enforcing policy document which attempts- somewhat unsuccessfully- to cover every aspect of information policy.

PRINCIPLES OF THE FRONTIER POLICY OF THE RUSSIAN FEDERATION

Russian Expert Commentary

The formation of Russia as a sovereign state and, as such, an independent subject of world policy, has made matters of its frontiers, its frontier regime and its frontier safety extremely important. The dissolution of USSR made twenty four subjects of the Federation frontier states for the first time. At the same time, five out of ten frontier regions (*okrugs*) were beyond Russia. The size of frontier forces was halved, with more than fifty per cent of staff resigning, and leaving half of the frontier posts without commanding officers. The situation required immediate legal definition and an establishment of frontier policy for the new state. The first step on this road was the law of April 1, 1993 “About the State Frontiers of the RF”. Three years later, on October 5, 1996, the President issued an edict on “The Principles of Frontier Policy of the Russian Federation”.

Being a constituent part of the Concept of National Security of Russia, they represent a system of officially adopted views on the aims, tasks, principles, major trends and mechanisms of effectuating the frontier policy of the Russian Federation, and are as important for the frontier service as the Military Doctrine for the Armed Forces.

According to A. I. Nikolaev, former FFS Director, the fact this document had no analogues in the world has played an extremely important role in the forming of a new character of frontier service, in defining its role and its place in the state’s strategy. Adoption of the document has marked completion of FFS transformation into a special state service. Besides, none of the military organization’s components has achieved such an adequate and effective reforming formula as that of the frontier service of the state.

Of no less importance is the fact that “The Basics” has clearly declared to the state and to the world the aims, tasks, principles, and major trends of the frontier policy of the

Russian Federation. According to the document, frontier policy is formed on the basis of the Constitution, of laws and other legislative documents of the Russian Federation, of generally accepted norms and principles of the international law. It is effectuated through purposeful and coordinated activity of the federal bodies of the state power, the state power bodies of the subjects of the Russian Federation, local self governing bodies, public amalgamations, organizations and citizens according to their rights and authorities within this sphere. The role of coordinator of the multifaceted activity of the eighteen departments is assigned to the Russian Federation Frontier Service, which has obtained a political status thereby.

“The Basics” has defined the procedures and rules for effectuation of economic and other activities within the frontier area of the Russian Federation, political, legal, organizational, and other conditions for realization of reliable defence of the state frontier of the Russian Federation. Recognizing its importance for FFS activity, nevertheless, it must be established that the document treats frontier security as a part of the Basics of frontier policy when the same is a part of a more extensive sphere – the national security policy. The basics principles and requirements gathered from the previous five years’ experience are specified and developed in the Federal law “About Frontier Service of the Russian Federation”. It is now possible and necessary to make the next step – to develop and approve the Concept of the frontier policy.

STATUTE ON THE ORDER OF PERFORMING MILITARY SERVICE

Anthony Foley

This document attempts to regulate a number of matters, but it is by no means clear in many places.

Much of what is contained in the document is more proper to Regulation (as with other documents which I have examined from the Russian Federation). The document attempts to cover too much and therefore leads to a degree of confusion in reading it (there are also some problems in translation which add to the problem).

There is no doubt that there is an attempt to regulate properly, but the document contains areas which are open to different interpretations and the drafting is too loose.

One interesting point which struck me was the status of women, who appear to be excluded from higher rank - unless I have misinterpreted the article in question (Section 4 of Article 8). This is far from democratic in the context of this age.

Another problem which strikes me as unusual is the references to particular regions - almost an implication that these regions will be the subject of trouble and strife *ad infinitum*. I would consider this to be a mistaken and somewhat misleading and divisive inclusion.

Much of this document could be reduced and a number of matters, such as medical categories, leave, posting to particular units, educational requirements, etc. included in regulations. The advantage of such a method would be that, in the event of amendment to a Regulation (or in many minor matters by means of an Administrative Instruction), then such amendment could be introduced by Ministerial consent. For instance, paragraphs are devoted to the actual construction of the military “contract” - this has no

place in a statute, apart from an enabling provision which permits the Ministry to introduce the technicalities (providing these are within the law, of course).

Briefly, the document requires reconsideration and far more coherence. It has many good points, but loses the opportunity to introduce ideas such as redress of wrongs, etc. Another most important factor which requires in-depth consideration in regard to the conditions of service is the whole idea of a Civil Court of Appeal to consider appeals from Courts-Martial - a most important democratic consideration.

THE CRIMINAL CODE OF THE RUSSIAN FEDERATION

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CRIMES AGAINST MILITARY SERVICE

Shackley F. Raffetto

This Code sets forth crimes, for which a military member may be prosecuted, that are strictly of a military nature. There are no provisions for prosecution for 'civilian' types of crimes in this Code, such as murder, rape, theft, drug use, etc. The comparable law in the US provides for prosecution of service members for some of these 'civilian' types of crimes.

In addition, there is a special statutory provision making military members, in addition to being subject to prosecution for 'military' types of offences set forth in laws dealing specifically with the military, also subject to prosecution in a court martial for any other federal crime. Thus, a military member may be subjected to court martial for murder, rape, theft or other Federal offence against another service member or against a civilian. It is assumed that, in practice, a military member in the Russian Federation (RF) may also be subject to prosecution for these 'civilian' types of crimes which are not strictly of a military nature. If this is in fact the practice, it would probably be helpful if the Code stated this specifically.

ON COURTS MARTIAL OF THE RUSSIAN FEDERATION

Shackley F. Raffetto

A. Basic Jurisdiction: The statutory scheme set forth in the law for courts martial in the RF is quite different and much broader than in the US. In the US, the jurisdiction of courts martial extends only to criminal cases. The law states that in the RF, jurisdiction includes civil, administrative *and* criminal types of cases. In the US, civil and administrative issues of service members would be addressed first by various administrative bodies and agencies, with final recourse to the Federal Courts (civilian). Military courts would not have jurisdiction at any level.

B. Legal Status of Military Judges: There appears to be a lack of clarity as to the legal status of military judges in the RF. There is no mention of military courts, the Military Chamber of the Supreme Court, or military judges in the RF Constitution. The law declares that military courts are in fact Federal courts of the RF. Article 11 of the law provides that the Chairman of the Military Chamber of the Supreme Court is the Deputy Chairman of the Supreme Court. The Chairman of the Military Chamber is a serving member of the armed forces and holds the rank of Colonel General of Justice. In the absence of the Chairman of the Supreme Court, it is assumed the Deputy Chairman would take his place and that would result in a serving military officer presiding over the Supreme Court of the RF. It is suggested that this would be inconsistent with fundamental democratic concepts of civilian control of the military.

C. Appointment and Tenure of Military Judges: Article 128 of the Constitution provides that the President shall appoint all Federal judges, except those of the Constitutional Court, Supreme Court and Higher Arbitration Court. The number of Court Martial Judges is to be determined by the Supreme Court (in an unspecified manner), according to Article 1 of the law, declares that Courts Martial are Federal Courts of common jurisdiction. Article 121 of the Constitution provides that 'judges shall be irremovable'. This would seem to apply to military judges if they are Federal Judges and

that their tenure is life long. Yet, Article 26 of the law provides that Military Judges shall be serving military officers (Article 27) who may only serve in the military until age 65, and then only if their tenure is extended to that age by the Chairman of the Supreme Court. This seems inconsistent with the Constitutional provisions for judges of Federal Courts and the power of the President to appoint judges.

D. Constitutional Court. There is no mention in the law of the right of a military member to recourse to the Constitutional Court of the RF.

E. Individual Rights of Accused Service Members: While there is mention, in several places in the law of jury trials or people's assessors, judge panels or various chambers for the determination of cases, none of the laws included in this collection of laws makes provision for when and under what circumstances these various modes of determining cases shall be utilized. Also, none of these laws provide for the rights of military members (e.g., right to demand trial by jury, manner in which jurors are selected, allocation of burden of proof, right to speedy trial, etc.) who are accused of committing a crime or other misconduct. There are many individual rights set forth and guaranteed in Chapter Two of the RF Constitution for citizens of the RF, however, since the criminal procedural and other rights of military members may be curtailed or differentiated somewhat it would seem helpful that they be separately stated in the laws governing military members. In the US, the individual rights of military members are separately stated in the laws concerning military service, separately from the Constitution. In the US, there is a Manual for Courts Martial that sets forth in detail precisely the manner of operation of a court martial, including the rights of military members.

ON SEVERAL ISSUES ON ARRANGEMENT OF THE ACTIVITY OF MARTIAL LAW COURTS AND BODIES OF MILITARY JUSTICE

Russian Expert Commentary

The social-political situation after the dissolution of the Supreme Council and adoption of the Constitution of the Russian Federation on December 12, 1993, the crisis in the Armed Forces of the Russian Federation and high politicization of military persons made acute the issues of legality, law and order maintenance in the Army, and political loyalty. The Law under consideration has become an important step in this direction.

Its main idea centres on the determination of the procedure of military service in martial-law courts and bodies of military justice and material security of military persons in these structures. It concerns significant strengthening of the social and material status of military judges (the conclusion of a contract for military service was suspended in this respect, but by right of benefits they were equated to the status of persons working under a contract; the amounts of their salaries were fixed at the level of the wages established for analogues posts of the main departments of the Ministry of Defence, units and institutions of the Armed Forces). The Law defined the rules of financing and logistic support of martial-law courts and bodies of military justice (at the level of the main and central departments of the Ministry of Defence).

The Legislative solution for these problems resulted in elimination of the dependence of martial-law courts and bodies of military justice on military Headquarters. By strengthening their independence, eliminating personnel discrepancies and unsatisfactory material conditions, it aimed at perfecting the administration of justice in the Armed Forces and democratizing the judicial system. At the same time, many provisions of the Law were of palliative character. The Law determined that the military persons of martial-law courts must perform military service in the Armed Forces and were to be included in their staff quantity yet financing and logistic support of martial-law courts was effected on account of the funds of the Ministry of Defence.

These provisions were revised in the Law ‘On Martial-Law Courts of the Russian Federation’.

MILITARY JUSTICE PROVISIONS OF THE RUSSIAN FEDERATION[10]

Michael Noone

This commentary reviews three laws: Section XI of The Criminal Code of The Russian Federation (No. 63-FZ, 13th June 1996), Chapter 33, Crimes Against Military Service; "On Several Issues on Arrangement of the Martial Law Courts and Bodies of Military Justice," (Federal law 61-03, 13.04.98); and "On Courts Martial of the Russian Federation" (No. 1-0K3, 23 June 1999). It is supplemented by two recent and informative articles in Volume 52 of The [U.S.] Air Force Law Review (2002), "Institutions of Military Justice of the Armed Forces of the Russian Federation," by General-Lieutenant Gennady Zolotukin, pp. 53-80, and "The Role of The Russian Constitutional Court in Protecting The Rights of Active Duty and Retired Servicemen," pp. 81-92 by Professor Bakhtiyar R. Tuzmukhamedov.

Thus the military justice system[11] has three components: criminal laws which define and prohibit certain behavior (Section XI of The Criminal Code of The Russian Federation (No. 63-FZ, 13th June 1996), Chapter 33, Crimes Against Military Service); criminal procedure which establishes a method for establishing the guilt or innocence of individuals charged with violations of the laws; and identification of those officials and institutions responsible for applying the laws (the law "On Courts Martial of the Russian Federation" (No. 1-0K3, 23 June 1999) and "On Several Issues on Arrangement of the Martial Law Courts and Bodies of Military Justice," (Federal law 61-03, 13.04.98)).

[10] The Criminal Code Of The Russian Federation (Crimes Against Military Service); On Courts Martial Of The Russian Federation; On Several Issues On Arrangement Of The Activity Of Martial Law Courts And Bodies Of Military Justice.

[11] When The Term "Military Justice System" Is Used, The Author Is Referring To A Separate Corpus Of Laws, Administered In Whole Or In Part By Specialists In Those Laws, And Intended To Fix The Guilt Of Members Of The Armed Forces Accused Of Crimes.

Introduction

Since the laws regulating criminal procedure have not yet been translated, commentary, as such, is premature. However, any examination of the Federation's provisions regarding military crimes and legal institutions must be premised on common principles which acknowledge, for example, the right of an accused person to be told what he is accused of, defend himself and to be judged impartially. The ways in which these principles are applied in a military context are a function of many variables: national legal traditions, and the role(s) of the military within society are the most distinctive. These considerations will also be incorporated in my comments on what I know of the three components of the Federation's military justice system: crimes, procedure, and Institutions.

With regard to national legal tradition: Military justice systems conform to national criminal justice practices for obvious reasons. Lawyers reason by analogy. Thus lawmakers called upon to create or modify their military justice system will follow their national (civilian) criminal justice system because it incorporates national notions of fairness, of what has come to be known as "The Rule of Law." The Federation's national system is similar to those which can be found in most Continental European countries and their former colonies, is derived from the Napoleonic Code, and may be described as "accusatory," or "civil." Its most notable characteristic to those who don't share the tradition is its reliance on magistrates as preliminary investigators and as prosecutors. The alternative tradition is described as "investigatory" or "common law," has its origins in Twelfth Century England, and is notable for its reliance on a jury. Both systems have incorporated features from the other: common law trials are often heard without a jury and non-professional lay "judges" often participate in civil law trials. Whichever the case, one must ask, in evaluating a military justice system, whether it conforms with national practices and, if it does not, what justifies the deviation. We must await translation of the criminal procedure guidelines in order to ask this question and to arrive at an answer.

The military's role in national society defines its military justice system. There are two fundamental reasons for a distinct military justice system. The first is that some behavior, accepted in civilian life or considered a trivial deviation from societal norms, will be treated

more seriously, due to the peculiar circumstances of military service. How seriously these peculiar circumstances will be taken is a function of the perceived role of the armed forces in society. A state whose armed forces expect to meet opponents in battle will demand a system firmly based on discipline, "control gained by enforcing obedience or order." If an army is not intended to be used in battle - and many are intended primarily for ceremonial purposes or as instruments to inculcate young male conscripts or simply to perform public works - then its military justice system will more closely resemble disciplinary systems which regulate the bureaucracy. The need for discipline defines, in large part, the nature of the Criminal Justice Code: what offenses are taken seriously, and over what categories of offenders may military courts exercise jurisdiction? Public statements of the Federation's elected leadership indicate that they intend that their armed forces have a warfighting capability.

Crimes under the RF Code

Civil law military codes typically distinguish behavior which constitutes a disciplinary offense from that which would constitute a violation of the national civilian penal code. "Faute envisagee sous ses aspects contraraires aux reglements de la discipline militaire, para oposition a l'infraction penale (ou aux reflements administratifs)." "Disciplinaire (faute)".[12] The same distinction between penal and disciplinary offenses is made in Article 83 of the IVth Geneva Convention regulating the punishment of prisoners of war. Although codes with Anglo-American origins do not overtly make this distinction, it is apparent. Some disciplinary offenses, desertion or disobedience for example, may not be crimes in civilian life. Anti-social acts which constitute a civilian crime may, depending on national traditions, be tried before civilian or military courts. However the distinction between penal and disciplinary offenses blurs when one considers behavior which constitutes a minor civilian crime, e.g. drunkenness or petty theft - rarely prosecuted or, if prosecuted, not punished severely - but which is treated as a serious offense in the military.

"Crimes Against Military Service," Section XI of The Criminal Code of the Russian Federation, reflects, of course, the law as written, not as it is applied. Its list of offenses penalizes some behavior, e.g. unauthorized abandonment of place of service (Article 337)

[12] *Multilingual Glossary* (Brussels: International Society For Military Law And The Law Of War, 1979).

which probably would not be a crime if a Federation civilian were to leave his place of employment. Other provisions, e.g. violation of motoring rules (Article 350) penalize behavior which constitutes an offense in civilian life, but may apply more severe sanctions. Although modern states' national criminal codes adhere to the principle "nulla poena sine lege," (an offense must be defined in law before it can be punished) some military justice codes permit punishment for more broadly defined conduct, e.g. that which "is unbecoming an officer" (U.S.) or is "contrary to military order and discipline." (Ireland and Norway). The Federation Code does not contain such a provision. It does, unlike older Codes, explicitly provide, in Section XII, for the punishment of violations of international humanitarian law. Section XI's jurisdiction apparently extends only to uniformed persons on active service, and to reservists during training. Other nations extend their jurisdiction further: to prisoners of war (see Articles 82 and 85 of Geneva Convention III); to cadets; and to civilians who serve or accompany the armed forces. Apparently Section XII's jurisdiction over humanitarian crimes extends to civilians as well.

Colonel General Zolortutkhins's article asserts that military courts' jurisdiction extends to service members' claims of violation of civil rights as well. The statutory basis for such jurisdiction was not within the material reviewed.

Criminal Procedure

If the first characteristic of a robust military justice system is how seriously national authorities consider the possibility that it will be employed in battle, the second characteristic is its ability to be deployed. If the armed forces are only to be used internally the military justice system can rely heavily on the domestic judicial system, which is typical of Continental Western European armies. Until recently, deployments outside the home country were small units engaged in peacekeeping operations or to suppress efforts to destabilize the governments of former colonies. Colonel General Zolortutkhins's article asserts that military courts' jurisdiction extends outside the Federations' territory. The statutory basis for such jurisdiction was not within the material reviewed. Disciplinary offenses, which under continental military law codes, provide for minor punishment and little or no legal protections, are typically punished in situ, whether committed domestically or outside the country. If a penal offense is committed outside the national boundaries, civil law systems typically return suspects to the home country for trial, after an examining

magistrate/prosecutor has gathered the evidence. The distinction between procedures applicable to disciplinary offenses and those applicable to penal offenses was not apparent in the material under review.

Military Justice Institutions

Colonel General Zolortutkhins's article elaborates on the structures outlined in the laws "On Courts Martial of the Russian Federation" (No. 1-0K3, 23 June 1999) and "On Several Issues on Arrangement of the Martial Law Courts and Bodies of Military Justice," (Federal law 61-03, 13.04.98). There is a hierarchy of military courts which handle both criminal justice, civil litigation and administrative matters. The courts' jurisdiction thus extends to controversies which would not fall within the jurisdiction of many nations' military courts. Garrison military courts are at the base of the hierarchical structure; appeals may be taken to District (Fleet) Military courts, which also hear as courts of first instance, those cases which are not within the competence of garrison courts. The Military Collegium, part of the Federation's Supreme Court, hears appeals from District (Fleet) courts and serves as a court of first instance: in disputes claiming that Federation officials, including the President, have acted ultra vires in matters affecting members of the armed forces; in cases involving alleged misconduct of a military judge; or cases of unusual complexity or social consequences. Professor Tuzmukhamedov's article points out that the Federation's Constitutional Court, although not part of the formal military justice hierarchy may also be called upon to protect the rights of service members and their families.

The material under review offers an introduction to the Federation's efforts to introduce humanitarian considerations into what had been a suspect criminal justice system.

ON THE STATE OF EMERGENCY

Russian Expert Commentary

Constitutional regulation of the institution of a state of emergency is an important component of a juridical state. Juridical uncertainty in this respect can pose a very dangerous situation. A state of emergency institution, according to the history of democratic regimes crises, can be used in antipodal ways—to protect democracy against extremism and, conversely, to establish an anti-democratic regime. According to K. Schmidt's gnomic expression, a constitutional guarantor can implement a state of emergency. That is why the establishment of a democratic law about the state of emergency is extremely important for states with unstable constitutional processes and facing a stage of transition from authoritarian to democratic statehood. The Constitution of the Russian Federation of 1993 provided for the possibility of the implementation of a state of emergency in the case of a situation and, according to the procedure, "established by the federal constitutional law". However, the law was approved only in 2001.

Its most important positive features are: a clear definition of a state of emergency institution, its goals, conditions and procedure for its implementation. A state of emergency is considered "a special legal regime" of the power bodies' operation which is implemented regardless of the existing organizational and legal forms and allows for particular limitation of civil rights and freedoms to protect the constitutional state. Its implementation is only possible according to the Constitution and alongside the existence of particular conditions of natural, social characteristics, the elimination of which is not viable without extraordinary measures. The latter category includes extreme situations of political conflicts which emerged abundantly in post-Soviet Russia—from *coup d'état* attempts, military rebellion, terrorism and the formation of illegal military troops to disturbances and various conflicts of a national, congressional or regional character. Their distinguishing feature is defined by the application of "violent acts" creating a threat to the security of citizens and operation of the state power structures.

It is very important that the law clearly establishes limits for the state of emergency institution within such parameters as procedure of implementation, terms of existence and realization, set of applied measures and limitations, as well as guarantees of the rights of citizens and responsibility of officials. Effectuation of a state of emergency is supported by the organs of internal affairs, by the criminal legislative system, by the federal security organs and by internal armed forces. Regulation of the use of the armed forces in this context is of special importance. The law permits their engagement "in exceptional situations", though it does not explain the meaning of the latter wording. The Frontier Service forces are engaged to facilitate a state of emergency only to protect the state frontiers. The armed forces are engaged to fulfill the tasks performed by them many times in the course of regional conflicts—effectuation of a special regime for entering a territory where a state of emergency is implemented, safeguarding of strategic objects, separation of opposing parties, participation in termination of activities of illegal military formations, as well as participation in liquidation of extraordinary situations. Such tasks (except extraordinary situations related to natural and man-caused conditions) are fulfilled by the armed forces "together" with the internal affairs law and order forces, criminal law system organs, the federal security organs and internal forces that aim to provide guidelines for strict control and coordination of their activity.

Operative subordination of troops varies depending on the state of emergency implemented either locally, or, in the entire territory of the state. In the first case, uniform command of all the forces and means supporting the regime is to be charged to the commandant of the territory. Within the commandant's authorities to issue orders and directives obligatory for organizations are citizens, as well as heads of power organs, including military formations in the given territory attracted for effectuation of the state of emergency. In the case of implementation of a state of emergency in the entire territory of the Russian Federation, there is a special regime of operative subordination of all military formations to a federal executive body nominated by the President of the RF.

It is important to outline several particulars of the law understandable in the current Russian situation. Firstly, the state of emergency is implemented without consultations with the subjects of the federation (this is considered by opponents as a limitation of federalism). The right to implement a state of emergency belongs to the President. The

formation of special state of emergency administrative organs is done not by legislation, but by the edict of the President, and the operation of such organs is based on the provisions approved by the President. The edict of the President, on implemention of the state of emergency, is to be approved by the upper chamber—the Federation Council, which becomes extremely important in such a situation. Nevertheless, the matter of political independence of the upper chamber has become disputable because of changes in the procedure of forming the same.

Of course, in the general context of power division and reformation of federalism, the law is aimed at provision of integrity of the state, stability of the political regime and centralization of administration. In an extreme situation, it gives to the federal center and to the President an important instrument to influence subjects of the federation and allows the effectuation of wide scale federal interference. Application of this instrument will depend on the general political situation and dynamics of the Russian federalism processes.

As far as the law includes a considerable amount of limitation norms, its application is only possible in exceptional situations and under strict public and international control. That is why some opponents have demanded its application in the course of conflict in Chechnya. That would have allowed, in particular, the flooring of the problem of refugees and protection of their proprietary rights, and discussion of the question of legislative control over the armed forces. At the same time, it is obvious that application of a state of emergency institution and engagement of troops in the settlement of conflicts contains an imminent threat to democracy and should be considered as an exceptional measure.

ON MARTIAL LAW

Russian Expert Commentary

International and home experience shows that at the time of war or direct threat of war, it is necessary to centralize power, to strengthen interior order, to mobilize material and people resources, and to subordinate all types of activity to the interests of repelling or preventing armed attack against the country. The necessity of introducing special rules and standards of living and activities of the state, society, and citizens has been taken into account since olden days. Special laws on this matter were adopted in Ancient Rome, in the XVIII–XIX centuries in France, Germany, Austria, and other European countries. In Tsarist Russia, Martial Law was announced on the grounds of the rules and special decrees of 1892. In the USSR, there was no special law, but Martial Law could be introduced according to an amendment to Article 49 of the Constitution.

Legislation of the majority of foreign countries consider Martial Law as a legal institution that governs the emergency regime of executing state power in situations when normal functioning of the society and state becomes impossible. This legislation is an inseparable element of a legal state. In this meaning, the adoption of Martial Law represents an important step towards turning Russia into a legal state. Being consecutively peaceful in its spirit, the Law contributes to the strengthening of legal bases of the country's defence. The Law regulates the order of and grounds for the introduction and cancellation of the regime of Martial Law, defines the powers of the bodies of state power and local self-government, determines the role of the Armed Forces and other power structures that are providing for the maintenance of this regime, and legal status of citizens and organizations at the time of Martial Law.

Here two points are worth mentioning. Martial Law shall be introduced by the Order of the President which is to be approved by the Federation Council within 48 hours, otherwise the Law shall cease to be valid. Thus, the Parliament is granted a function of control. Furthermore, the Law forces the President to give notice to the Secretary General of the Organization of the United Nations and, via the Secretary General, to other member-states of the Organization of the United Nations and inform Secretary

General of the Council of Europe that the Russian Federation deviates from its duties under International Treaties, in connection with limitation of citizens' rights and freedoms. In order to execute International obligations, this means that the Martial Law shall obtain support and recognition from the International Community.

The transfer of all spheres of life and activity of the society into a qualitative new state is impossible without the generally accepted limitation of democracy, citizens' rights and strengthening of control over society, information, mass media, etc. The special significance of the Law is that it sets limits on the transformation of the power system, on the limitation of the legal status of citizens and organizations "only to the extent that is necessary for the purposes of providing for defence and security of the Russian Federation on the grounds envisaged by the Federal Constitutional Law and Federal laws adopted in accordance with it".

The Law stipulates measures that prevent the country from turning into one military camp, including prohibition of political organizations, political and information and propaganda activities, that could undermine the defence potential of the country; expansion and strengthening of the role of the state in regulating social and economic processes and relations, including the introduction of limitations on carrying out economic and financial activities and property turnover. However, it excludes an "emergency" that gives place to tyranny. The creation of any emergency bodies of power is not envisaged. In general, the operating system of government is preserved. Only in the places where military operations are conducted may the taking of measures of Martial Law be entrusted to authorities of military command by the Order of the President. The powers of government, federal bodies of executive power, executive authorities that are providing for the regime of Martial Law and the activity of courts and prosecutor's office are stated in detail in the Law. The questions of responsibility of the citizens for breaking standards and rules of Martial Law for offences that damage defence shall be examined by courts of common jurisdiction according to the Constitution and other Laws.

In accordance with the Law, the introduction of Martial Law is possible only in the case of military aggression. At the same time, the Military Doctrine of the Russian Federation stipulates a rather wide spectrum of interior dangers, including different forms of

extremism, separatism, terrorism and organized crime that can lead to armed operations aimed at seizing power. In this case, the life of the country and functioning of the bodies of power shall be regulated by the Law on State of Emergency.

ON MARTIAL LAW

David Law

Legislation addressing the extraordinary circumstances associated with martial law will raise a myriad of sensitive questions in any country that values its democratic principles and is concerned lest the measures adopted to deal with a martial law situation end up compromising the very security that they were supposed to protect. This is particularly true of the Russian Federation as a successor state to a regime that systematically misused state power to protect the monopolistic position of the Communist Party.

The authors of this law were clearly mindful of these antecedents when drafting the legislation in question. Thus, the law insists on the extraordinary nature of the circumstances that would be deemed to justify a decision to declare martial law, via the need '…to create conditions for repelling or preventing aggression against the Russian Federation.' In addition, several measures are included in the legislation that are designed to prevent the misuse of an emergency situation for political purposes as well as provide reassurance both at home and abroad. The Federal President, whose role it is to initiate legislation on martial law, is required to obtain the approval of the Federation Council. Other safeguards include the stipulation that the office of the Commissioner of Human Rights cannot be set aside in a situation of martial law and under the proviso that the United Nations and the Council of Europe are to be duly informed of the initiation of martial law.

In other respects, however, the document raises some questions of concern. Article 7 provides a list of "measures to be used in the territory where martial law has been introduced". As is to be expected of legislation of this nature, the measures are extremely far-reaching. While most measures would seem to be justifiable under the special conditions that accompany martial law, this is not necessarily uniformly the case. Take, for example, measures that foresee that the state can:

> 'introduce control over work of establishments that provide for functioning of the transport, communications …publishing houses, calculation centers…[and] mass media, to use their work for the needs of defence…'

'…introduce military censorship over mail and messages [and]…create bodies of censorship…'

'..forbid or limit the departure of citizens outside the territory of the Russian Federation…(and)'

'…introduce additional measures that are aimed at strengthening the regime of secrecy in the bodies of state power'.

One cannot exclude, of course, that steps of this kind might prove necessary in one or the other set of extraordinary circumstances. What is disconcerting is that the default position in this text appears to assume that an increase of state power in an emergency is necessarily a desirable option. For example, it is questionable whether the interests of the state and its citizens would be well served by a shutting out of the press or restrictions of all kinds being placed on the circulation of information, or by the assumption by state bodies of control over jurisdictions that they are not normally accustomed to supervising, let alone directing. Societies, not least those under serious duress, need to know what is going on; their governments need to know that those they govern have confidence in the information that is generated by official instances. Similarly, when coping with martial law, the broader interest may best be served if jurisdictions are left to operate autonomously, under the overall authority of the government. The state and its bureaucracy latter will have enough to do in an emergency without becoming involved in matters of which they have little notion. This is a policy course that becomes that much more realistic if those jurisdictions that are likely to play key roles in a situation of martial law have had the opportunity to practice cooperation in simulated emergencies in peacetime.

Chapter Three of the legislation addresses the question of the special powers of state authorities at a time of martial law, listing *inter alia*, the powers of the President. The problem is not that these are wide-ranging in nature. Rather, it is that the powers given to the President in Article 12 under this chapter do not appear to be subject to the stipulation given in Article 4, and mentioned above, to the effect that the President's actions must be approved by the Federation Council. For instance, one reads that the 'President can suspend the activity of political parties, other public associations, religious formations that conduct propaganda and/or agitation and any other activity that undermine defense ands security of the Russian Federation at the time of martial law.'

The President's discretion would also appear to be very wide when there is a question of terminating martial law. Article 21 foresees that it is the President who decides when martial law is to be brought to an end. This raises another issue that is not considered in the legislation, namely, that special powers given to the government should be subject to periodic review. For example, it might be appropriate for the legislation initiating martial law to stipulate how long this could be in effect without the President having to seek its renewal.

A particularly interesting aspect of the law concerns the kind of aggression that can give rise to a declaration of martial law. Approved by the Duma in December 2001, and by the Federation Council in January 2002, the legislation restricts the possible grounds for aggression undertaken by a foreign state or a group of foreign states. It would, therefore, not be possible to declare martial law in Chechnya owing to the military activities of the irregular Chechen military formations alone. If, however, a foreign country were to send 'armed gangs, groups, irregular forces or hirelings' to use force against the Russian Federation, this would constitute aggression of the type that could justify the declaration of martial law.

ON THE PROCEDURE OF PROVIDING CIVIL AND MILITARY PERSONNEL FOR PARTICIPATION IN THE ACTIVITY ON MAINTENANCE AND RESTORATION OF THE INTERNATIONAL PEACE AND SECURITY BY THE RUSSIAN FEDERATION

Russian Expert Commentary

The Russian Federation, as a peace-loving democratic State and as a Standing Member of the UN Security Council, recognizes its responsibility in maintaining international peace. The present Law is confirmation of this. The fact of its adoption, being on the one hand, an official testimony of the availability of the Russian Federation to participate in peace-making activity and, on the other hand, defining the procedure and rules of such participation, calls to prevent voluntary decisions and actions.

The Federal Law states that Russia assigns its military personnel, including military units and sub-divisions with the corresponding armaments and military equipment, support and logistics means. Russia assigns civil persons for activities relating to the maintenance of peace as undertaken by the UN Council of Security in compliance with the UN Charter, by regional bodies, or, within the framework of the regional bodies or agreements of the Russian Federation, or, on the basis of bilateral treaties of the Russian Federation or multilateral international treaties. Nonetheless, it is specified that the Russian Federation, in each case, independently defines the feasibility of its participation in such operations. Its peace-making activity may also be realized by rendering humanitarian aid and material-technical resources.

The Law contains a detailed procedure of decision-making on forwarding individual military persons, military formations of the Armed Forces and civil personnel outside the limits of the territory of the Russian Federation for participation in peace-making activity. In compliance with the principle of separation of powers, it fixes the corresponding powers of the President, Chambers of the Federal Assembly and Government, as well as the procedure of financing the costs in preparation and participation in the maintenance or restoration of international peace and security. There are requirements legalizing the parliamentary control over this activity. Thus, the President of the Russian Federation informs the Council of Federation and the State Duma on all decisions. The

Government of the Russian Federation submits to the Council of Federation and the State Duma an annual report on participation of the Russian Federation in the activity of maintenance or restoration of international peace and security. The spending of additional funds is thus only feasible upon adoption of the relevant Federal law.

The Law provides for measures on social and legal protection of those persons participating in the peace-making activity. The military and civil personnel are selected for such work on a voluntary basis. Military persons are selected from those who perform military service under contract. All persons involved in the peace-making activity undergo attestation, medical examination and training. For the purposes of the training and special preparation of military personnel, there is a special military contingent formed within the structure of the Armed Forces of the Russian Federation. The Government has imposed upon it the mission of establishment and provision of additional guarantees and compensations of those persons involved in the peace-making activity and this extends to the members of their families.

ON PROCEDURES FOR DEPLOYING CIVIL AND MILITARY PERSONNEL OF THE RUSSIAN FEDERATION FOR ACTIVITIES RELATED TO THE MAINTENANCE OR RESTORATION OF INTERNATIONAL PEACE AND SECURITY

David Law

A crucial dimension of security sector reform relates to the legal basis for the use of force in the international community and for the deployment of third party forces into a national theatre. This issue came under the spotlight in the 1990s when traditional forms of consensual peacekeeping transmogrified into peace enforcement operations typically involving the use of force against one or both combatants. The issue has become further complicated since the events of 11 September 2001. In its wake, there has been much discussion of such questions as whether a state has first had to suffer an attack to be able to mount a military response that is in keeping with international law, and whether international law *as per* the UN Charter and related instruments is sufficiently flexible and comprehensive to allow states to address effectively the security challenges they face at the beginning of the 21st century.

The Law on Procedures for Deploying Civil and Military Personnel of the Russian Federation for Activities Related to the Maintenance or Restoration of International Peace and Security was promulgated in 1995. As such, it does not take into account the more recent developments mentioned above. It does, however, create a framework that can help regularize decision-making about the deployment of Russian civilian and military forces in peace support activities and render the process more transparent and accountable. This is an important step forward when one considers the sometimes questionable rationales that were used to justify the deployment of Russian forces to a number of CIS countries in the first half of the 1990s.

The law in question is also significant from another perspective. For states that have been associated with imperialistic military behaviour in the past, it can be extremely difficult to establish a new basis for the deployment of forces abroad – however much

changed circumstances might demand. For example, it took Germany half a century after World War II to establish a constitutional framework for sending troops abroad. Russia, while facing a quite situation, has managed to do this in half a decade.

The text stipulates that it does not apply to actions coming under Article 51 of the Union Charter. But to return to a point raised above, the distinction between an action of self-defense mounted in response to a direct attack on one territory's and an action designed to prevent a failed or failing state from becoming an even more dangerous haven for those whose purpose it is to launch a direct attack has become increasingly difficult to make.

Another aspect of the law is that it defines a number of different procedures to be followed depending on whether those to be deployed are civilians or military, or if the latter, constituted in a 'military formation' or an 'army unit'. These categories are not defined in the legislation, and only have a loose meaning in current Russian military usage. This could give rise to misunderstandings.

A related question concerns the lack of clarity over the roles of key executive and legislative bodies. The wording used to indicate whether a Presidential decision to dispatch Russian forces abroad on a peace support mission needs the approval of the Council of Federation seems to differ depending on whether the deployment is of a 'military formation' or an 'army unit'. Similarly, it is not clear why the President of the Russian Federation should be obliged to work with the legislature in decisions involving the deployment of civilian and military personnel, but not when it is a question of their recall.

ON THE RAILWAY TROOPS OF THE RUSSIAN FEDERATION

Russian Expert Commentary

The Law 'On the Railway Troops of the Russian Federation' adopted in 1995, with amendments introduced in 1999, defined the legal framework of the activities of the Railway Troops of the Russian Federation. It was not just a legally sealed determination specifying tasks of the Railway Troops. For the first time, information on the operations of the Railway Troops in the Russian Federation was disclosed to the public. Previously, these matters were silenced for ideological reasons and often presented in the form of urgent Komsomol construction works.

The Law gives clear information of tasks carried out by the Railway Troops in peace and wartime, makes them open to society, which creates a possibility of realizing principles of civil control over them. However, even now, the Law does not directly say that in peacetime the Railway Troops construct railways, including those designed for economic purposes.

The Law seals an independent status for Railway Troops and places their control in the hands of the President of the Russian Federation. With federal authorities and institutions of local governments, the Railway Troops carry out socially necessary tasks for maintaining their combat and mobilization capabilities. The principles of organization and control over the Railway Troops as delineated by Law were illustrated by the experience of actions on the territory of the Chechen Republic which designed to restore and preserve the railway network.

The process of recruiting Railway Troops operates on both a call basis and a contract basis. If it is, however, resolved that staff strength is determined by the Government, then the number of military persons is not regulated in any way.

The Law takes into consideration the interaction of Railway Troops with other analogous troops of CIS member-countries which have a railway network. It is worth mentioning

that international treaties, in the sphere of activities of the Railway Troops, represent the legal bases of the Law. Thus, the legal basis of the activities of Railway Troops is formed not only by Russian laws and other legal acts, but also by international treaties signed by the Russian Federation in the field of activities of Railway Troops.

ON THE STATE DEFENCE ORDER

Russian Expert Commentary

After the collapse of the USSR, the forced demilitarization of the country and drastic reduction in defence-industrial financing, placed many of its enterprises, characterized by a high scientific-technical, technological and personnel potential, in a rather difficult condition. Furthermore, the process of privatization commenced in the 1990s, which owing to the departmental peculiarities of the military-industrial complex (production specificity, secret character, isolation from local commodity markets and others), led to a situation whereby the majority of defence enterprises were on the verge of bankruptcy.

The Federal Law 'On the State Defence Order' aims to change this situation. It establishes the general legal and economic principles of State Defence, procedures for forming, financing and fulfiling the State Defence Order for supplies of armaments and military equipment, fulfilment of work and rendering of services, as well as for export–import supplies in the domain of the military-technical cooperation of the Russian Federation with foreign States.

In compliance with the Law, only a federal executive authority, having troops and armed formations within its structure, may act as the agent of the State Defence Order and the State Customer—its Head Contractor. At the same time, financing of the Defence Order is effected by allocation of appropriations to the State Customer out of the protected articles of expenditures of the Federal Budget. The Government of the Russian Federation establishes for organizations, regardless of their organizational-legal forms and forms of property, the quotations for mandatory supplies of required resources to the State Customer's Head Contractor in accordance with the prices holding in the commodity market**.**

The basic indicators of the Defence Order are approved by the President of the Russian Federation. Placement is conducted on a competitive basis, except for the activities on maintenance of mobilization facilities. The Russian Federation and other Federal executive authorities bear responsibility for implementation of the military-technical

policy, provision of fulfilment of the Federal Program of Development, Creation and Production of Armaments and Equipment, timely supply of the State Customer with monetary funds for advancing and payment of the products (works, services) and fulfilment of other work within the Defence Order.

The Law aims, on the one hand, to assist in the extrication of the military-industrial complex out of crisis, and, on the other, to make its functions transparent, which in principle creates conditions for the establishment of civil control over military production. The Law expands transparency of the military budget and creates a legal basis of control over its implementation. With its adoption, the situation in this domain has started to improve. As a result, the increase of the military-industrial complex's share in Russian exports is provided not only on account of the expansion of armaments and equipment sales, but also owing to the highly technological double-use of products. Nevertheless, there is necessity for further revision of the Law.

The State Defence Order, which is formed in compliance with the Federal Program of Development, Creation and Production of Armaments and Equipment, developed for a ten-year period (1995-2005), is updated every financial year by adoption of relevant laws or introduction of amendments and additions to the Federal Law 'On the State Defence Order'. There was, for instance, the adoption of the Law 'On Urgent Measures Related to Provision of Financing the State Defence Order for 1996 and 1997' on January 24, 1997 in relation to non-compliance by the State of its obligations to the customer.. In 1999, the events in Northern Caucasia led to a total revision of the State Defence Order and to an increase of 4 billion rubles. The text of the Law under consideration itself was amended on February 26, 1997 and May 6, 1999. In January 2002, the State Duma presented a bill for consideration on the introduction of amendments. It inteded to open opportunities to attract off-budgetary funds and to advance payments of foreign customers in the financing the exports of the State Defence Order.

ON INTERNAL TROOPS OF THE MINISTRY OF INTERNAL AFFAIRS OF THE RUSSIAN FEDERATION

Russian Expert Commentary

The democratic constitutional state of the Russian Federation provides and maintains effective management and control over its military on the part of the constitutionally instituted authorities. The OSCE Code of Conduct related to military-political aspects of security expressly states the obligation of member states to clearly define the functions and missions of their military forces, as well as their obligation to act exclusively within the constitutional limits.

Adoption of the Law 'On Internal Troops of the Ministry of Internal Affairs of the Russian Federation' in the Russian Federation became a critical step in attaining this aim. It defines the destination, legal fundamentals, principles of activity, powers of the internal troops of the Ministry of Internal Affairs of the Russian Federation, procedures of their accomplishment of imposed missions and establishes guarantees of legal and social security for internal military personnel, as well for citizens discharged from military service and for members of their families

The Law provides for the general protection of the security of individuals, society and the State and for the protection of freedoms and rights of citizens against criminal and other unlawful infringements. The document lists the missions imposed on internal troops: participation jointly with the bodies of internal affairs of the Russian Federation in protection of the public order, safeguarding the public security and the state-of-emergency regime; guarding of important State facilities and special cargoes; participation in the territorial defence of the Russian Federation; rendering of assistance to the Federal Frontier Troops of the Russian Federation in protection of the State Frontier of the Russian Federation. These missions are decoded and specified applicable to operational formations and military units; special motorized military formations and units, as well as aviation, sea and task military formations and units. This readability, however, is diluted by the provision stating that, in accordance with other

Federal laws, the internal troops may also be imposed with “other tasks”, having no definition at all.

Nevertheless, the legislation defines the rights of military persons of internal troops during their performance of active service; governing the use of physical strength; special means, weaponry, combat and special equipment to protect citizens against unofficial and non-grounded force impact; increasing the responsibility of military persons in the use of special violent techniques and means in their missions. These elements are intended to strengthen the legal basis of the security of the society and individual and to serve in the normalization of military-civil relations.
At the same time, the Law guarantees the personal security of rights of military persons involved in the accomplishment of high risk missions, as well as the measures of their legal and social protection. They are covered with all norms, benefits and compensations envisaged by the Federal Law ‘On the Status of Military Persons’ dated May 27, 1998. Moreover, the Law specifies the rights of military persons of the internal troops to legal defence, insurance guarantees, accommodation, medical aid, etc., establishes guarantees for citizens discharged from military service and to the members of their families. This is important for enhancement of the status of internal troops and for their integration in civil society.

The activity of the internal troops of the Ministry of Internal Affairs of Russia shall be realized in compliance with the principles of legality, observance of rights and freedoms of a human being and citizen, one-man management and centralization of control. As it happens, the aforementioned principles do not cover all fundamentals of the activity of the internal troops in the civil society and jural State. They should have had added principles such as the interaction with troops (forces) of other departments; checking powers of the State bodies with respect to internal troops and their continuous availability to the accomplishment of set missions.

The Law objectively defines the powers of the Federal State authorities and authorities of the constituents of the Russian Federation in the sphere of activity of the internal troops. Unfortunately, the aforementioned Law does not provide sufficient definition of subordination procedures, or on the powers and rights of the ministers of internal affairs of individual constituents on the use of internal troops, thus failing to promote the

strengthening of unity and integrity of the Russian State. The articles of the Law governing control over the activity of the internal troops and Prosecutor's supervision are similarly insufficient as they lack the specific norms of State and civilian control in this domain.

ON INTERNAL TROOPS OF THE MINISTRY OF INTERNAL AFFAIRS OF THE RUSSIAN FEDERATION

Ian Leigh

The purpose of this legislation is to define the organisation, powers, rights and constitutional controls applicable to the Internal Troops of the Ministry of Internal Affairs. The legislation is in 10 Sections. These deal, respectively, with: the overall objectives and mission of the internal troops; the powers of the constitutional organs of the Russian Federation in relation to these troops; personnel matters, including the call up, training and discharge of troops; the specific remit of specialised military units and their powers; the rules governing the use or force, 'special methods', weapons and other combat and special equipment; the management and chain of command; the responsibility for assembling special missions (and the financial payments connected with these); the legal and social rights of internal troops; and legal control through the prosecutor's office. Of particular interest are the provisions defining the overall objectives and constraints on the Internal Troops, the extent of their legal powers, and the degree to which to law provides for recognition of human rights, both of citizens and of the troops themselves.

Overall Objectives

The need within a democratic state for the armed forces to subscribe fully to the constitutional order and the rule of law is met in the case of the Law governing Internal Troops by Arts. 3, 6 and 7 of the Law. Among the principles mentioned in Article 3 is that:

> 'The activity of the internal troops shall be realized on the basis of the principles of legality, observance of the rights and freedoms of a human being and citizen….'.

Respect for human rights is detailed further in Article 7 (see below).

Respect for the Rule of Law is among the central principles applying to the operation of Internal Troops under the legislation. According to Article 6 (Legal Fundamentals of the Activity of the Internal Troops):

> 'The activity of the internal troops shall be based on the Constitution of the Russian Federation, the present Federal Law, Federal Constitutional laws, Federal laws and other legal acts of the Federal State authorities.'

The Constitution is the 1993 Constitution of the Russian Federation, which includes in Chapter 2 the 'Rights and Liberties of Man and Citizen'. Apart from the usual civil and political rights, these include in Article 59 a duty to perform military service, or substitute civil service in the case of conscientious objectors. Article 87 of the Constitution makes the President of the Russian Federation the Supreme Commander-in-Chief of the Armed Forces.

Human Rights

The Russian Federation is a signatory to the European Convention on Human Rights and Fundamental Freedoms 1950 (05.05.1998), and, consequently, it is appropriate to make brief reference to some points at which the Convention needs to be considered in relation to the Law. Compliance with the Convention will be relevant both at Strasbourg before the European Court of Human Rights, but also so far the Russian courts are concerned, since Art. 15.4 of the Constitution of the Russian Federation has the effect of incorporating the Convention into Russian law:

> The commonly recognized principles and norms of the international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply.

Several specific references to human rights appear in the Law. For example:

> Article 7. Activity of the Internal Troops on Protection of the Rights and Freedoms of a Human Being and Citizen
>
> The Internal troops shall protect the rights and freedoms of a human being and citizen against criminal and other unlawful infringements regardless of sex, race, nationality, language, origin, status and official capacity, place of residence, religion attitude, beliefs, membership in public associations, as well as other circumstances.

This provision prohibits discrimination and so reflects Article 19 of the Constitution of the Russian Federation, Article 14 of the European Convention on Human Rights and Article 26 of the International Covenant on Civil and Political Rights.

Article 7 of the Law also imposes human rights limitations on the actions of troops:

> 'Military persons of the internal troops shall be prohibited to use treatment humiliating the human dignity.'

This is less specific than Article 3 of the ECHR, which prohibits torture and 'inhuman or degrading treatment'. The jurisprudence of the ECHR has found various practices to violate Article 3, although they fall short of torture. These include: corporal punishment, whether administered judicially or administratively, and various interrogation techniques designed to discomfort and disorientate terrorist suspects, such as deprivation of sleep, subjection to white noise and the use of blindfolds (see, especially, for use by the military: *Ireland v UK 18 Jan. 1978, A/25*).

Article 7 goes on to state:

> 'Any restriction of the rights and freedoms of a human being and citizen by military persons of the internal troops during their execution of service duties shall be admissible only on the basis and under the procedure, envisaged with the Legislation of the Russian Federation.'

This is a reflection of the requirement that even qualified human rights may only be restricted where the restriction is prescribed or authorised by law: see Articles 8-11 ECHR. It should be noted, however, that legislation alone is not enough to satisfy the Convention. A second aspect- the 'quality of law' test propounded by the European Court of Human Rights- focuses on the clarity, foreseeability and accessibility of the legal regime. Where laws fail to stipulate with sufficient detail the circumstances in which powers to over-ride human rights may be invoked they have been found to violate this test (see, for example, in relation to Article 8 ECHR: *Kruslin v France* (1990) 12 EHRR 547; *Huvig v France* (1990) 12 EHRR 528; *Kopp v Switzerland* 27 EHRR 91).

Quite apart from these explicit passages in the Law referring to human rights, however, the question arises of whether the detailed powers granted to internal troops and the circumstances in which they can be used meet human rights standards. Articles 18-23 of the Law deal with the circumstances in which the legal powers of the Internal Troops are available. They create a graduated regime where more serious powers are available to meet increased threats. A fundamental distinction is between the legal powers available to troops on 'active service' and those available in a 'state of emergency': see Article 24 of the Law. Where a state of emergency has been declared internal troops have draconian additional powers to enter and search homes, to restrict movement of persons and vehicles, to commandeer transport and means of communication, to exclude citizens from certain areas, to demand information, to demand identification and to carry out personal searches and enhanced powers to detain individuals who violate a curfew. None of these powers, or indeed the lesser powers available on active service, require independent or judicial approval, although several refer to the role of troops in suppressing crime.

The grounds for declaring a state of emergency are contained in the Federal Constitutional Law of 30 May 2001 on the State of Emergency. This provides some safeguards such as the need for approval by the Federation Council within 72 hours (Article 7) failing which the Presidential Decree will be invalid. It also sets time limits for an effective state of emergency (30 days throughout the Federation as a whole or 60 days in a locality, Article 9) and a duty on the President to revoke the decree once the circumstances giving rise to the emergency are passed (Article 10). The Federal Constitutional Law of 30 May 2001 on the State of Emergency deals also with which

institutions have to be told, which civil rights are to be suspended, and the powers of command. In addition to these, however, Art. 15 ECHR imposes procedural requirements and limits to which rights may be suspended. Consequently, some fundamental rights (notably, the right to life under Art. 2 and Art. 3 protection from torture, inhuman and degrading treatment) are non-derogable and procedural requirements for the registration of a state of emergency exist under Art. 15 (the latter are recognised in Art. 37 of the Federal Constitutional Law of 30 May 2001 on the State of Emergency). The European Court of Human Rights will be able to review the legality of the state of emergency in order to check that the necessary pre-conditions are met (see, for example, *Ireland v UK (1978) 2 EHRR 25; Lawless v Ireland (1961) 1 EHRR 15; Aksov v Turkey (1996) 23 EHRR 553*).

Articles 25-29 of the Law govern the use of particular operational techniques by Internal Troops, including the use of force (Arts. 26), 'Special Means' (Art 27), the use of weapons (Art. 28) and 'special equipment' (Art. 29). General safeguards concerning the use of these techniques are contained in Article 25; these include the need for specialist training and on any given occasion, prior notice to the person at risk (except where this inappropriate or impossible), a duty to give first aid, reporting requirements, and personal legal liability where powers are exceeded.

A defect of Article 25 is that there is no explicit mention at this point of duty to behave proportionately- with regard to the risk and probability of the threat to be countered, so that where legal or human rights are over-ridden by the Armed Forces that they do so only to extent necessary to achieve legitimate objectives. Proportionality is seen to be valuable because of the bias within democratic states towards maximising the freedom of individuals. The doctrine applies, for example, under the ECHR to special powers (e.g. surveillance, see here Article 8 of the Law); information gathering; and to legal privileges and exemptions for security and armed forces. Incursions on human rights can be justified by public interests such as national security- but only to the extent necessary. National security should not be a *carte blanche*. One significant facet of proportionality analysis is the need for a system of safeguards and checks with independent elements: see for example the discussion of whether laws permitting telephone tapping for reasons of national security were necessary in the interests of democratic society under Art. 8 ECHR (*Klass v FRG*, (1979) 2 EHRR 214; *Mersch v*

Luxembourg, (1985) 43 D and R 34) and, likewise, legislation permitting the opening and retention of security files (*Leander v Sweden* (1987) 9 E.H.R.R. 433 ; *Esbester v UK* App. No. 18601/91, 2 April 1993; No. 28341/95). It is noteworthy that in the cases both of the Netherlands and Greece surveillance conducted by the armed forces has been found to be in violation of Convention: *V and Others v Netherlands*, Commission report of 3 Dec. 1991; *Tsavachadis v Greece*, Appl. No. 28802/95, (1999) 27 EHRR CD 27.

In addition to the human rights of citizens, the Law recognises the human rights of troops also: Article 15 guarantees their basic constitutional rights; and Article 14 concerns Labour relations. A number of other social and economic rights are guaranteed which go beyond the requirements of the ECHR, such as legal defence (Article 42), insurance (Article 43), housing (Article 44), access to telephones and nursery education for children within a stipulated period (Article 45), medical aid (Article 46), free travel (Article 47) and additional pension and social security protections (Article 48).

Where human rights claims are involved there is a requirement under Article 13 of the European Convention to provide an effective domestic remedy for violations. The only specific remedy mentioned in the Law is the supervision of the Prosecutor General of the Russian Federation in Article 53. There is a duty on the part of officials under Article 25 of the Law to inform the Prosecutor of all cases arising from the use of force, special means, weapons or special equipment resulting death or injury. Internal Troops will have a necessity defence to a criminal charge under Article 40 of the law, depending on the circumstances. It should be mentioned that at this point that intentional killing by the military, for example of terrorist suspects, in order to save the lives of others or where strictly necessary in self-defence can be justified as an exception to the right to life under Article 2 of the European Convention. However, in determining whether it was absolutely necessary to use lethal force the European Court is prepared to examine in great detail the planning, command structure and orders given in specific military operations: see *McGann v UK, 27 September 1995, A/324*. Civil actions against individual servicemen and women are generally barred under Article 41. Whether Article 13 of the Convention is satisfied will depend in practice on whether the reporting mechanisms are sufficiently robust and whether the actions of the Prosecutor's office are sufficiently independent (for Constitutional provisions dealing with the Prosecutor see Article 129 of the Constitution of the Russian Federation).

THE LAW ON CIVIL DEFENCE

Russian Expert Commentary

Amongst the legal acts governing the activity of national security, the Law 'On Civil Defence' occupies an important place. It defines the forces and means, content and tasks of civil defence in the Russian Federation. It establishes its legal grounds and defines the powers of State authorities and bodies and local governmental bodies and organizations regardless of their organizational-legal forms or forms of property.

The necessity of this Law was dictated by changes in the governmental bodies' structure, by the forming of the market economy and under the force of democratic transformation. On one level, the Law intended to make this sphere of activity open to Russian citizens and accessible for civil control. On another, it brought the Law into conformity with the principles and regulations generally recognized by the world community. It states that if an international treaty signed by the Russian Federation establishes rules other than those envisaged by the present federal law, then the rules of the international treaty apply. Military persons from the civil defence sector are issued with the international differential signs of civil defence.

The basic direction of the Law is defined by the content of civil defence, which is understood as the system of measures of preparation for the defence and protection of the population as well as the material and cultural values of the Russian Federation against hazards associated with the prosecution of hostilities or as a consequence of hostilities. There is no need to prove the humanitarian nature of measures which correspond to norms of international humanitarian law and to the democratic framework of defence construction and protection of individual, society and State security.

At the same time, the Law predominantly reflects approaches to the arrangement of civil defence applicable to a large-scale war. The notion of civil defence itself is rather rigidly tied to the status of war. "Conduct of the civil defence in the territory of the Russian Federation or in its individual localities", says the Law, "shall start from the moment of

declaration of the status of war, the actual start of hostilities, or the introduction by the President of the Russian Federation of martial law in the territory of the Russian Federation or in its individual localities". Many peculiarities, which may be inherent in the arrangement of civil defence in local conditions, including internal armed conflicts, remain lost. Meanwhile, the Law admits use of civil defence troops not only in the course of the prosecution of war, but also during periods of natural disaster, catastrophe and demolition operations.

The Law fails to stipulate conditions concerning the protection of individual rights in the accomplishment of civil defence tasks. However, the duties and rights of citizens have been defined. The matter of admissibility of the absolute priority of the rights of the State over the rights of the individual is disputable under these conditions. An approach which admits infringement of individual rights in the realization of civil defence functions by management bodies and organizations contradicts the Law 'On Security', which provides the absolute priority of individual rights over the interests of the State.

As for the principles of arrangement and performance of civil defence, the Law accounts for the peculiarities connected with the transition to the market economy. The organizations in this domain have been defined regardless of their forms of property. This approach, in relation to enterprises and hazardous production, is justified. The Law obliges them to create civil defence organizations, stipulating the possibility of compensation of their costs on conducting civil defence activities.

On the whole, the Law 'On Civil Defence' legislatively fixes a quite proportional hierarchical structure of the total system of civil defence, preserving all the rich experience of its arrangement accumulated in the Soviet Union. It accounts for the basic peculiarities connected with the performance of economic reforms and democratic transformations in the country.

Taking into account the fact that within the limits of transformation of the military organization of the country there are planned considerable changes in optimization of all structures connected with the conduct of rescue actions and activities in the elimination of emergency consequences. One should also expect the introduction of amendments to

the Law ‘On Civil Defence’. At this stage, it will be feasible to eliminate the drawbacks pertinent to it

THE LAW ON CIVIL DEFENCE

Theo van den Doel

General Remarks

The Law clearly formulates the powers of the executive authorities and government but it is not clear if there are limitations on the means to implement these legal powers in full. Otherwise, several questions need answers: are these powers limited by restrictions and, if so, of what type? Is there a hierarchy within these laws? What is meant by the phrase 'within their terms of reference'? Further clarification would be useful.

The law is rather vague because it does not clearly define or mention the governmental bodies, organisations, and agencies that actually have to do the jobs prescribed. As a result, it is not clear in which way the appropriate budgets are guaranteed.

The duties of the different bodies are well described but there is no description of the rights of the authorities/persons involved

Detailed Remarks

Article 3 states that the rules of international law have priority above the rules of the Federal Law. However, it is hard to believe that ordinary citizens have knowledge of the international laws the RF has ratified. It is too easy only to refer to 'international laws' as a catch-all phrase. What has to be done is an implementation and specification of international rules that are applicable in the present Federal law.

Article 9, Sub 2 requires that organizations which have potentially hazardous production facilities maintain them in the condition of continuous availability/accessibility. This article refers, more or less, to the old Communist system in which all the production facilities belonged to the State. It is not clear if this article also includes private companies. If so, it will have great consequences.

Article 11 (civil defence management) states that the civil defence heads bear personal responsibility. The impact of this article is not clear. The boundaries of such ‘personal responsibility’ should be specified at some point (e.g. in reference to other laws), especially in terms of liability.

ON MOBILISATION PREPARATIONS AND MOBILISATION IN THE RUSSIAN FEDERATION

Russian Expert Commentary

The activity of the State in the field of mobilisation preparation and mobilisation was always treated as one of the most secret spheres. That is why approval of a law establishing the rights and responsibilities of the state power bodies, of local self governing bodies, as well as of various organizations, officials and citizens of the Russian Federation in this field is very important. It is proof of the movement of Russia to democratic transformation and the building of an open society.

The system of mobilisation preparation in the State was based on the principles of strictly centralized state administration and of a planned economy on the basis of state proprietary rights to production means. Transition to the market economy, democratic reforming of structure and functions of the State's bodies, as well as new approaches to the military establishment demanded its modification.

Previously formed industrial mobilisation readiness became a considerable obstacle in its development. Some enterprises were released from the necessity of preserving mobilisation facilities, but mobilisation tasks and reserves remained as they were. Marketing of the latter was often performed illegally with the administrative echelon of enterprises filling its pockets. The enterprises were falling apart. Remaining mobilisation facilities, as idling enterprises, required the corresponding maintenance expenses. Such expenses increased the cost of civil products of enterprises, making them non-competitive in the internal and external markets. Approval of the law has subsequently set a legal framework that has defined not only the mobilisation responsibilities of enterprises, but also the responsibility of the State for enterprise expenses.

A matter of principle importance is the strict legislative framework for mobilisation activity in the State established by the law. Its legislative basis is the Constitution of the State,

international agreements of the Russian Federation, the Civil Code and other legislative acts of the State in the field. It imparts a clear definition and maximum possible openness to mobilisation preparation and activities as part of the state security organization. Detailed definition of authorities and functions of the President, of the federal state power bodies, executive power bodies of subjects of the Russian Federation and of local self-governing bodies in the field of mobilisation preparation and mobilisation is entitled to make it transparent for society to establish actual civilian control over it.

It is notable that the law considerably accounts for particulars of the market economy and the multitude of possible proprietary forms of enterprises which can receive mobilisation orders. Thus, the means earmarked for mobilisation preparation are released from VAT; mobilisation purpose objects and preserved mobilisation facilities and other mobilisation equipment are released from enterprise property taxation. The law provides for the granting of other privileges to inspire participation of enterprises in mobilisation preparation, including compensation of losses incurred by enterprises and citizens because of mobilisation measures by the state, the procedure for which is established by the Government of the Russian Federation.

The law defines the responsibilities of citizens in the field of mobilisation and mobilisation preparation. It establishes application of the Civil Code norms in the field. However, the principle of reservation of citizens for the period of mobilisation providing maintenance of serviceability of the State's power bodies and local self-government bodies is disputable. It is adequate for wide scale war, but for localized military activities it hardly meets the requirements of social equity.

As a whole, the law 'On Mobilisation Preparation and Mobilisation in the Russian Federation' defines the main legal framework allowing the settling of mobilisation matters under the new conditions. Nevertheless, it is oriented towards preparation of a wide scale war and turning the country into a "uniform military camp." It hardly considers the particulars of mobilisation preparation and mobilisation for limited scale military activities. The law does not give answers to specific or problematic questions, yet it preserves the possibility for solving them in other sub-legislative acts.

ON COMPULSORY STATE INSURANCE OF LIFE AND HEALTH OF MILITARY PERSONS, CITIZENS CALLED UP FOR MILITARY PERIODIC TRAINING, THE RANKS AND COMMANDING OFFICERS OF INTERNAL AFFAIRS BODIES OF THE RUSSIAN FEDERATION, THE STAFF OF PENITENTIARY FACILITIES AND BODIES AND THAT OF FEDERAL TAXATION POLICE BODIES

Russian Expert Commentary

'The Code of Conduct for Military-Political Aspects of Security' of OSCE (Organization on Security and Cooperation in Europe) provides that each participating state will ensure the adoption of adequate administrative and legal procedures to defend the manpower of all its forces. The Law 'On Compulsory State Insurance of Life and Health of Military Persons, Citizens Called Up For Military Periodical Training, the Ranks and Commanding Officers of Internal Affairs Bodies of the Russian Federation, the Staff of Penitentiary Facilities and Bodies and that of Federal Taxation Police Bodies' represents one of the measures aimed at implementing this norm. It determines the duties of the state to military and equated persons and the terms of their compulsory state insurance, including the qualification of insured events, the sum of insurance, the procedure and terms of their payment.

The Law establishes that federal executive bodies which call for military service shall be insurants; they shall allocate means for these purposes from appropriate budgets. The insurance companies that have concluded contracts with insurants shall be directly engaged in insurance. The Law lays down special measures for this activity control (licensing, the financial reliability of an insurant, no foreign investments in its authorized capital, establishment of supervisory councils). It particularly specifies the duty of military units to render assistance to insured persons in vindicating and executing the documents required to take a decision on the payment of insured amounts, as well as the responsibility of commanders and officials of military units who are guilty of a groundless refusal to present and issue such documents.

By and large, the Law confirms our country's qualitative tools of social and legal protection for military persons. It determines the rules that expand and strengthen military-civil relations in the country.

THE FEDERAL LAW ON MILITARY DUTY AND MILITARY SERVICE

Russian Expert Commentary

To facilitate the military security and defence of the state, a uniform military service system is established in the Russian Federation. Its legislative regulation is facilitated by the Federal Law 'On Military Service'. It establishes, in particular, that international agreements of the Russian Federation are related to the basics of military service, which is considerably important for facilitation of the rights and freedoms of military personnel at the level of world standards, for the democratization of the military and for the integration of the Armed Forces with civil society.

The law establishes a legal basis for engaging educated, physically sound, law-abiding citizens with the Armed Forces and other troops. The same is supported by medical certificates and professional and psychological screening of recruits for military service; organization of training in military service basics, military applied sports in state, municipal and non-governmental educational institutions. According to the law, persons with an existing conviction and under investigation cannot be drafted for military service.

The law allows the release from military service those citizens whose brothers have died during discharge of their military duties. There are provisions made for the postponement of service in cases concerning required support for the elderly, parents, siblings or young children. Postponement allows recruiters to proceed with education and to increase the cultural and intellectual potential of people, and to establish economic prerequisites for increasing the wellbeing of civil society.

The basic form of military responsibility is military service. The social significance of military service rests with the capability of citizens to fulfil their Constitutional obligation to protect the country by means of its Armed Forces, troops, military units and organs. The law qualifies cases of protection of the wellbeing of individuals, assistance through law and order organs devoted to the protection of the rights and freedoms of citizens, public security and the prevention and liquidation of calamitous consequences upon

“discharge of military service obligations”. This underlines the direct relationship between military service and the affairs and interests of civil society.

While describing in detail the content of military service and its types, procedures and rules of their discharge, obligations of the bodies of state power, of officials and citizens with respect to its organization, the law acts as the most important instrument for the regulation of this sphere of social life. It describes and substantiates military service as a special type of federal state service. Therewith, the law is an instrument defining the content and many trends of civilian control over the military organization and activity in the Russian Federation. Thus, the procedure for the military registration of citizens is determined by the corresponding provisions approved by the Government of the Russian Federation. The draft board is of a non-departmental character. Its resolutions can be challenged in courts of law, and so on. The law establishes a reliable basis for the legal facilitation of the integration of the Armed Forces with civil society. The goal is the compulsory fulfilment of all its provisions and norms by all organizations, departments, officials, and citizens.

At the same time, for the purpose of increasing the authority of the military service within society with complete effectuation of human rights and freedoms, it is necessary to pass a law applicable to alternative military service. Cardinal measures must be developed with the aim of increasing the attractiveness of military service, guaranteeing facilitation of the rights and freedoms of military persons according to international treaties on human rights and terminating any type of abuse by military officials and the administrative system in general.

THE FEDERAL LAW ON MILITARY DUTY AND MILITARY SERVICE

Theo Van Den Doel

General Remarks

The Law on Military Duty and Military Service is rather detailed. As a consequence, the law is not flexible in practice. When one of the details in the law has to be amended because the reality has changed, the whole procedure has to start-up again from the beginning. In daily political practice, the whole procedure to change a law takes about 3-4 years. Another method is to draft a law in which the principal headlines are laid down. The details, according to the law, are worked out in separate decisions at the level of the involved ministries. The mentioned law is easy reading but the many details makes the law more complex than necessary.

Significantly, the law does not have any provision for a citizen to reject the decision of the military draft commission and to appeal to a civil court.

It is not clear in the law if persons outside the Russian Federation (e.g. the former Soviet Republics can enter military service).

Detailed Remarks

Article 2 of the Law (March 1998, last amendment July 2001) stated that there are several services in which the citizen can fulfil his military duty. One of these services is the engineering-technical and road-building military formation. The existence of these services can be questioned. In the Communist era, they were used as working battalions and as construction workers for private purposes by the high ranking military. In a democracy and in a constitutional state, which bans corruption, and in a market economy, this work has to be done by private companies.

Article 3, which points out the legal base for the military duty, does not specify what is meant by the 'international treaties of the Russian Federation'. If the Russian Federation has obliged itself in international treaties to contribute with armed forces (e.g. the GOS treaty) it is recommended [that the specific obligations are pointed out].

Article 13 points out the education prior to the military service. At the age of 16, citizens have to follow courses to achieve a kind of minimum level for the military service. It is not clear what the consequences are if this has been refused. (e.g. by the parents)

In Article 14, there is preferential treatment (choice of military school, military unit etc.) for those who have followed the 'military patriotic youth' education. This preference can be questioned in a free and open democracy in which citizens make their own choices.

Article 17 is rather vague in terms of age and period. For how long can citizens obtain such voluntary training? The article does not mention either the obligations of the State or the obligations of the citizen.

Article 23 (1d) releases a citizen from military draft in the event that he has fulfilled his military service in another State. It is not clear neither what the range is of this sub-article, nor what the status is if the citizen comes from a state which has only a voluntary army.

There is an overlap in the Articles 16 and 30. Most preferable is that in Article 30 a reference is made to Article 16.

Article 38 (Para 2) regulates the time-compensation available for a conscript who performs their duty during battle operations or during an armed conflict. The article does not make clear what the terms are for a battle operation. It is not clear for example if UN-peacekeeping missions meet the requirements of this article.

Article 43 regulates the appointments to and release from military positions. These activities are regulated by Presidential Decrees. It is understandable that the President as the Supreme Commander in Chief of the Armed Forces appoints and releases high-

ranking officers: but it is not clear in the law which military ranks belong to the category of high-ranking officers.

Article 45 describes the position of military personnel who are elected in the Duma or in the Federation Council. After their termination as politician, they either return back to the armed forces or are discharged from military service. It is not clear on what kind of criteria the two different decisions are based.

THE FEDERAL LAW ON MILITARY DUTY AND MILITARY SERVICE

Anthony Foley

This particular Law is mainly covers the technicalities of enlistment in the Forces of the Russian Federation. As with other laws, segments of it are more appropriate to Regulation.

This Law contains three Articles which cause some concern: Article 11 - Military Patriotic Upbringing; Article 14 - Military Patriotic Upbringing of Children; Article 17 - Minor Citizens.

The whole concept of involving children/minors in any form of military activity is viewed with extreme disdain in most democratic states and indeed there are a large number of organisations (including UNO) actively campaigning in regard to “child soldiers”. While this Law does not provide for “child soldiers” as such, it does imply the indoctrination of children/minors in military matters. This is not acceptable in a free society and does not contribute to democracy in any way; a democratic society confers choices on citizens and ought not seek to indoctrinate.

ON THE STATUS OF MILITARY PERSONS

Russian Expert Commentary

Adoption of the Law 'On the Status of Military Persons' is a notable event in the state and military construction of the Russian Federation. It is a legislative recognition of the Army as a special social group, a specific part of society, occupying a specific position that is legally sealed. The Law determines the rights, freedoms, liabilities and responsibilities of military persons, as well as bases of the government policy in the field of legal and social security of military persons dismissed from military service with consideration of their family members. Legislative definition of these provisions is, undoubtedly, the lawmakers' achievement. The rights and freedoms of military persons governing military service during the Soviet period have not been directly mentioned in the documents.

Aimed at the approval and maintenance of the high status of military persons, the Law is intended to assist in the improvement of the material and social position of the military, and, similarly, to raise both military service prestige and the authority of the Army nationally and internationally. The law specially stipulates that military persons should observe generally accepted principles and norms of international law and international treaties signed by the Russian Federation.

Legislative definition of a military duty ("defence of the State sovereignty and territorial integrity of the Russian Federation, repulse of an armed attack, as well as carrying out tasks according to international liabilities of the Russian Federation") should exclude the summoning of the army for tasks that are not of a military nature, for instance, for construction works. There is a contradiction between the status of military persons sealed in the Law and their real status which demands improvements in Russian society and in consolidation of the army.

The present Law stresses the legislative and social security of military persons, which remains insufficient. Government guarantees of a certain, mostly minimal, standard of living to the population are understood as social security. In our society, such groups include the disabled, orphans and large families. In the past, they included military persons. Recent circumstances, however, have consigned the Army to almost the lowest level of the social hierarchy. This can hardly be considered normal. Lately, as a result of the attempts of politicians and the press, a special image of the Russian officer is being created: that of a person giving rise to pity. A mixture of the pride, esteem and recognition of an uneasy military force exists alongside condolences, deep sighs and unwillingness. It is not the security of military persons that should be heard but the development and implementation of a complex Conception of Social Policy of the State in respect of the Armed Forces.

ON THE STATUS OF MILITARY PERSONS

Shackley F. Raffetto

Article 10, Paragraph 7 of the Federal Law Acts Prohibited for Military Members

This provision generally prohibits the misuse of military position or property by RF military members. The provision does not, by its terms, require disclosure of conflicting economic interests or prohibit ownership of passive interests in businesses. In the US, there is an elaborate statutory and regulatory framework intended to prohibit and regulate government 'ethics' or misuse of position or property by civilian officials and military members. Central to the US regulatory scheme is a requirement that certain high level officials and officers file annual written disclosures of their financial holdings (shares of stock, mutual funds, bonds, etc.) in the private (civilian) sector.

These disclosures are reviewed and compared with a list of companies that do business with the government/military and if a conflict of interest is revealed, it is addressed by the officer either disposing of the interest or by his disqualification from participation in the particular government/military activity or transaction. The disclosure requirements and restrictions are most stringent for those civilian officials and military officers whose official duties involve the procurement of goods or services for the government/military. This scheme also serves as a method to guide and advise officials/military members who may have unknowingly acquired a conflicting interest in a private enterprise. Paragraph 7 of the law prohibits ownership through 'trustees', but does not appear to deal directly with the issue of ownership by military personnel of shares of stock or these types of passive interests in commercial enterprises.

Expanding Paragraph 7 of the law to include such passive investments and require disclosure of privately held investments may be very helpful in preventing corruption or at least avoiding conflicts of interest. In the US approach, the laws are designed to prevent even 'the appearance of impropriety' in the carrying out of duties by civilian government and military officials, because even the 'appearance' of misconduct (even though none exists) undermines public trust and confidence in the government/military.

As the market economy in the RF expands the opportunity for investment by public officials and military members in enterprises operating within the 'military-industrial complex' and doing business with the government/military will increase substantially. A carefully drafted and enforced 'ethics' (anti-corruption) law might be very helpful in further promoting the rule of law and fighting corruption.

ON ALTERNATIVE CIVIL SERVICE

Russian Expert Commentary

The right of a citizen to alternative civil service is endorsed by the Constitution of the Russian Federation. This right is determined in its most general form in cases in which "…military service contradicts his beliefs and religion and in cases defined by the Federal Law." It requires elaboration and securing the mechanism of realization of a constitutional norm.

The first draft of the relevant legislative act was made in 1994 and it contained several liberal provisions that were borrowed from laws of foreign countries. However, the State Duma subsequently removed the provisions from the agenda. The new draft law interpreted the service not in civilian but in military terms (military construction, military medical, etc.). By spring 2002, five draft laws had been submitted to the State Duma for consideration. The final draft law was formally adopted in April 2002.

The law defines alternative civil service as a special type of labour activity undertaken by civilians in the interest of both society and the state. Civil service represents an alternative to military service. The draft law endorsing civil service regulates the order and rules of its organization and operation. According to international practice, citizens performing non military service are obliged to serve a longer term than citzens performing military service. Citizens can perform alternative forms of civil service either on the territory of their permanent residence or outside its boundaries, individually or in groups. The practice of allocating alternative forms of civil service to citizens is in accordance with the standards of the Human Rights Commission of the United Nations. In the official report of the UNHRC, the Commission indicated the citizen’s right of 'refusal of military service because of considerations of conscience.' This means that ‘individuals who refuse military service shall present evidence that their beliefs are serious and fully grounded'.

Without mentioning the specific provisions of the draft law, it is worth mentioning that if it is adopted, it will a create a legal basis for the realization of the rights and freedoms of

citizens and expand the possible forms of executing their duties before the state. However, it is desirable that the right of alternative service is to be brought into correlation with the Constitutional duties and obligations of a citizen to defend the motherland. The problem remains unsolved in that at the time of Martial Law and during wartime this service shall be determined by law and other legal acts which do not presently exist.

The humanitarian significance of this document is connected with the object that it envisages, i.e., the right to alternative civil service for native minorities who engage in a traditional way of life. In such cases, citizens participating in non military service are sent to alternative civil service establishments and organizations in branches of traditional economy and trade.

The legalization of alternative civil service should relieve a certain tension in society which becomes acute,at every call-up to military service. It should also improve military and civil relations and the social and psychological atmosphere of the military. Some reticence of the draft law and now disputable provisions may be specified in Regulations on the Order of performing alternative civil service and other legal regulation acts that are envisaged in this law.

ON MILITARY-TECHNICAL COOPERATION OF THE RUSSIAN FEDERATION WITH FOREIGN COUNTRIES

Russian Expert Commentary

Arms sales, the design and manufacture of military products for other countries, represent an important and delicate sphere that exclude the making of discrete decisions by a limited group of persons..The industrial base and defence infrastructure are connected to society via thousands of channels. Its foreign relations are of economic and political significance. Incomes from Russian arms sales total nearly 5 billion dollars. When Russia is experiencing economic difficulties this is the area where real struggle develops. It involves corporate forces and lobby groups whose activities frequently becomes counter-productive for the state.

An effective and strict public control, primarily parliamentary, is required to prevent any unconstitutional actions in this field. That is why the adoption itself of the Law 'On Military-Technical Cooperation of the Russian Federation with Foreign Countries' could be considered a result and manifestation of the democratic reforming of Russia. This law provides the legal basis for preventing possible collisions or dictation of corporate interests in this field.

The text of the Law does not allow for the creation of any specific mechanisms of civil control over military-technical cooperation. It reads: "All issues associated with military-technical cooperation of the Russian Federation with foreign countries are under the exclusive authority of the state administration bodies of the Russian Federation". However, the Parliament, as one of the most important state power entities, is simultaneously a main public control link. The Law grants sufficient prerogatives to the Russian Parliament to take into account public interests in this field while discussing, correcting, and adopting the state budget and while ratifying international treaties. In this sensitive field of military construction and international relations, it is the law that imparts legal definition and the legislative limits of activities.

From the juridical point of view the Law adequately outlines the mechanisms responsible for exercising the right to participate in military-technical cooperation. At the same time,

economic practices of participants of this cooperation constantly give rise to situations which force them to appeal to the institutions of civil society. It is these institutions (rather than authorized power bodies or economic entities) which are most active in exercising initiatives that have far-reaching consequences. With this, military-technical cooperation has shifted from a position of secrecy to that of open clashes of intra-political interests. Its unprecedented and frequently unjustified limpidity has become of public concern. It would seem that somebody is seeking to turn the concept “civil control” of military-technical cooperation to that of “civil management”.

In the interests of enhancing the efficiency of the military-technical cooperation system of Russia with foreign countries, it is necessary to specify and define the content of the authorities of civil control entities and the mechanisms of their functioning (authoritative powers of higher state power bodies; controlling and supervisory activities of special supra-departmental authorities; principles of observation and information of society about the business situation in this field by the institutions of civil society, including mass media, research centers, public associations; citizens’ addresses).

It is clear that the Law cannot envisage all details. However, it should outline principles relating to the alteration of some of its basic ‘economic’ provisions in the consideration of the opinion of civil control entities. It is difficult to contend that such alterations in the Law represent the exclusive prerogative of federal authorities, primarily the Government of the Russian Federation.

ON THE FIGHT AGAINST TERRORISM

Russian Expert Commentary

The effectiveness of the struggle against terrorism, which is not exclusively connected with the performance of counter-terrorist operations precipitated by events in New York, Chechnya, Corsica or wherever else presumes judicially precise and politically weighted definitions of the terrorism phenomena. This task in the Russian Federation discovered a legislative decision ‘On the Fight Against Terrorism’, which was adopted three years prior to the terrorist attack on the United States.

The Russian legislator had then already given a clear definition to such phenomena as terrorism and terrorist activity. The political value of this goes far beyond the frames of the legal terminology unification. For example, in compliance with the Law “an organization shall be admitted as a terrorist organisation if at least one of its structural subdivisions exercises terrorist activity with the consent of at least one governing body”. This wording gave a precise legal characteristic to the Russian Social-Democratic Labor Party or the People's Commissariat of Internal Affairs, which sank into oblivion and to the modern terrorist organizations of nationalist, religious and other character acting in Russia and abroad. It is more important that the Law creates a legal basis of resistance to them within the National-State limits and on the international scale. Thus, the counter-terrorist operation in Chechnya is almost the first one to be conducted in compliance with the norms of this Law in the history of Russia.

The important social-political value of the Law qualifies as the civil duty of everybody to inform the law-enforcement bodies on terrorist activity and any other circumstances that may promote prevention, identification and suppression of terrorist activity. Unfortunately, the Law fails to recognise security guarantees to persons who have fulfilled this ‘civil duty’. This certainly degrades the efficiency of this legal norm.

The Law gives general regulation of the conduct of counter-terrorist operations, which creates a legal basis of civil control over the counter-terrorist activity of State services and bodies. Many provisions of this Section are, however, rather vague and, as demonstrated by the experience of the counter-terrorist operation in Chechnya, insufficient for effective civil control. In the first place, it refers to the procedure and

regulations of informing the public about acts of terror and the progress of counter-terrorist operations. The criterion is highly critical from the practical point of view with the definition of the end of a counter-terrorist operation worded in a rather indistinct way.

During a counter-terrorist operation restrictions of civil rights and freedoms are inevitable. The Law should have included measures on prevention of potential abusive practice related to the right to freely enter (penetrate) into areas owned by citizens, transport vehicles, etc., including the establishment of responsibility for exceeding commission at its application. The same refers to “regulation” (to be read as “limitation”) of mass media activity on the part of the persons effecting control of the counter-terrorist operation. Expansion (even if it is declared temporary) of the powers of force departments and services, other executive authorities, does not lead to stable confidence of citizens to the government of the State and does not promote growth of the effectiveness of their participation in resistance to the forces, using terror as a means of achieving their goals.

These and several other defects of the Law require revision. It requires greater interaction of the State and society. Greater efficiency of the fight against terrorism for the sake of citizens’ rights and freedom, but not to the detriment of them is a necessary condition of its success.

ON THE FIGHT AGAINST TERRORISM

David Law

The anti-terrorism legislation of the Russian Federation, promulgated in 1998, takes a comprehensive approach to the problem of terrorism. It lays out the principles on which anti-terrorist actions are to be based, acknowledges the relevant legal obligations, both domestic and international, that the Federation has to observe, and provides a framework as well as procedures for ensuring the necessary vertical and horizontal cooperation among the agencies and jurisdictions that are entrusted with the anti-terrorist struggle. As such, it marks a major milestone in the efforts of the Federation state to arm itself conceptually, materially and organizationally for one of the most important security challenges confronting the young Russian state.

Unfortunately, the terrorist threat facing Russia has become even more serious and problematical since the law was passed. If and when the legislation comes up for review, there are a few aspects that lawmakers might wish to reconsider.

First, the definition of terrorism provided in Article 3, while wide-ranging, lacks specificity. This is not surprising – indeed it is typical of the definitions of terrorism used throughout the Euro-Atlantic area. In view of this, Russia will no doubt want to play a leading role in discussions at the UN and elsewhere aiming to develop an international consensus on a more rigorous definition of terrorism.

A second point concerns the organizational framework for the struggle against terrorism. Article 6 refers to six bodies as being on the front line in Russia's anti-terrorist efforts. What is striking about this list is the absence of what one would have assumed to be key actors in this regard. The President and his Administration are not mentioned, notwithstanding the pivotal role they play in virtually every major policy decision of the Russian state and the coordinating function that would logically fall to them. The Ministry of Foreign Affairs is also not mentioned despite the fact that it would certainly seem to have a leading role in securing the cooperation of foreign governments in bilateral or multilateral anti–terrorist operations as well as in international political efforts to address

terrorism. Then there are ministries, such as those responsible for the safety of the food supplies or for the security of air- and seaports, that may seem less immediately involved in anti-terrorist measures but which could end up playing a decisive role.

A third point relates to the relationship between principles and practice. Article 2 lays down the principles that are to guide government practice in the struggle against terrorism. Two in particular warrant mention: first, the use of prophylactic legal, political socio-economic and propagandistic measures, and second, the priority assigned to protecting the rights of persons running the risk of injury or death as a result of being caught up in a terrorist act. Both aspects point to dilemmas that virtually all states on the front line against terrorism have to face. It is one thing for a state to acknowledge the principle that root causes help breed the environment that fosters terrorism; it is quite another for a state to be able to address such root causes at the same time as it is knee deep in the operational aspects of the anti-terrorist struggle. Similarly, how are the state, civil society and the international community to evaluate whether the principle to protect innocent lives has been effectively upheld, for example, as in the terrible attack on a Moscow theatre in October 2002, where one in five hostages lost their lives?

ON MATERIAL RESPONSIBILITY OF MILITARY PERSONNEL

Russian Expert Commentary

Democratic law and order assumes the mutual responsibility of citizen and state to one another. This norm has been defined in relation to the military activity sphere in the law 'On Material Responsibility of Military Personnel'. By its implication, it is aimed at the protection of society's interests against abuse and negligence by military personnel. On the one hand, the law establishes the responsibility of a military person in charge of the corresponding rights and authorities to be responsible for the negative effects of his or her actions. It is aimed at increasing responsibility for the loss caused by the exercising of his or her military service responsibilities to the federal and military units.

On the other hand, the law makes it possible to compensate for material loss. At the same time, the law determines the procedure for compensation of losses incurred and thereby protects the interests of military service personnel. Material sanctions, with respect to such military service personnel, can be applied exclusively given the terms of the material loss caused by his or her action or inaction. No material sanctions can be enacted against military personnel when harm is caused as a result of the fulfillment of orders from high command, as well as from actions deemed reasonable, i.e., *force majeure*. The provision that prescribes compensation to be awarded by a court of law subject to the commander's claim is of the principal importance. Only when the loss does not the exceed monthly allowance of the corresponding military person, can compensation be charged according to the commander's order (this provision was recognized as complimentary to the Constitution of the RF according to the Resolution of the Constitution Court of the RF, April 10, 2001). The order itself can be claimed against military personnel before the senior commander and/or in court of law.

In addition, the law establishes the procedure for compensation through monthly instalments. In many cases, the law establishes a limited material responsibility.

ON FINANCING THE STATE DEFENCE ORDER FOR STRATEGIC NUCLEAR FORCES OF THE RUSSIAN FEDERATION

Russian Expert Commentary

After the August 1998 default and the later problems in the Armed Forces, it was necessary to determine the sector in its structure that would, more than any other, safeguard the sovereignty and territorial integrity of the state and prevent military aggression against the Russian Federation. In Russia, in the military defence of the state, the role of the Strategic Nuclear Forces grows considerably in conditions when the general armed forces and its reforming are diminishing.

Equally, however, with other Armed Forces structures, extremely insufficient financing of the SNF leads to quantitative reduction and degrading of its equipment, making it extremely important to guarantee financing within the necessary minimum volumes.

Legal resolution of the matter is provided by the law 'On Financing of State Defence Order for Strategic Nuclear Forces of the Russian Federation'. The law defines SNF as functionally unified by the military control system amalgamations, formations and units of the Strategic Missile Forces, Marine Fleet and Air Defence Forces, equipped with strategic shock nuclear armaments, anti-missile defence. SNF facilitates the functioning and application of the controlling system and establishes minimum necessary volumes and the financing procedure for the period 2000 to 2010, inclusive. According to the law, financing of SNF is performed within the state defence order framework as its constituting part. The current Federal Budget expenses to finance SNF are defined as separate aim oriented expenses in the subsection 'Building and Maintenance of the Armed Forces of the RF' of the Section 'National Defence'. It increases openness of the state nuclear policy and, simultaneously, improves the controlling function of the Parliament approving the annual budget of the state.

The law establishes general SNF financing expenses for the period up to 2010 and for each year of the period broken down for Research and Development works, for

purchase of armaments and military equipment, for capital construction, and for the Ministry of Nuclear Power programs. It also establishes maximum percentage of SNF financing within general expenses under the Section ‘National Defence’. That was done to eliminate a possible negative impact of financing SNF for other defence needs. This breaking down allows the concerned civil structures adequately estimate reasonability of allocation of finances for Strategic Nuclear Forces to influence the development of resolutions by the state power organs with respect to conditions and development of SNF.

Importantly, the law facilitates the possibility of an introduction of amendments and supplements to it after clarification of the state program for development, creation and manufacturing of armaments and military equipment for the period 2006 to 2010 has taken place. This is also the case in adjustments of the existing program until 2005, in amendments to the SNF structure, in the signing of the RF international agreements, termination or suspension of the same and, in changes made to the financing volumes subject to inflation index for the passed period.

ON THE RATIFICATION OF THE COMPREHENSIVE NUCLEAR TEST BAN TREATY

Fred Schreier

Intent of the Law and International Context

This Federal Law ratifies the *Comprehensive Nuclear Test Ban Treaty* (CTBT). This treaty, composed of a Preamble, 17 Articles, 2 Annexes, and a Protocol with 2 Annexes, is banning any nuclear explosions, for military or civilian purposes, in any environment. The United Nations General Assembly passed the CTBT by an overwhelming majority of 158 votes against 3, with 5 abstentions, on September 10, 1996. It was signed on behalf of the Russian Federation in New York on 24 September 1996.

By banning all nuclear explosions, the CTBT would constrain the development and qualitative improvement of nuclear weapons, end the development of advanced new types of nuclear weapons, contribute to the prevention of nuclear proliferation and the process of nuclear disarmament, and strengthen international peace and security.

To date, 169 states have signed the CTBT and 107 have ratified it. The CTBT will enter into force upon its ratification by all 44 states listed as possessing nuclear facilities. 12 states have yet to do so, among them the USA with the world's largest and most advanced nuclear arsenal. Though the US had played a leadership role in negotiating the CTBT, the US Senate rejected ratification in September 1999 by a vote of 48 to 51.[13] Further delay of the treaty's entry into force could undermine adherence to other arms control agreements. The Non-Proliferation Treaty (NPT), in force since 1970 and with 188 member states the most-ratified nuclear disarmament treaty ever signed,[14] and the

[13] Since taking office, President Bush's administration has indicated that the White House will not ask the Senate to reconsider approval of the CTBT, but has pledged to maintain the decade-old testing moratorium for now. The CTBT cannot win Senate approval for ratification without presidential support, but the president also cannot unilaterally withdraw the treaty from the Senate's consideration. Thus, the CTBT is trapped in US political limbo.

[14] Yet three nations remain outside: India, Pakistan, and Israel. North Korea announced its withdrawal on 11 January 2003, with the withdrawal becoming effective on 11 April 2003.

CTBT were linked when the nuclear weapon states promised to act on the CTBT in exchange for the indefinite extension of the NPT.

Until the CTBT comes into effect, the members of the nuclear club are observing a moratorium on testing. If the US breaches the moratorium, the Russian Federation will do the same. Russia might also withdraw from the CTBT if it felt its national security interests were threatened. More than that, Russia's new military doctrine states that it might be the first to use nuclear weapons if there is no other way to protect its security.

The CTBT established an organization to ensure implementation, which includes a Conference of States Parties, an Executive Council, and a Technical Secretariat. The treaty's extensive verification regime includes an International Monitoring System, an International Data Center which is part of the Technical Secretariat, On-Site Inspections, and Confidence Building Measures.

The International Monitoring System comprises a network of 321 monitoring stations and 16 radionuclide laboratories that monitor the earth for evidence of nuclear explosions in all environments. Seismic, hydro-acoustic, and infrasound stations are employed to monitor the underground, underwater, and atmosphere. Radionuclide stations can detect radioactive debris from atmospheric explosions or vented by underground or underwater nuclear explosions. The four technologies were selected for their technical and cost effectiveness and the synergy between them. More than 55 percent of the monitoring stations are now operational. The data generated by the monitoring technologies are transmitted via a global communication system to the International Data Center in Vienna, Austria. The data is then combined and made available to the signatories to the CTBT.

Under the treaty's global verification regime of 321 monitoring stations, the Russian Federation has concluded a Facility Agreement with the Preparatory Commission (PrepCom)[15] of the Comprehensive Test Ban Treaty Organization to deploy on its territory 6 primary seismic stations, 13 auxiliary seismic stations, 8 radionuclide stations, 1 radionuclide laboratory, and 4 infrasound stations.[16] All facilities are being deployed

[15] Established on 19 November 1996 in order to bridge the period until the CTBT's entry into force.

[16] For details and locations see: http://www.ctbto.org/verification/facilities/monfacoutput.dhtml?&state=143

within the Comprehensive Test Ban Treaty Organization's International Monitoring System and International Data Center network. Moreover, the Russian Federation will retain a national capability to allow her to reach an independent judgment on the data produced by the International Monitoring System.[17]

Enactment and scope of the Federal Law on Ratification of the CTBT

Adopted by the State Duma (by 298 votes to 44) on 21 April 2000, approved by the Council of Federation on 17 May 2000, and signed by the President of the Russian Federation in Moscow on 27 May 2000, this Federal Law on Ratification of the CTBT completed the process of ratification. When the Russian Federation deposited its instrument of ratification with the General-Secretary of the United Nations[18] in May 2000, it became the 30th member state to accede the CTBT.

The Law itself is a general framework law, containing a summary of the purposes of the law, and 8 Articles.

The Contents of the Law

Article 1 asserts the ratification of the CTBT.

Article 2 specifies in 7 paragraphs the terms on which the Treaty will be implemented, pertaining to the maintenance of operational availability, reliability and security of the nuclear arsenal of the Russian Federation; support of the nuclear arms complex, and its modernization; development of nuclear arms technologies; maintenance of a potential for possible re-activation of nuclear test activity; perfection of control over foreign nuclear testing; reconnaissance of and data collection on foreign nuclear arsenals and weapons developments; and priority financing of these activities as well as measures associated with the implementation of the CTBT.

[17] Russian Defence Minister Igor Sergeyev proposed in November 2001 that Russia might consider "additional verification measures for nuclear test ranges going far beyond the treaty provisions", but only after the CTBT enters into force.

[18] United Nations, General Assembly. Fifty-Fifth session. 23 May 2000; Document A/55/79. See also: Secretary-General deeply gratified by Russian Federation's ratification of the nuclear-test-ban treaty. United Nations Press Release SG/SM/7366, 24 April 2000.

Article 3 describes in 3 paragraphs the responsibilities of the President, the Government, and of the Chambers of the Federal Assembly of the Russian Federation. In the case of the President, these responsibilities pertain to the governing of activities in support and maintenance of the nuclear arsenal, reliability and security of nuclear weapons; State guidance of activities, weapons and test programs; and decisions associated with the implementation of the CTBT.

In case of the Government, these responsibilities pertain to the management and development of directives and programs decided by the President; measures to perfect control over foreign nuclear tests; definition of functions and executive authorities for the interaction with organizational bodies of, and Russian compliance with, the CTBT; decisions, and conclusion of agreements with authorized bodies, on the creation and functioning of the international monitoring system in the Russian Federation; appointing and instituting the national body of the CTBT; submitting an annual report to the President on reproduction of nuclear weapons without full-scale nuclear tests; financing the Russian dues to the budget of the CTBT Organization; and, upon commission of the President, exercising foreign policy measures required for the implementation of the CTBT.

As to the responsibilities of the Chambers of the Federal Assembly: these have to take part in decision-making, and elaborate and adopt laws, on the funding and other measures required for the implementation of the treaty; they have to consider the annual information of the Government forwarded in compliance with the following Article 5 of this law and take appropriate decisions; and, if extraordinary events related to the subject matter of the CTBT jeopardize Russian supreme interests, they will have to take measures envisaged in Section V of the *Federal Law on the International Treaties of the Russian Federation*, in case Russia may contemplate withdrawal from the CTBT.

Article 4 asserts that the Preparatory Commission, its personnel, and the delegates of the States, will enjoy the legal capacity, and such privileges and immunities as are necessary, for the exercise of their functions in the territory of the Russian Federation *prior* to the enforcement of the treaty.

Article 5 specifies 5 items of information, covering activities, progress, and compliance of all parties with the treaty, the Government is mandated to report to the Chambers of the Federal Assembly one year after enforcement of the CTBT, and from then on annually.

Article 6 specifies in 2 paragraphs the terms on which the Russian Federation may withdraw from the treaty, the measures to be taken in such case, and the consultations and procedures to be followed in compliance with the *Federal Law on the International Treaties of the Russian Federation*.

Article 7 stipulates that in case of withdrawal of the Russian Federation from the CTBT, nuclear tests will be implemented upon sanction by the President.

Article 8 provides for the Federal Law on Ratification being in force from the date of its official publication.

Commentary

Overall, the *Federal Law on Ratification of the CTBT* is a succinct and comprehensive document. Since it has been accepted by the Secretary-General of the UN and the UN General Assembly as a main instrument of ratification, it served the purpose well.

In view of the fact that it is *framework law* of a rather wide compass, the text is inevitably kept rather general in nature. In scope, it ranges over clearly defined policy areas pertaining to the President, the Government and to the Legislature. The definitions of responsibilities contained in Article 3 seem to establish sufficient room and flexibility for the regulation of all necessary details[19] – either by decrees and directives of the President or by acts and directives of the Government – to make the adoption of an

[19] Such as: Empowerment of the Ministry, that will assume the role of National Authority, serve as national focal point for liaison with the CTBT Organization and with other State Parties, ensure the implementation of the treaty's provision, including those for international verification of compliance with the CTBT. Selecting the Offices, Institutions or Organizations taking part in the International Monitoring System and responsible for the seismological, infrasound, radionuclide stations, and the radionuclide laboratory. Appointment of the Office or Organization which will assume the role of the National Data Centre and which is responsible for transmitting the technical data from the Russian Stations to the International Data Centre. Designation of the Organizations responsible for the engagement of national technical means. Regulating the request for and disclosure of information, on-site inspections and privileges and immunities concerning the inspections, etc.

supplementary *Law on the Implementation of the CTBT* existing in other states[20] unnecessary prior to the day of entry into force of the CTBT.

However, if in the practice of the application of the CTBT it would appear that, for encompassing all aspects needed for compliance with the treaty, such a supplementary law would be preferable to the collection of too numerous decrees, acts, and directives, there is still the possibility to use the mandated reporting of the Government to the Chambers of the Federal Assembly one year after enforcement of the CTBT, or annually thereupon, to decide on, and to enact, a *Law on the Implementation of the CTBT*.

[20] See for example Canada at: http://laws.justice.gc/en/C-36.5/35234.html, or the *Nuclear Explosions (Prohibition and Inspections) Act 1998* of the UK at: http://www.hmso.gov.uk/acts1998/1998007.htm, the German implementing law adopted in 1998, or the equivalent Australian act.

RUSSIAN LAWS RATIFYING NUCLEAR ARMS TREATIES

Jean-Pierre Stroot

The two laws under scrutiny here are those ‘On Ratification of the Comprehensive Nuclear Test Ban Treaty’ and ‘On Ratification of the Treaty between the RF and the United States of America on Further Reduction and Limitation of Strategic Offensive Weapons’, have been proposed in their English translated versions. They concern START-2 and CTBT respectively. Both laws date from April 2000. Since that time neither START-2 nor CTBT have been submitted to the US Senate for ratification. Furthermore, in June 2002, USA and Russia have signed a new bilateral treaty. It is known as the Moscow Treaty. At least both parties have ratified this one. The law of ratification by the Russian Duma and the Congress of the Federation dates May 2003.

The Moscow Treaty (MT) is rather peculiar. It requires a reduction of nuclear weapons that are in a state of launch readiness to or slightly below the level that was foreseen by START-2, but it does not include destruction of the weapons that should be disarmed nor a system of verification. It is a very short treaty compared with the previous ones that involved detailed description of the arms dealt with the treaty as well as a thorough description of inspections and verification. Also, MT does not provide any provision for elimination of weapons that are removed from state of readiness. Warheads and missiles may thus be stored and reactivated when the treaty expires in 2012!

One more curiosity is that MT does not refer to START-2 but to START-1 only. START-2 is clearly ignored, in line with the absence of US ratification. It has become a "non-treaty". This has now been recognised by Russia, which has nullified its ratification of START-2.

CTBT is another interesting case of study. Contrary to START-2 it is a multilateral treaty that has been signed by a vast majority of countries as a counterpart for the approval of indefinite extension of the non-proliferation treaty (NPT). Its peculiarity is that it may enter into force after ratification by all 44 nominally designated countries, which are

either nuclear or are most likely to have the capacity to become nuclear. Amongst these are India and Pakistan. There is little hope to get a rapid ratification if any by these two countries which are not parties to the NPT and are actively involved in developing nuclear arsenals. Furthermore, the actual USA administration is observing a moratorium on nuclear tests, but it has decided not to ratify the CTBT and it has approved a reduction of the time necessary to resume tests in case. Its new doctrine is based on the study of new nuclear warheads and also it remains under pressure of stewardship of the existing arsenals that are said to require regular control explosions. The Russian ratification is a positive action, although CTBT entry into force is still a very far-fetched if not an impossible goal.

The paradox, that is faced by an analysis of the demise of both START-2 and CTBT, is that of arms control in general today. Both ratification laws involve lots of detailed considerations. These concern the preservation of the Russian national nuclear force as a fundamental element of its security. They do not contradict the texts of the treaties, but they multiply the warnings towards their partners. It is the same practice as that used by the USA.

ON PENSION PROVISION OF PERSONS WHO SERVED IN THE ARMED FORCES, INTERNAL AFFAIRS BODIES, PENITENTIARY FACILITIES AND BODIES, AND OF THEIR FAMILIES

Russian Expert Commentary

As defined, the State is not only to provide for military persons, but also to support those who are discharged from military force formations for reasons of age or health. In the Russian Federation, the procedure and rules of social protection are established by the Law ‘On Pension Provision of Persons Who Served in the Armed Forces, Internal Affairs Bodies, Penitentiary Facilities and Bodies, and of Their Families’.

The Law establishes the legal norms and the mechanisms by which the state fulfils, regulates and guarantees the social protection, adaptation and rehabilitation of former military persons and their families. It grants pensions for long-service, disability and survival, pension bonuses to different categories, as well as fringe benefits, allowances and compensations to persons involved in accidents or exposed to radiation during nuclear tests.

The law applies to the citizens of the Russian Federation who were in regular military service or in contractual service in any of its forces, structures and bodies, as well as to their families. As a successor of the USSR, the Russian Federation has assumed the responsibility of provision for former military persons residing in CIS countries (under treaties, agreements), and in countries that are not members of the CIS with pensions, if the legislation of the these countries does not stipulate their right to pension..

The Law establishes that a pension shall be fully paid to military pensioners irrespective of whether they receive another wage or income. This allows civilians to lead an active working and sociopolitical life. At the same time, if the number of military pensions fails to prevent persons from living below the poverty level then the overwhelming majority of pensioners have to work.

The legislator understands that there are certain defects in the pension provision of military persons and seeks to eliminate them successively. In the past six years, amendments have been made to the Law in question every year (sometimes twice yearly) to further improve the social security and service of former military persons by increasing the level of social protection, prosperity, employment and health. The amendment of January 2002 was associated with bringing the Law in harmony with the Federal Law ‘On Government Pensions in the Russian Federation’.

Nevertheless, the collision is that the nominal pension provision for military persons shall be regulated by an unconstitutional act (a law of the Russian Federation) approved before adopting the existing Constitution that provides federal constitutional laws and federal laws. It is thought that it is high time to resolve this collision.

ON THE STATE BORDER OF THE RUSSIAN FEDERATION

Russian Expert Commentary

The emergence of Russia as a sovereign constituent of world policy has made acute the question of the spatial limit of the sovereignty, destination and status of the State Frontier alongside the rules of its establishment and protection. The Law 'On the State Frontier of the Russian Federation' has become a specific and important step in the political-legal and normative settlement of these problems.

The Russian Federation views its State Frontier as the provider of its territorial integrity and national interest, as an expression of the unity of the national-governmental and administrative formations constituting it and as the basis of its military, economic and border security. By adopting the Law, Russia declares the content and character of the frontier regime, the legal relations governing Frontier areas (water bodies) and the means of international communications passing through Russian territory to the country and the world.

At the same time, the Law implements the international-legal principles of the territorial integrity of the State, inviolability of the borders and other things into the norms of the National Legislation. Moreover, it defines that if an international treaty of the Russian Federation establishes rules other than the ones envisaged with the present Federal Law, then the rules of the international treaty apply. The document provides for legal definitions and securing of the principles, which the Russian Federation is guided with in organization and construction of the State Frontier and in its Frontier Policy: protection of the security of the Russian Federation and international security; mutually beneficial, comprehensive cooperation with foreign States; mutual respect of sovereignty, territorial integrity of the States and inviolability of the State borders; amicable settlement of frontier disputes.

Owing to this, the Frontier Policy of the State cannot be a discretionary one. Its goals and assets, the means of their achievement and protection of the State Frontier have

been regulated by the Legislator. In compliance with the Law, protection of the State Frontier is implemented on the basis of the coordinated activity of the Federal State authorities, State authorities of the constituents of the Russian Federation and local governmental bodies, as well as organizations and citizens in accordance with the established procedure. The Law contains express definitions of the powers and forms of participation of all constituents of the Frontier Policy, including enterprises and their associations, institutions, organizations, public associations and citizens in protection of the State Frontier. At the same time, the role of the federal executive authority in the domain of protection (and coordination) of the State Frontier is assigned to the Federal Frontier Service of Russia, which has been supplied with legislative definitions concerning the powers and procedure of actions of its bodies and troops. The Law describes the detailed procedure and rules of use of weapons and battle equipment “within the limits of the Frontier territory”, “for repulsion of an armed intrusion” upon clearly expressed notice of the intent to apply them and preventive shots”, etc.).

At the same time, the Law contains provisions on the legal and social security of military persons and other citizens participating in the protection of the State Frontier; responsibility for violations of the law at the State Frontier; sources of the resource, financial and logistic support of protection of the State Frontier of Russia and other.

Thus, the Law creates the legal basis of economic and other activities in the Frontier zone, temporary stay and movement within its limits of persons and transport vehicles, creation and activity of the pass points via the Frontier, its guard and protection. The Law, on the one hand, discloses the value of the Frontier and the Frontier Policy for security of an individual, society and the State and serves strengthening of contacts and interaction of the Frontier bodies and troops with the population of the Frontier territories. On the other hand, the provisions of the Law are oriented at increasing transparency of the actions of the Federal Frontier Service and other force structures involved in protection of the Frontier, which is of principle importance for the development of civil control.

The Law “works” for providing security of all social formations and resources of the country that are located within the limits of State sovereignty (the State Frontier). It is important to note that the Law of the Russian Federation ‘On the State Frontier of the

Russian Federation' is not of a canonical character. As required and, in connection with the change of the Frontier situation, its provisions and norms are revised. During the period of the Law's effect, eight amendments and additions were introduced.

At the same time, the Law was adopted by the Supreme Council of the Russian Federation, which is unavailable nine months prior to the adoption of the Constitution. This is why partial corrections of the text may be insufficient. It is feasible to revise the Law and to adopt it by a legislative body anew.

ON ADDITIONAL GUARANTEES AND COMPENSATIONS TO MILITARY PERSONS, SERVING ON THE TERRITORIES OF THE CAUCASUS AND BALTIC STATES AND THE REPUBLIC OF TAJIKISTAN, AS WELL AS CARRYING OUT TASKS RELATED TO DEFENDING CONSTITUTIONAL RIGHTS OF CITIZENS UNDER STATE OF EMERGENCY CONDITIONS AND DURING ARMED CONFLICTS

Russian Expert Commentary

The Law of the Russian Federation 'On Additional Guarantees and Compensations to Military Persons, Serving on the Territories of the Caucasus and Baltic States and the Republic of Tajikistan, as well as Carrying out Tasks, Related to Defending Constitutional Rights of Citizens under State of Emergency Conditions and during Armed Conflicts' was adopted at a time of sharp aggravation of the internal political order in the newly independent states, which emerged in the territory of the former USSR. These involved multiple conflicts, which often acquired the form of armed struggle. The Law specifies measures concerning social and political security of military persons, tasks undertaken in so called 'flash points' (increased pay, favourable length of service conditions, enrolment in civil education and vocational establishments without competition, additional leave, etc.), and provisions for family members of deceased military persons.

The Law is based on a universal practice that aims to strengthen forces of the State during times of armed struggle. However, the norms contained in the Law are too lenient. Their vagueness is determined, on the one hand, by an unclear differentiation of guarantees, compensations and privileges and, on the other hand, by anonymity, under which absence of the names of structures and officials responsible for the unconditional execution of measures specified by the Law is clear. The formula, according to which the order of granting additional guarantees and compensations is determined by the Government, only shifts the problem to another level, but does not solve it.

However, the matter is not just in the legislative definition and approval of concrete norms. The fact of adoption of this law itself represents an official form of rejection of the ideological postulate, which dominated in the Soviet period when the Army had no internal function. It was recognition of the fact that the Armed Forces might be attracted to prevention and suppression of armed conflicts. It is noteworthy that, in April 1995, the present Law was extended to military persons as well as to rank and file commanders and students of the Ministry of Home Affairs of the Russian Federation, who had been carrying out tasks under armed conflict conditions in Chechnya. The document used an extremely vague definition “carrying out tasks under armed conflict conditions”. It is likely that the lawmaker proceeded from the assumption that clear definitions of functions and tasks of the Armed Forces of the State, specified by ‘The Code of Conduct, Related to Military and Political Aspects of Security’, is implicit in other legal acts.

The maximum terms for the carrying out of tasks in a state of emergency and during armed conflicts by military persons is the responsibility of the Government of the Russian Federation. The determination of zones of armed conflicts, in each particular case, is also within its authority. These conditions have not an instrumental, but a conceptual character. They draw a clear line, dividing the competence of political and military authority in estimating and qualifying armed conflict, outlining limits of independent actions of military command in considering organizational and staff matters and, consequently, representing one of the key factors of civil control over military activity.

ON THE CREATION AND APPLICATION OF SPACE MEANS IN THE INTERESTS OF DEFENCE AND SECURITY OF THE RUSSIAN FEDERATION

Russian Expert Commentary

To this very day, research and use of outer space in Russia is implemented in compliance with the Law on Space Activity dated August 08, 1993, which establishes the legal and organizational fundamentals of space activity, including those applicable during defence missions. In the past decade, much has changed in this domain. Against the background of the militarization of outer space, Russia has taken its own measures to contain aggression in outer space and out of space. In the interests of providing military security of the State, space forces were established, and they have recently been given the status of an independent category of troops.

The bill under consideration is expected to define the legal fundamentals of the national policy in the sphere of creation and application of military-oriented and dual-use space means for the purposes of strengthening the defence capacity and security of the Russian Federation. At the same time, the fact that the corresponding activity is not regarded as self-sufficient is of principal importance. Firstly, it is governed by the Constitution, the Legislation of the Russian Federation, the generally recognized principles and norms of international law and the international treaties of the Russian Federation. Secondly, the bill names control over compliance with the international treaties of the Russian Federation on the limitation and reduction of armaments, including prevention of the proliferation of weapons of mass destruction in outer space. Thirdly, exclusion of the unofficial utilization of military-oriented and dual-use space means is its central provision. Fourthly, it is developed under strict environmental control.

These and other provisions establish the rigid framework of the military-space activity and also make it open to public discretion. The bill, in detailed order, defines the procedure of development, production and service acceptance of military-oriented and dual-use space means, as well as the procedure of financing and the powers and functions of various State authorities on their creation. Thus, it fixes the legal basis,

providing the Parliament and the structures of civil society with an opportunity to form their attitudes to the military-space activity of the State and to influence it accordingly.

Approval of the published bill as Law represents an important milestone and a means of expanding transparency of the State's military policy. It seems that it should have been introduced with some clarifications at the stage of discussion. Apparently, it is feasible to expand the effect of the Law on the total 'life cycle' of the space means, i.e., to include the articles governing the procedure of their utilization. The article on responsibility for infringements of the future law is too narrow. Whilst it provides for administrative and criminal sanctions for actions "having caused or causing damage to the Russian Federation on creation and (or) application of military-oriented and (or) dual-use space means,", those committing actions by means of which the Russian Federation has been caused damage, are able to escape responsibility.

ON RELEASED AND DECOMMISSIONED MILITARY PROPERTY

Russian Expert Commentary

The Federal Law 'On the Released and Decommissioned Military Property' is designed to define regulations on the release and further use of military property, under the management of the Armed Forces of the Russian Federation and other troops, military units, army formations and bodies. Thus, in the domain of legal governance, the Law defines a critical domain of social-economic relations, with respect to the use of resources used in reforms of the military establishment of the State. The need for adoption of this Law is highlighted by the fact that the value of the aforementioned domain of social-economic and military-political relations is steadily increasing especially with respect to improving military performance.

Both the realization and industrial utilization of military property is subject to legal governance, and these spheres are frequently, in the economic and in the environmental and social sense, characterized unfavorablely. Additional legal governance of the mentioned domain is defined with this law.

From the point of view of social consequences resulting from implementation of the Law under consideration there several aspects may be singled out.

From the economic point of view the importance of the Law is in the first place defined with the following factors:

- an opportunity arises to find additional material and financial means for the needs of the armed forces, to carry out military reform and reorganization of other defense structures of the State.
- additional economic and financial means arise to materially support the most critical scientific-technical developments in the military domain;
- as a result of diversification the economic domain additional equipment and property possessing new functions for use in the economic and other domains will be developed;

- it is important from the operational-technical point of view that the Law requires activities to be planned in the project-designers' documentation, allowing already, at the design level, to attach a completed character to the life cycle of military equipment and property.

From the *social point* of view the Law is important owing to the following:

- it outlines the circle of problems which have been faced by Russian society within the process of re-armament and reorganization of the armed forces and other defense structures, resulting in a release of military property;
- it expressly defines the totality of the constituents participating in the governed process: on the one hand, this includes the totality of the armed forces, troops, military formations and bodies, and on the other hand, all constituents of economic activities. Regardless of the organizational-legal forms and forms of property; such a definition allows one to clearly delineate civil control over the armed forces in and is also important from the point of view of the possibility of systematic control over the effectiveness of compliance with the requirements of the Law itself;
- additional material and financial means arise as a result of the law to solve of actual social problems, in particular, the problems of improving social security of military persons, persons, discharged from military service, and members of their families;
- an opportunity forms to create additional workplaces in the domain of industrial production and services, which will improve the condition in the domain of population employment;
- a system is proided for wherin dangerous factors and possible factors of social tension, accompanying the process of realization are accounted for; on this basis industrial use and liquidation of military property; efforts are concentrated on the corresponding bodies and organizations devoted to settlement of problems such as minimizing the risk of causing damage to the personnel of the corresponding enterprises and population, problems of environmental normalization, non-admission of environmental pollution including with radioactive wastes, non-admission of economic and financial damage and in the number of others;
- the realization of the Law will, in particular, allow one to form an effective mechanism preventing abusive practices in the corresponding domain. As has been shown in practice, quite a large number of criminal proceedings are instituted against military

persons for abuse, mainly connected to processes of realization and utilization of released military property.

In the *political domain* the Law provisions will be of no less importance:

- In accordance with other legislative acts the Law under consideration promotes bringing Russia to the level of the requirements of a modern democratic society, and to a certain degree contributes to demilitarization of the political and economic relations in modern Russian society;
- the law also defines and delimits powers of political bodies of the State authority both at the Federal level and at the level of the Federation constituents and the local governmental bodies, allowing added transparency for activities conducted and thus ensuring more effective control over their realization;
- the law will allow principles to form based on policy line and in compliance with this Law, in particular, with respect to national financial policy;
- the law will also expand the opportunities to enrich military-civil relations in the Russian Federation and improve effectiveness of civil control over the defense structures and within their specific domain of activity.

Thus, the importance of the Law and its social significance for modern Russian society is unquestionable. At the same time, legislative formalization of the process of releasing further utillizing military property turns out to be an extremely complicated legal process, giving rise to possible gaps in the legal governing of the corresponding sphere.

In particular, it seems feasible to list in the text of the Federal Law under analysis a comprehensive list of the domains used to release material and financial resources. It prevent the unjustified dissipation of resources and in compliance with this, possible concealment and abusive practices. The law may also help articulate and further develop clear social and economic reforms to ensure the system of measures envisaged with the present Law.

ON THE STATUS OF PARTICIPANTS IN COMBAT OPERATIONS

James Greene

The proposed draft Russian Federation Law 'On the Status of Participants of Combat Operations' is, at its core, a well-intentioned effort to update the 1993 law 'On Additional Guarantees and Compensations for Military Persons Carrying out Military Service on the Territories of the Caucasus and Baltic States and the Republic of Tajikistan' so as to ensure that adequate protection and social benefits are provided to servicemen and their families. While the 1993 law focused on specific geographical 'trouble' areas where Russian servicemen found themselves serving when the Soviet Union disintegrated, the proposed draft law is a more flexible instrument, which goes beyond the current law's specific geographical focus to include service in currently-unforeseen zones of emergency or armed conflict. The proposed draft law also expands somewhat the scope of social protections for servicemen, by addressing – albeit briefly – minimum training requirements for service in a combat area and issue of re-training and social adaptation for departing servicemen.

Despite its good intentions, however, the proposed draft law is only likely to have a minimal impact on improving the welfare of servicemen and their families, due to its continued reliance on the framework of the Soviet veteran's system. This system – designed for maximum ideological impact, not maximum social welfare – has built-in inequalities and outdated economic mechanisms that are increasingly at odds with the realities of the developing democracy and market economy in today's Russia.

Overall Principles

The 1993 law and the proposed draft law both provide a positive acknowledgement of society's obligations to servicemen, veterans[21], and their families. However, both laws continue the model of the Soviet veterans' system, which focused resources on

[21] The term 'veteran' is used in this article to mean former servicemen in general. In describing 'participants in combat operations' in the sense of the two laws discussed here, the term 'combat veteran' is used.

providing significant privileges to a relatively limited group of combat veterans. Thus, proximity to combat – rather than need or acknowledgement of service – is the principle criteria in determining whether a serviceman or veteran will have access to the significant immediate and long-term benefits provided under these laws, including pay, early pensions, preferences for housing, special vacations, survivors' benefits, work preferences, and other privileges.

As a nation with 'universal conscription' (although in reality only about 12% of eligible draft age men actually serve) and limited resources, Russia understandably needs a means of rationing resources and prioritizing access to veterans' benefits. But by continuing to focus significant resources on a privileged group of combat veterans – a designation independent of need – the proposed draft law will inevitably be less effective at addressing the social welfare needs of veterans overall and mitigating specific service-related consequences (like medical disability). For example, under the proposed draft law, combat veterans receive priority care at government hospitals even for non-service related injuries, whereas a veteran who was disabled in a service-related accident outside combat would not be eligible.

One reason for this discrepancy is that the Soviet veterans' system aimed for maximum motivational and ideological impact, rather than maximum impact on social welfare. A principle goal was the glorification of combat – including sacrifice and death in combat – rather than the recognition of service, which was of limited meaning in a society where everyone was a 'servant of the state'. This 'combat cult' was aimed at motivating servicemen – many of whom were conscripts – to participate in combat and thus join a materially privileged 'combat veteran' class. It also aimed to legitimize the conflict in which such combat sacrifices were made, by focusing on the glory of those who fought rather than the wisdom of the war or the effectiveness of its prosecution. Likewise, the 1993 law and the proposed draft law – which specifically evoke the continuation of benefits for veterans of the Great Patriotic War alongside the provision of similar provisions for veterans of service in Nagorno-Karabakh, North & South Ossetia, Abkhazia, Tajikistan, Transdniestria, Chechnya, or Dagestan – aim as much at legitimizing Russia's modern conflicts as they do at protecting servicemen. The effects of this 'combat cult' are particularly damaging when extended into the law-enforcement and intelligence services – as is done in the 1993 law and the proposed draft law – where

they create an internal incentive for these organizations to increase their level of militarization and their participation in combat operations.

The Soviet-era preference for political and ideological factors over social welfare factors increasingly diverges from the economic and political realities of a modern, democratic Russia. The system of privileges [*l'goty*] for combat veterans' provides for not only for special government-mandated privileges, but also for priority on government-provided services that should, in principle, be available to all citizens (or all former servicemen). This apparent inequality creates the perception of a privileged combat veteran caste – a perception that can only be enhanced by inequalities introduced in the proposed draft law; for example, the different formulas for determining combat pay for conscript and contract soldiers. Furthermore, the weak definition of eligibility criteria and the considerable latitude given to officials for designating eligible servicemen and prioritizing distribution of benefits invites arbitrary decision-making, favouritism, and corruption – particularly given the considerable financial benefits and privileges involved. By continuing this flawed system, Russia risks engendering a sense of popular injustice that could undermine the public support and parliamentary financing this is essential for the long-term viability of veterans' programs.

Ironically, the continued reliance on the *l'goty* system is also not in combat veterans' best economic interest. Since the system is based mostly on the distribution of public goods, it fosters combat veterans' dependence on the government sector. The value of such privileges is likely to continue decreasing (at least in relative terms) for the foreseeable future, given the government sector's under-funding, inefficiency, and decaying infrastructure. Of course, *l'goty* with a low cost to the government – for example, free passage on public transport or reduced utility rates – will likely continue, allowing those combat veterans on limited income to survive at a subsistence level. But more valuable privileges, such as train tickets, plane tickets, vacations, vehicles, and medical care, will likely be in increasingly short supply as decreasing budget resources meet rising costs. Such privileges will therefore be increasingly scarce, available only to those veterans best able to influence the bureaucrats responsible for their 'equitable distribution'. In addition, by focusing on maintaining the serviceman's or veteran's rights within the government sector – for example, by preserving housing preferences – the 1993 law and the proposed draft law also neglect to address important aspects of the

serviceman's relationship with the growing private sector. The laws also fail to take into account how benefits can best be delivered in a market economy; for example, by maximizing direct payments to veterans (who can then purchase what they need from the private sector) or by leveraging public funds through mechanisms like loan guarantees.

The decreasing ability of the Soviet veterans' system to provide for its clients' needs, combined with increasing social hostility that undermines efforts to find adequate resources or alternative solutions, is likely to lead to systemic crisis. Reform is essential if Russia is to meet its social obligations to veterans over the long term.

International 'Good Practice'

Russia's decisions on how to address the social welfare of its servicemen, veterans, and their families will need to be a national decision that takes into account the uniqueness of Russia's national situation. However, examining international practice can help in developing an independent baseline for assessing current domestic practice. Likewise, international practice can be a source of ideas that could be usefully adapted to the Russian situation. This section will try to illuminate some prospects for comparative study, using examples from practice in the United States and the United Kingdom.

In general, the privilege-based approach – with special benefits for combat veterans – differs significantly from the practice in most established democracies. In the latter, immediate benefits for participants in combat – such as extra pay – are limited. Equal rights for social protection are provided to all servicemen and their families, although some programs are specifically targeted to mitigating the negative effects of long deployments. Most long-term benefits are not limited to combat veterans, but are provided to all veterans, either on the basis of the terms of service (for example, years served and method of discharge) or to mitigate specific negative consequences of service (whether or not the soldier served in combat), such as medical disability. Some countries – for example the United States – do distinguish in law between veterans of wartime and non-wartime service, but in practice the benefits provided differ little. Some nations also provide veterans' benefits for service in specific paramilitary forces, such as the US Coast Guard or a national gendarmerie, but these apply equally to all members

of these forces, irrespective of whether they perform 'military duties' or participate in combat operations.

The following sections provide a more detailed comparison of Russian law (the 1993 law and the proposed draft law 'On Participants in Combat Operations') and international good practice in the following areas: combat pay, veterans' benefits, disability, social protection for servicemen and families, and implementation mechanisms.

Combat Pay

In international practice, combat (or the risk of combat) is largely seen as an integral part of a serviceman's job. For example, in the US Armed Forces, combat pay is $150 per month for all ranks. For even the most junior US servicemen, this is only about 15% of their pay. In addition, the US Congress has also passed tax relief for those serving in particular operations – effectively another 5-15% added to pay. This pales in comparison with the Russian practice of increasing pay for those serving in combat areas by 50-100% and providing daily bonuses of up to one-and-a-half months' salary for 'first-hand participation' in combat.

Veterans' Benefits

Russian combat veterans also have considerable additional benefits: priority on receiving government housing and land for gardens/dachas; privileged access to credit for building housing, gardens, and farms; preferential rates on utilities, privileged access to medical care; work placement, education, and re-training programs; and lifetime rights to certain working conditions, vacations, and attendance at cultural and sporting facilities. In addition, Russian servicemen can receive combat-related credit toward retirement of up to three months' credit for per one month in combat.

Regarding priority for pubic housing, general practice in the US and UK provides government housing on the basis of need; of course, in some cases, service in the armed forces or a service-related disability can be a factor in demonstrating need. Payment of utilities, telephone installation, reduced tariffs on transportation, and the

provision of social and judicial support would be also be addressed under such needs-related programs.

Access to credit for housing, on the other hand, is a regular benefit provided to veterans in many countries of Europe and North America to help them adapt to civilian life. In the US, this has been accomplished since 1944 by a system of government loan guarantees that allow veterans to purchase homes at reduced interest rates and without down payments. Such a loan guarantee system provides considerably more efficient use of government funds, since each $1 budgeted can, as a rule, generate at least $10 in commercial loans (depending on the specifics of the programme and economic conditions, this proportion can reach 1:100 or higher).

Generally, there is no preference for veterans or servicemen at government communication, cultural, entertainment, sport, and leisure facilities in the US and UK; however, since most of these institutions are private, such preferences would have little meaning. Many businesses do offer discounts and specials to servicemen (and sometimes veterans) to demonstrate patriotism, show good citizenship, and attract military and ex-military customers.

Preferential access to free medical care, medicines, and medical equipment is generally limited to those that either have a service-related injury or have retired from the service after serving until pension. In the US, however, there is the possibility of gaining medical care at Veterans' Hospitals on an 'as available' basis.

Education, re-training, and job search programmes also play an important role in the social adaptation of departing servicemen. Education programs can include preferences (as in the Russian draft law), tuition-sharing programmes, or specifically targeted courses, but as a general rule they mainly seek to defray the financial cost of education or training; veterans are still required to meet academic and other entrance requirements. For servicemen leaving service involuntarily, separation pay is also a portion of the adaptation package. This would include those leaving due to a service-related disability, for which they would also receive a disability pension (see below). At

least in the US and UK, this is the only form of early retirement; there is no system of multiple credit toward retirement for combat or dangerous duty.

Disability

Since combat – or the risk of combat – is considered to be an integral part of a serviceman's job, in developed democracies the state generally takes responsibility for compensating or mitigating the impact of service-related hardships or disabilities without prejudice as to whether they were related to combat, training, peacetime operations, or even off-duty time (unless incurred through misconduct or gross negligence). The majority of compensation is monetary, with disabled veterans receiving one-time and/or monthly payments, based on their level of impairment. For example, in the UK, a minor injury like the loss of an index finger or big toe would be compensated by a £5890 one-time payment and declaration of a 14% disability. Larger injuries would result in the declaration of a 20%-100% disability, with a weekly payment from £25 to £124.

The Soviet system represented in the 1993 law and the proposed draft law contrasts with this in several ways. Eligibility is limited to 'invalids of combat action'. The level of benefits provided is – at least on paper – quite high, including housing preferences, free medical and dental care, medicines, free education in government institutions, temporary disability payments of 100% pay for up to 4 months in a row (up to 5 months/year); a mandatory 30-day holiday each year; special working conditions; preferences for sanatorium stays; and provision of a vehicle (if needed) or compensation. But since many of the benefits are really privileged access to government-provided services, the actual level of delivered services may be significantly lower, due to under-funding, decaying infrastructure, and corruption.

Social Protection for Servicemen and Families

Many of the specific social protections in the current and draft Russian Federation laws have analogues in international practice; for example, ensuring housing for the serviceman and family members, evacuation of family members and household belongings from emergency zones, extra vacation time for servicemen following long deployments, provisions for family members to travel to the serviceman during vacation, and pensions for the family members of servicemen killed in combat. Despite the

similarities, however, the comments made in the sections above regarding the focus on government privileges and the limited scope of the Russian laws (i.e. only applying to 'participants in combat') apply in this area as well.

One result of the focus on government privileges is that neither the 1993 law nor the proposed draft law provide servicemen protection within the civil or commercial sphere. But as Russia's market sector continues to grow, Russia's servicemen will also need protection for their private sector affairs; for example, private debt or rental contracts. In the United States, this is done on the basis of the *Soldiers' and Sailors' Civil Relief Act of 1940*, which gives servicemen the right to reduced interest rate on debts, protection against eviction (or in some circumstances the right to terminate rental leases early), and delay of civil court actions: bankruptcy, foreclosure, divorce, and tax judgments. The *Uniformed Services Employment and Reemployment Rights Act of 1994* extends these protections further to cover the private-sector jobs of those called to active duty from the reserves.

In recognition that the considerable number of regular and extraordinary overseas deployments in which servicemen participate is one of the greatest social challenges to servicemen and their families, the United States and the United Kingdom have developed a system of 'operational welfare' to mitigate the negative impact of such deployments. This includes pre-deployment training, individual and family counselling, support for private communication (e.g. phone calls and e-mail), family crises intervention, and post-deployment leave. Some aspects of 'operational welfare' are addressed in Russia's current (i.e. 1993) law; for example, periodic leave for those in combat zones, minimum training requirements, and the requirement for the government to establish guidelines for the maximum continuous term of service in a combat zone. Unfortunately, the proposed draft law excludes these last two provisions, therefore moving Russia in contradiction to international good practice. The draft law should seek more, not less, in the area of pre-deployment training, by providing qualitative guidelines for such training; for example: servicemen's legal and moral responsibilities in combat (including under the Geneva Convention and the OSCE Code of Conduct), treatment of prisoners of war and non-combatants, stress management, suicide prevention, and operational issues (e.g. principles and application of low-intensity conflict, realistic simulation of projected combat situations).

One crucial area in which the draft law is unclear is the area of social protection for families of servicemen missing in action (MIA) or prisoners of war/captive (POW). The basic guiding principle – ensuring that family members continue to receive a stable level of support – is usually best applied by allowing the serviceman to specify what proportion of his salary should go to which relatives in case he is MIA/POW. In contrast, the draft law, with its 25% per dependent formula, could result in dramatic shifts in the financial flows within the family. The draft law is also conspicuous in its failure to address the question of POWs directly. Rather, the stipulation that MIA benefits stop when the serviceman's location is determined means that POWs are *de facto* excluded. Protecting the rights of POWs and their families is a crucial morale issue that needs to be addressed clearly in the law, particularly in light of the Soviet Union's historical treatment of returning POWs.

Implementation Mechanisms

Although the specific division of responsibilities and mechanisms for implementation of laws are highly dependent on the broader context of each country's executive system of government, as a general rule these basic elements of these should well-defined within the law. Such responsibilities and mechanisms include the rights (or obligations) of government to establishing certain executive bodies to administer programs, guidelines for the work of these executive bodies, mechanisms that link these bodies to the budgetary process, mechanisms for regular reporting back to Parliament on the implementation of the law, and (where appropriate) enforcement mechanisms and sanctions for violations of the law.

While the 1993 law only generally addressed the issue of responsibilities and mechanisms, it did provide a good basis on which to build, by giving government three clear tasks: (1) providing procedures for establishing the facts of service for servicemen; (2) requiring the government to set limits on service in combat zones; (3) determining the order of providing the additional guarantees and compensations established under this law. Unfortunately, rather than building on foundation established in the 1993 law, the proposed draft law omits the first two tasks. The proposed draft law does establish

commanders' responsibility for keeping lists of those with 'direct participation in combat' although it does not provide clear guidance on the criteria or mechanisms.

The proposed draft law also goes into more detail on the division of responsibilities between the Federal Government and the Federal Subject Governments for financing the various provisions of the law. Unfortunately, this added detail does not really establish a clear linkage between implementation and financing. The costs of many *l'goty* remain hidden; for example, the free transport of veterans on public transport, some of which is assumed by local government, and some of which is transferred to the private operators of *marshrutka* mini-buses. Other areas contain unclear mandates and mechanisms; for example, *l'gotnyi* credit is mentioned but neither defined nor funded. The financial split between federal and federal subjects' budgets seems arbitrary and illogical; why does the federal government pay for a *l'gotnyi* annual vacation [*putevka*], while it is the federation subjects that must pay financial compensation when a *putevka* is not available. The 1993 law and the proposed draft law also do not clearly define ministerial responsibilities within the government; the only reference is the requirement for MOD to provide burial services (and presumably finance them).

Areas for Improvement

A review of both the 1993 law and the proposed draft law, in the light of international good practice, highlight the following as the most important areas for improvement:

- Transition to a fair, inclusive, and needs-based approach;
- Development of new benefit and protection mechanisms that are more appropriate to Russia's market economy;
- Better definition of key concepts; and
- Clear assignment of responsibilities for implementation.

Suggestions for each area are detailed below. These suggestions should be taken not as authoritative prescriptions, but rather as ideas to help continue the process of further developing the proposed draft law.

Fair, Inclusive, and Needs-Based Approach

Previous sections have identified the need to move from a system based on narrow eligibility and socially visible privileges for participants in combat to one that aims to improve the social well-being of servicemen and veterans overall. This is crucial not only from the perspective of fairness, but also to ensure the broad base of societal support that is needed to ensure the long-term viability (particularly funding) of the veterans' system.

Of course, any change will need to be gradual and well-considered. A good first step might be to incorporate elements into the proposed draft law that would ensure that sufficient information is available to support effective evaluation of current and alternative models. For example, the law could require government to keep detailed statistics and report annually to the Duma on the distribution of resources within veterans' programs and on the welfare of servicemen and ex-servicemen (with combat service and without). Similarly, the draft law could establish an oversight and review commission to assess the effectiveness of current law against clearly defined criteria and provide recommendations on possible reforms.

One area of inequality, however, could be addressed immediately – combat pay. As discussed previously, the different formulas for conscript and contract soldiers in the proposed draft law fosters the perception of a two-tier system. Such perceived inequality undermines morale and team spirit in the place where it is most needed – in combat units. In addition, the method of figuring combat pay as a percentage of regular pay also creates a systemic inequality; in real terms, the greater the pay, the greater the bonus. As a result, officers receive a larger combat bonus than soldiers or sergeants, and senior officers receive more than junior officers – a system inversely proportionate to the relative risk of combat for these groups. A more equitable method would be a flat-rate combat bonus, which would emphasize the equal risks assumed by all servicemen when facing combat or danger.

Mechanisms Appropriate to Russia's Market Economy

Since both the 1993 law and the proposed draft law maintain Soviet-era mechanisms, they fail to address the changing realities of today's Russia. As Russia's market economy continues to develop, an increasing proportion of a serviceman or veteran's economic relations will be in the private sector – be it banking, renting or purchasing housing, a spouse's job, or the purchase of goods to meet day-to-day needs. These relations can be disrupted by the unpredictable requirements of service life, resulting in significant financial loss and personal hardship. Russian servicemen, therefore, need mechanisms that can help protect them from the negative impact that military service might have on their personal financial affairs; for example, lawsuits, foreclosure or eviction from housing, divorce proceedings, and loss of civilian jobs (for reservists recalled to active duty). Using the example of the US Soldiers' and Sailors' Civil Relief Act of 1940, the burden of proof in court is on the plaintiff to demonstrate that serviceman's failure to meet his obligations was not materially affected by the conditions of service.

The reality of today's Russia is that most goods are purchased through the private commercial sector, not produced and distributed through the government sector. Where government bodies are providing goods (e.g. vehicles, vacations) directly to combat veterans, they are, in fact, acting as another middleman – one that is comparatively inefficient. For the most part, that inefficiency also applies to those goods that are government-produced. Thus, the standard of living of Russia's veterans will rise if the mechanisms by which their benefits are delivered become less reliant on the distribution of government sector goods and privileges, and focus instead on providing veterans with the money to purchase what they need from the private sector. Re-focusing benefit programs on the private sector will also save the government money, by allowing it to reduce the bureaucracy that currently delivers benefits and use public-private initiatives – like loan guarantees – to increase the impact of government money. The process of moving benefits to a money-based system could also be used to move toward a needs-based system, more accurately define needs and targeting benefits to address them; for example, in the case of disability.

Better Definition of Key Concepts

Although the proposed draft Russian law does seek to better define certain key terms (such as 'participant in combat operations' and 'invalid as a result of combat operations') the definitions provided are not sufficient to ensure the clear implementation of the law. For example, the proposed draft law indicates that an 'invalid of combat action' is one who becomes 'invalid from a wound, contusion, mutilation, or disease received during the execution of military responsibilities in a zone of combat operations during a period indicated in this law.' This leaves as an open question the definition of invalidity (disability), differentiation of disability by degree, the definition of 'executing military responsibilities', the designation of authorities responsible for making determinations, and mechanisms/guidance for these authorities (e.g. for classifying the extant of disability, legal responsibilities for determining a service-related cause, the possibility for applicants to appeal). Similarly, the proposed draft law's definition of a 'participant in combat operations' fails to address important issues: the length of service in a combat area or the Armed Forces needed to qualify for benefits, what the meaning of 'military tasks' is, and whether benefits are lost when a serviceman is dishonourably discharged from the service. Similarly, the term 'first-hand participation in combat' is not clearly defined; it appears to depend completely on the commander's discretion.

An improved law should seek to fully define key terms at the outset, with a view to ensuring that the definitions are operationally useful. This section might also assign responsibility for the operational application of definitions; for example, the Defence Minister might be responsible for defining a 'foreign combat zone' on the basis of set criteria,[22] while the President and Parliament would be responsible for the definition of an internal 'emergency zone'. Russia might also find it useful to follow international practice in developing criteria, procedures, and responsibilities for determining whether injuries or disabilities are 'service related' or 'not service related' (determinations of 'not service related' usually are the result of misconduct or gross negligence), and thus whether servicemen are eligible for compensation or government-sponsored medical care.

[22] For example, US eligibility criteria, defined by the Secretary of Defense) for combat pay are:

- Subject to hostile fire or explosion of hostile mines;

Clear Assignment of Responsibilities for Implementation.

The need for more clearly defined responsibilities extends beyond the issue of operationalising definitions, as discussed in the last section. It also requires the clear definition of responsibilities in the broader sense; that is, assigning responsible authorities, establishing the mandate of those authorities, and setting out guidance for how they should fulfil their responsibilities. Such implementation responsibilities might include the development and publication of programs and procedures (including application for benefits, adjudication, and appeal), the establishment of needed administrative bodies, and mechanisms to ensure that adequate resources (financial, personnel, material support) are available to administer these programs. The law should also establish the requirements for the various responsible authorities' to report to parliament, beneficiaries/applicants, and the public. For example, the Ministry of Defence (MOD) might be tasked with developing a database system to track and record units' participation in combat/emergency zones, as well as criteria and procedures for potential beneficiaries to prove attachment to such units in a combat zone, or presence in a combat zone independent of the unit. The law could also give the MOD authority to establish an office to develop and administer this database system, provide timelines for putting the system in place and give guidelines for using foreign experience and technical support. Finally, it could require MOD to report regularly to the President and Parliament on the development and establishment of this system, and on the analysis of data provided by the system's regular use.

Financing is a key element for ensuring the smooth implementation of any law; here the proposed draft law falls considerably short. Rather than setting out clear mechanisms (i.e. ministerial budgets, special fund), it provides blanket permission to use any legal means for funding veterans' programmes, with the bizarre step of explicitly allowing the use of proceeds from 'decommissioning of equipment.' Without clear funding

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- On duty in an area of imminent danger of being exposed to hostile fire or explosion of hostile mines during a period when other members of the uniformed services in that area were subject to hostile fire or explosion of hostile mines;
- Killed, injured, or wounded by hostile fire, explosion of hostile mines, or other hostile action; or
- On duty in a foreign area where subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions.

Ref. US Code, Title 37, Chapter 10, Section 310(a).

mechanisms, the law is largely declaratory; in reality the government – which in practice often means specific bureaucrats – will decide on priorities for implementation in an arbitrary and ad-hoc manner. In the absences of a special fund, with strict financial controls, the permission to use income from decommissioning equipment merely opens a loophole that allows funds generated through such decommissioning sales to escape the treasury. Which begs the question: why should the availability of prostheses for combat veterans or vacations for children of those who died in combat depend on how many surplus tanks Russia sold abroad this year?

Conclusion

The proposed draft law, like the 1993 law, seeks to ensure that society meets its obligations to its servicemen. But both laws, by continuing Soviet models, will almost certainly fail to meet the needs of servicemen and veterans in the developing market economy and democracy of today's Russia. If the Russian Duma wishes the new law to be successful, it will need to be willing to break out of the Soviet mould and re-cast the proposed draft law to develop a modern needs-based, inclusive, and market-oriented system. Many European and North American countries have considerable experience – based on veterans' benefit systems that were first established to provide for the millions of servicemen returning to civilian life after the two World Wars – on which Russia could build. Russia's excellent academic institutes, with the active participation of international experts, could identify, adapt, and incorporate this experience into the proposed draft law. International consultation could be done on an ad-hoc basis or using multinational fora, such as a working group under, for example, the NATO-Russia Council, NATO Parliamentary Assembly, or the Geneva Centre for the Democratic Control of Armed Forces. Likewise, the inclusion of Russian NGOs could help ensure that the final product has broad societal support. By using such a scientific and inclusive approach, the Duma can ensure that the result will best reflect international best practice, the realities of Russia's developing democracy and market economy, and – most importantly – the needs of those servicemen and veterans who have given of themselves in service to their country.

ON THE STATUS OF PARTICIPANTS IN COMBAT OPERATIONS

James Sherr

Review of Laws on Participants in Combat Operations

The draft Russian Federation Law "On the Status of Participants of Combat Operations" should be viewed as the logical successor of the 1993 law "On Additional Guarantees and Compensations for Military Persons Carrying out Military Service in on the Territories of the Caucasus and Baltic States and the Republic of Tajikistan," which established the legal basis for providing benefits to those military personnel who found themselves serving in current or potential trouble areas when the Soviet Union disintegrated. [Hereafter referred to as the 'draft law' and 'current law', respectively.]

The draft law's intent is positive; that is, to update current law to ensure that adequate protection and social benefits are provided to servicemen in combat zones and their families. It goes beyond the specific geographical focus of current law to cover service in areas of currently-unforeseen states of emergency or armed conflict. It also addresses – albeit briefly – the issue of training required for service in a combat area, as well as issues of re-training and social adaptation. However, in application, the draft law's positive impact will likely be limited by its reliance on the basic framework of the Soviet veteran's system, which has built-in inequalities and socialist economic mechanisms that are increasingly at odds with the changing social and economic realities of today's Russia.

Overall Principles

In continuing the Soviet model, both the 1993 law and the new draft law continue a privilege-based system, with proximity to combat a key factor in determining the level of servicemen's both immediate benefits and long-term privileges. Whether a serviceman was simply stationed in a combat zone, participated in military operations in a combat zone, or was a 'first-hand participant' in combat had – and still has – a considerable

impact on pay, pension benefits, preferences for housing, survivors' benefits, and other privileges.

This privilege-based approach with special benefits for 'combat veterans' differs significantly from the practice in most established democracies. In the latter, immediate benefits – such as combat pay – are limited. Most long-term benefits are rights-based, linked to either compensating military service overall or mitigating negative results of that service (such as permanent disability), whether or not the soldier served in combat. Some countries – for example the United States – do distinguish in law between wartime and non-wartime veterans (meaning 'former servicemen'), but in practice the benefits provided differ little.

To illustrate the difference, under current Russian Federation law, both conscripts and contract servicemen receive a combat-related increase in pay of 50% (for service in the Caucasus, Baltic States, and Tajikistan) or 100% (for service fulfilling tasks related to a state of emergency). This magnitude remains the same in the draft law, with a slight re-definition of categories. The draft law also adds daily payments for 'first-hand participation in combat', varying according to the circumstances from 15 times the daily norm to 1.5 times monthly salary. In addition, servicemen can receive combat-related credit toward retirement, with a factor of 1:1.5 or 1:3, depending on the specifics. In the draft law, combat veterans are also to get preferential treatment or rates for housing, utilities, medical care, work placement, education, re-training, working conditions, holidays, and attendance at cultural and sporting facilities.

In contrast, in the United States' Armed Forces, combat pay is relatively limited – $150 per month for all ranks. For even the most junior servicemen, this is only about 15% of their pay. The US Congress has also passed, on a case-by-case basis, tax relief for those serving in particular operations – effectively another 5-15% added to pay (the higher the pay, the greater the tax rate, hence the greater the relative value of the tax credit). In contrast to the Soviet system, there is no system of pension multiples for combat or other hardships. Finally, since combat – or the risk of combat – is considered as an integral part of a serviceman's job, the state takes responsibility for mitigating the impact of service-related hardships or disabilities incurred, without prejudice as to which

part of a serviceman's job they were related (unless incurred through misconduct or gross negligence).

As a nation with 'universal conscription' (although in reality only about 12% of eligible draft age men actually serve) and limited resources, Russia understandably needs a means of rationing resources and prioritizing access to veterans' benefits. However, the continuation of Soviet practice will give priority to the motivational and ideological impact of veterans' programs, rather than to the social welfare of veterans. The creation of a class of 'combat veterans' with special privileges may help enhance the overall prestige of service in the Armed Forces. It may motivate servicemen – many of whom were conscripts – to participate in combat and thus join a materially privileged 'combat veteran' class. It may emphasize the 'legitimacy' of the conflicts of Russia's modern conflicts, by explicitly linking the benefits to veterans of service in Nagorno-Karabakh, North & South Ossetia, Abkhazia, Tajikistan, Transdniestria, Chechnya, or Daghestan with the benefits given to veterans of the Great Patriotic War.

But by continuing to focus on the status of 'combat veteran' – a designation independent of need – the draft law will be less effective at focusing resources to address the real social welfare of veterans overall, or at redressing service-related disadvantage or disability. For example, combat veterans may receive priority care at government hospitals even for non-service related injuries, which might be ahead of a veteran who was disabled in a training accident before even having the chance to enter combat.

The Soviet-era preference for political and ideological factors over social welfare factors is likely to increasingly diverge from the economic and political realities of a modern, democratic Russia. The system of 'combat veteran' *l'goti* creates the perception of a privileged caste, whose members receive government-mandated privileges and priority on government-provided services. But since many of these privileges and services should, in principle, be available to all citizens (or all former servicemen), this 'caste system' threatens to engender a sense of injustice that will undermine the popular support needed to ensure that the system of veterans' benefits receives popular support and parliamentary financing.

The danger of perceived inequality is intensified by the susceptibility of the system to corruption and arbitrary decision-making. While the draft law does seek to define some key issues, criteria for designation as 'combat veterans' or 'first-hand participants' in combat are still not clear. This gives considerable latitude to officials – particularly unit commanders – for designating eligible servicemen. In addition, government officials are given considerable leeway in how to prioritize the distribution of benefits. As in many areas of Russian administrative life, the lack of clear criteria and official latitude invites arbitrary decision-making, favouritism, and corruption – particularly given the enormous increase in pay and the lifelong benefits that are received by those designated as 'combat veterans' or 'first-hand participants' in combat. This can only further serve to weaken public support.

The draft law also introduces inequalities in the benefits provided for conscript and contract soldiers serving in combat areas. The 50-100% increase in pay currently applied to both contract servicemen and conscripts will be applied only to contact servicemen. Conscripts will simply receive pay at the rate of contract soldiers of a similar position. While this formula may be financially advantageous to conscripts, it fostering the perception of a two-tier system. The percentage method of calculating combat bonuses also has built-in inequalities; in real terms, these bonuses are greater for those whose regular pay is greater. Thus, officers receive a higher bonus than NCOs, and senior officers more than junior officers – a system inversely proportionate to the relative risk of combat for these groups. Such perceived inequalities undermine morale and team spirit in the place where it is most needed; that is, in combat units. A more equitable method would be to provide a flat-rate combat bonus, which would emphasize the equal risks.

Ironically, while the Soviet-era principles in the draft law are likely to result in reduced societal support for the veterans' system, from an economic perspective the continued reliance on the *l'goti* system keeps 'combat veterans' linked to the government sector, with its underfunding, inefficiency, and decaying infrastructure. Thus, the value of veterans' benefits are likely to continue decreasing, at least in relative terms, for the foreseeable future. Of course, those *l'goti* with a low cost to the government will likely continue; for example, free passage on public transport or reduced utility rates. These will allow those 'combat veterans' on limited income to survive at a subsistence level.

But more valuable privileges, such as train tickets, plane tickets, vacations, vehicles, and medical care, will likely be in increasingly short supply as infrastructure and budget resources decline and costs increase. These privileges will therefore either be increasingly unavailable, or available only to those veterans best able to influence the bureaucrats responsible for their 'equitable distribution'. The decreasing value of veterans' benefits, when combined with social hostility that undermines efforts to find alternative solutions or additional resources, could prove devastating for those who rely on the system. By focusing on maintaining the serviceman's or veteran's rights within the government – for example, by preserving housing preferences and providing system, the draft law also neglects to address important aspects of the serviceman's relationship with the private sector.

It is important, therefore, that Russia begin to explore alternatives to simply maintaining and strengthening the Soviet system. Principles for such a reform could be: equal treatment for all servicemen during and after service; maximizing the social protection of servicemen and their families; ensuring the servicemen and veteran's benefits are suitable for Russia's growing market economy (e.g. maximize direct payments to beneficiaries, leverage public funds through mechanisms like loan guarantees, protection of rights in the private sector).

Of course, any move away from the system of differentiating 'combat veterans' and providing benefits via a *l'goti* system will need to be gradual and well-considered. The draft law could incorporate elements to begin this process; for example, by requiring the government to keep detailed statistics and report annually to the Duma on the distribution of resources within veterans' programs and on the welfare of servicemen and ex-servicemen (with combat service and without). Similarly, the draft law could establish an oversight and review commission to assess the effectiveness of current law against clearly defined criteria and provide recommendations on possible reforms.

International 'Good Practice'

Certainly, the path that Russia chooses to address the social welfare of its servicemen during and after their service will have to be its own decision, which will need to take into account the unique characteristics of the Russian situation. However, examining international practice can provide a useful external perspective to help assess domestic

information and the framework for analysis. Likewise, international practice can be a source of ideas that could be usefully adapted to the Russian situation. This section will try to illuminate some of these possibilities by examining some elements from practice in the United States' and the United Kingdom's.

In examining international good practice, let us look at the following areas: eligibility, benefits provided protection for servicemen, and implementation mechanisms.

Eligibility

In the section on principles, it was already discussed that in international practice benefits for current or former servicemen (i.e. veterans) benefits are usually provided on the basis of terms of service (for example, years served or method of discharge) or harm/disability incurred while in service. In addition, there are specific privileges and payments for those that have served in the Armed Forces until retirement. In some cases, these benefits are also provided for service in specific para-military forces, such as the US Coast Guard or the Gendarmarie.

In contrast, both the current Russian law and the draft law limit eligibility to those who directly participated in 'combat operations' with additional benefits for those with 'first-hand participation'. Both current law and the draft law also explicitly extend these benefits those in other forces – internal forces, intelligence forces, and law-enforcement personnel – that are involved in combat operations. This has several impacts. First, as discussed previously, it creates a 'combat veteran' class whose benefits differ from other servicemen, resulting in inequities. Secondly, it spreads this 'combat caste' system into law-enforcement and intelligence services, introducing great numbers of paramilitaries into the veterans' system. Thirdly, it provides internal incentives for paramilitary forces to increase their level of militarization and their participation in combat operations.

The draft Russian law does seek to better define who is a 'participant in combat operations' and 'invalid as a result of combat operations'. Geographically and constitutionally, this is done fairly well; however, in improving the draft law, it might also be useful at to clearly define some key operational terms, such as 'fulfilling military tasks in a combat zone' or 'first-hand participation in combat'. It would also be useful to assign

responsibility for the operational application of at the beginning of the law; for example, the Defence Minister might be responsible for defining a 'foreign combat zone' on the basis of set criteria,[23] while the President and Parliament would be responsible for the definition of an internal 'emergency zone'. In international practice, the determination of whether injuries or disabilities are 'service-related' or 'not service related' is also frequently a tool used for determining eligibility (determinations of 'not service related' usually are the result of misconduct or gross negligence). Russia might also find it useful to develop criteria, procedures, and responsibilities for making such determinations.

Benefits

In addition to combat pay and pension benefits discussed above, combat veterans also considerable additional benefits. These include priority on receiving government housing and land for gardens/dachas, and privileged access to credit for building housing, gardens, and farms. Regarding priority for pubic housing, the draft law differs from general practice in the US and UK, where government housing is provided on the basis of need; however, service in the armed forces or a service-related disability is sometimes a factor that can be used in the determination of need. Payment of utilities – perhaps to include basic telephone installation – reduced tariffs on transportation, and the provision of social and judicial support would be also be addressed under such needs-related programs.

Access to credit for housing, on the other hand, is a regular benefit provided to veterans (combat and non-combat) in both the US and the UK to help them adapt to civilian life. In the US, this is accomplished using a system of government loan guarantees that allow veterans to purchase homes at reduced interest rates and without down payments. Because the loans are provided through a commercial organization, with the government

[23] For example, the US criteria for determining eligibility for combat pay are:

- Subject to hostile fire or explosion of hostile mines;
- On duty in an area of imminent danger of being exposed to hostile fire or explosion of hostile mines during a period when other members of the uniformed services in that area were subject to hostile fire or explosion of hostile mines;
- Killed, injured, or wounded by hostile fire, explosion of hostile mines, or other hostile action; or
- On duty in a foreign area where subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions.

providing insurance against default, these programs are capable of generating considerable loans volume for a limited budget allocation. Education, re-training, and job search programs also play an important role in the social adaptation of departing servicemen; these can include preferences (as in the Russian draft law), tuition-sharing programs, or specifically targeted courses. However, as a general rule these address programs financial capability; veterans still need to pass the required entrance exams. For servicemen leaving service involuntarily, separation pay is also a portion of the adaptation package.

Preferential access to free medical care, medicines, and medical equipment is generally limited to those that either have a service-related injury or have retired from the service after serving until pension. For all veterans, however, there is the possibility of gaining medical care at Veterans' Hospitals on an 'as available' basis.

Generally, there is no preference for veterans or servicemen at government communication, cultural, entertainment, sport, and leisure facilities in the US and UK. However, many other these facilities are in private hands, and offer discounts and specials to servicemen (and sometimes veterans) to demonstrate patriotism, show good citizenship, and attract military and ex-military customers.

Social Protection for Servicemen and Families

In general, most of the specific social protections in the current and draft Russian Federation laws have analogues in international practice; for example, ensuring housing for the serviceman and family members, evacuation of family members and household belongings from emergency zones, extra leave time for servicemen on deployments away from home, provisions for family members to travel to the serviceman's place of leave, and pensions for the family members of servicemen killed in combat. However, there are two principal differences. Firstly, in international practice, these benefits are applied to all servicemen or veterans, rather than just those that participate in combat. Secondly, in international practice the mechanisms are aimed at meeting the needs of people in a market economy, whereas the measures in current Russian law and the draft law are almost all aimed at guaranteeing servicemen's rights in relation to the government sector. But as Russia's market sector continues to grow, Russian

servicemen will also need protection for their private sector affairs; for example, private debt or rental contracts. In the United States, this is done on the basis of the 'Soldiers' and Sailors' Civil Relief Act of 1940,'[24] which gives servicemen the right to reduced interest rate on debts, protection against eviction (or in some circumstances the right to terminate rental leases early), and delay of civil court actions: bankruptcy, foreclosure, divorce, and tax judgements. The 'Uniformed Services Employment and Reemployment Rights Act of 1994' extends these protections further to cover the private-sector jobs of those called to active duty from the reserves.

In the United States and the United Kingdom, due to the considerable number of regular and extraordinary overseas' deployments, there is a system of 'operational welfare' developed, which includes such items as individual and family counselling, support for private communication (e.g. e-mail), support for family crises, and post-deployment leave. This concept is also supported by aspects of the Russian law (and draft law); for example periodic leave for those in combat zones, minimum training requirements, and the requirement for the government to establish guidelines for the maximum continuous term of service in a combat zone. Unfortunately, this last provision was not included in the draft law. In addition, it would be helpful if the law provided qualitative guidelines for pre-deployment training; for example: servicemen's legal and moral responsibilities in combat (including under the Geneva Convention and the OSCE Code of Conduct), treatment of prisoners of war and non-combatants, stress management, suicide prevention, and operational issues (e.g. principles and application of low-intensity conflict, realistic simulation of projected combat situations).

One crucial area in which the draft law is unclear is the area of social protection for families of servicemen missing in action (MIA) or prisoners of war/captive (POW). The basic principle that should apply here is to ensure that the level of support that the serviceman currently provides to family members is maintained. This would best be done by allowing the serviceman to specify what proportion of his salary should go to which relatives in case he is MIA/POW.[25] The draft law, with its 25% per dependent formula, could result in dramatic shifts in the financial flows within the family. The draft

[24] See http://www.defenselink.mil/specials/Relief_Act_Revision/

[25] In the US, the serviceman is recommended to reserve 20% to be maintained in reserve for himself; this ensured that he will maintain assets even in the case of divorce.

law is also conspicuous in its failure to address the question of POWs directly; in fact, the stipulation that MIA benefits stop when the serviceman's location is determined means that POWs are excluded. Protecting the rights of POWs and their families is a crucial morale issue, and needs to be addressed clearly in the law, particularly in light of the historical treatment of returning POWs in the Soviet Union.

Disability

Current Russian Federation law provides veterans of the conflict in Chechnya with the privileges provided to veterans of the Great Patriotic War – an association with clear political and ideological overtones. In contrast, the draft law seeks to enumerate the privileges to be provided to 'invalids of combat action': housing preferences, free medical and dental care, medicines, free education in government institutions, temporary disability payments of 100% pay for up to 4 months in a row (5 months/year); mandatory 30-day holiday each year; special working conditions; preferences for sanatorium; and provision of a vehicle (if needed) or compensation.

These privileges differ from international norms in several significant ways. Firstly, as previously discussed, they apply only to combat veterans, rather than to all disabled veterans. Secondly, the level of benefits provided is quite generous – including vehicles and housing. Thirdly, the Russian system remains privilege-based, whereas in the United States and United Kingdom the system is market-based; disabled veterans receive one-time and monthly payment, based on their level of impairment. For example, in the UK, a minor injury like the loss of an index finger or big toe would be compensated by a £5890 one-time payment and declaration of a 14% disability. Larger injuries would result in the declaration of a 20%-100% disability, with a weekly payment from £25 to £124. Finally, the guidance in the Russian draft law for determining eligibility provides considerable room for interpretation. An 'invalid of combat action' is one who becomes "invalid from a wound, contusion, mutilation, or disease received during the execution of military responsibilities in a zone of combat operations during a period indicated in this law." This leaves open the definition of invalidity (disability), differentiation of disability by degree, the definition of 'executing military responsibilities', assignment of authorities responsible for making determinations, and

mechanisms/guidance for these authorities (e.g. in classifying the extant of disability, the legal responsibilities for determining causation, the possibility for applications to appeal).

Implementation

Responsibilities and mechanisms for implementation of the law are highly dependent on the broader context of each country's executive system of government. However, in general, responsibilities and mechanisms should be clearly defined in law, including the rights (or obligations) of government to establishing certain executive bodies to administer programs, guidelines for the work of these executive bodies, mechanisms that link these bodies to the budgetary process, mechanisms for regular reporting back to Parliament on the implementation of the law, and (where appropriate) enforcement mechanisms and sanctions for violations of the law.

The current Russian law provides a good basis on which to build, by giving government three clear tasks: (1) providing procedures for establishing the facts of service for servicemen; (2) requiring the government to set limits on service in combat zones; (3) determining the order of providing the additional guarantees and compensations established under this law. In building on this, it would be helpful to add clearer guidelines or principles that government should follow in implementing each of these areas. For the first task, this could include principles for establishing the facts of service (e.g. the presumption of proof), requirements for government transparency and responsiveness (e.g. time limits), the requirement that an administrative appeal process be put in place, and the right of potential beneficiaries to seek judicial redress where there have been administrative shortcomings. For the second task, the principles to be taken into account in the government determination should be enumerated (e.g. total manpower needs, military effectiveness, timelines for training replacements, class of service, psychological and social impact of extended service). This should also be done in the third task area, to include principles for determining priority (e.g. primacy of maintaining minimum living standards, hierarchy of recipients), transparency requirements, appeal mechanisms, and requirements for regular and extraordinary reports to parliament on the distribution of privileges and any shortfalls. In addition, the law should include a requirement for government to ensure that key elements of the

administrative system are in place (e.g. record-keeping, application process, adjudication process, supervisory process) and give government the right to create (or propose creation to the legislature) of additional executive bodies needed to implement the law. It should include clear requirements for regularly reporting on implementation of the law, provision of benefits, and the impact of the law on the welfare of servicemen and their families. It would also be helpful if there were clear political accountability for implementation – for example, the designation of the minister with principle responsibility for implementation and reporting to parliament. Unfortunately, rather than build on current law, the draft law mostly subtracts, omitting the first two tasks, and adding commanders' responsibility for keeping lists of those with 'direct participation in combat'.

The draft law does go into more detail on the division of responsibility between the Federal Government and the Federal Subject Governments for financing the provisions of the law. But for a number of reasons, this additional detail unfortunately does not result in a clear linkage between responsibility and financing. Firstly, many of the costs are hidden or difficult to determine; for example, the free transport of veterans on public transport. Some costs are transferred to the private sector; for example, when veterans travel on a 'marchrutka' mini-bus, or when they apply for *l'gotnii* credit – for which the law contains no clear mechanisms for financing (or references to other laws that do). In some cases, the financial split between Federal and Federal Subject Budgets are not well-coordinated; for example, the federal government pays for an annual vacation [*putovok*], while federation subjects pay the financial compensation when a *putovok* is not available. The draft law also does not clearly define responsibility within the government; the only reference to ministerial responsibility is the requirement for MOD to provide burial services (and presumably finance them).

Finally, the law contains only two points concerning the source of financing. First is permission to use any legal means of funding the programs; second is the explicit inclusion of 'decommissioning of equipment' as a source of financing for the federal government. This lack of further guidance or clear funding sources leaves the impression that the law is an unfunded mandate, with the priorities for implementation to be determined by the government – which in practice means specific bureaucrats – on an arbitrary and ad-hoc basis. By including the direct use of funds for 'decommission equipment' the law also provides the possibility for funds generated through those sales

to escape the treasury. Plus one should ask the question: should the possibility for children of those who died in combat to go on special vacations or combat veterans to get prosthesis be dependent on how many surplus tanks Russia sold abroad this year?

Areas for Improvement:

More clarity

- get definitions and procedures out of the way first: “combat zone”; “eligible serviceman”; “participant in combat operations”; “first-hand participant in combat operations” Fulfilling military tasks in a combat or emergency situation.”
- government mandate and guidelines
- Clearly define responsible authorities and financial aspects [President given authority to define, but not given guidance or reporting requirement.]
- Reporting requirement to Duma.

Market-oriented benefits (meet the realities for Russia today)

- more cash, less benefits (cash better used in hands of recipients that governments)
- Add specific aspects to address new economic reality:
- Protections for servicemen vis-à-vis private sector
- More highly developed system of determining and compensating disability

Inclusiveness (all veterans, Conscript vs. Contract)

- Have laws that apply to veterans overall. Move from a system that focuses on combat veterans only to one that meets welfare needs of all servicemen. Vital for ensuring the broad base of support that is needed for long-term viability.

Final Thoughts

The draft law is noble cause, but unfortunately not quite yet able to break out of Soviet mould. Closer scrutiny of specific aspects of the law and comparison of its content with international experience is to be recommended. In this vein, it is a suitable role think tanks (governmental or private) could provide, or the issue could be a focus of future international cooperation programmes (perhaps even with NATO).

ESSAY

DEMOCRATIC VALUES, HUMAN RIGHTS AND THE DRAFT LAW ON 'SOME AMENDMENTS TO LEGISLATIVE ACTS ON DEFENCE OF THE RUSSIAN FEDERATION'[26]

Ian Leigh

These comments are addressed from the point of view of a constitutional lawyer with an interest in human rights, as well as national security. Three themes will be used as reference points for these brief comments on civil- military control. They are the democratic values of legality, accountability and transparency. These are general principles that should apply to any law in this field and they are already reflected in the Draft Law.[27] Further reflection on them, however, suggests some ways in which specific features of the draft law on civil control could be strengthened.

1. Legality and Legislative Control

The rule of law is fundamental. Only if the security and armed forces are established by law and derive their powers from the legal regime can they be said to enjoy legitimacy. Without such a framework there is no basis for distinguishing between actions taken on behalf of the state and law-breakers, including terrorists. 'National security' is not a pretext to abandon the commitment to the rule of law which characterises democratic

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[26] Paper presented at the Workshop on Legislation on Civil Military Relations in Russia and the CIS, Moscow, 27-29 November 2002. The draft law referred to may be found in the Events section of the DCAF website http://www.dcaf.ch and is used herein as a framework for discussing Russian security sector law as of November 2002.

[27] *Draft Law On Addenda and Amendments to Some Legislative Acts on Defence of the Russian Federation (hereafter,' Draft Law')*.

states, even in extreme situations. On the contrary, exceptional powers must be grounded in the legal framework and a system of legal controls.

Legislation is the legal embodiment of the democratic will and approving legislation (along with scrutinising government actions) is among the key roles of the parliament. It is appropriate that therefore in democracies where the rule of law prevails that the armed forces derive their existence and powers from legislation, rather than exceptional powers. This gives them legitimacy and enables democratic representatives to address the principles that should govern this important area of state activity and to lay down limits to their work. As in other areas, one key task of the legislature is to delegate authority to the administration but also to structure and confine discretionary powers in law.

Moreover, legislation is also necessary where it is intended to qualify or restrict the constitutional rights of individuals on grounds of national security. The Constitution of the Russian Federation refers to legal restrictions on human a civil rights and liberties to the extent required for the protection of the security of the state in Article 55.3.

At the international level under the European Convention some rights, such as the right to life under Art. 2 or not to be tortured under Art. 3 are absolute - no state interest no matter how serious - justifies limiting them. Other rights, notably under Arts. 8-11, may be limited, *within the law*.[28] Hence, limitations to the rights of respect for private life home and correspondence, freedom of expression and freedom of association on grounds of national security must 'in accordance with law' or 'authorised by law'.

The Russian Federation has been a member of the European Convention since 1998. Compliance with the Convention will be relevant before the European Court of Human Rights at Strasbourg, but also so far the Russian courts are concerned, since

[28] e.g. Article 8: Respect for Private and Family Life:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

international treaties are incorporated into domestic law under Article 15.4 of the Constitution.[29]

There are two distinct implications from this emphasis on legality: firstly, that security forces (including the armed forces) should be established by legislation, and, secondly, that the specific powers that they exercise should be grounded in law. Legality requires that security forces act only within their powers in domestic law. Consequently, only lawful action can be justified by way of interference with human rights under the European Convention.

The rule of law requires more than a simple veneer of legality, however. Symbolic or vague legislation is not sufficient. The European Court of Human Rights refers additionally to the 'quality of law' test - this requires the legal regime to be clear, foreseeable and accessible. For example, where a Royal Decree in the Netherlands set out the functions of military intelligence but omitted any reference to its powers of surveillance over civilians, this was inadequate.[30] Similarly, the Strasbourg Court held that the law in Rumania on security files was insufficiently clear as regards grounds and procedures, since it did not lay down procedures with regard to the age of files, the uses to which they could be put, or establish any mechanism for monitoring them.[31]

The 'quality of law' test puts a particular responsibility on legislatures. One possible response is to write into the law general statements that the powers of agencies can only be used where 'necessary', that alternatives less restrictive of human rights are always to be preferred, and that the principle of proportionality should be observed. An alternative – and perhaps preferable route- is to giving detailed provisions for each area

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[29] Article 15.4 of the Constitution of the Russian Federation states: 'The commonly recognized principles and norms of the international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply.'

[30] *V and Others v Netherlands*, Commission report of 3 Dec. 1991; and see also in applying the 'authorised by law' test to various forms of surveillance: *Malone v UK* (1984) 7 EHRR 14; *Khan v UK,* May 12, 2000, European Ct HR (2000) 8 BHRC 310; *P G. and J.H. v UK*, European Court of Human Rights, 25 Sept. 2001, ECtHR Third Section

[31] *Rotaru v Rumania*, No. 28341/95, 4 May 2000. See also *Leander v Sweden* (1987) 9 E.H.R.R. 433, holding that in order to be 'in accordance with law' the interference with privacy must be foreseeable and authorised in terms accessible to the individual. In the context of security vetting this did not require that the applicant should be able to predict the process entirely (or it would be easy to circumvent), but rather that the authorising law should be sufficiently clear to give a general indication of the practice, which it was.

of work of the security forces which incorporate these requirements by specifying the circumstances where powers can be used and the safeguards that apply.

How far does the draft legislation measure up to these standards? The objectives of civil control in the sphere of defence are detailed in the proposed amendments to Clause 9 of the Federal Law 'On Defence' [32], which contain a full summary, generally according with international good practice.

It is uncontroversial that respect for the rule of law is paramount in civilian oversight. Nevertheless, the wording does not at this point expressly refer to ensuring that the Armed Forces comply with law and relevant international agreements to which the Russian Federation is a party. This may be implicit in the references to 'approving democratic principles and standards. ..' and 'suppression of violation of human rights. …' but, perhaps, might be mentioned in its own right. (Compliance with treaties is, however, dealt with in greater detail in the amendments to Clause 27 of the Federal Law 'On the Status of Military Personnel'[33])

Prevention of discrimination on grounds of political belief *is* mentioned in the amendments to Clause 9 (above) but protection against other forms of discrimination (for example, on grounds of religion or sex) might also be included, bearing in mind the broader range of suspect discrimination included under Article 14 of the European Convention on Human Rights:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

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[32] Dated May 31, 1996; see *Draft Law, Clause 2, I, 5*.

[33] Dated May 27, 1998; see *Draft Law, Clause 2, II, 3.* Generally, Clause 27 is well thought out and appropriately worded. It is desirable, however, that (in addition to any potential personal liability in international criminal law and the liability of the state) any infringements by service personnel should also constitute serious offences against military law.

Reference might also be made to the principle of *proportionality*; for example, where legal or human rights are over-ridden by the Armed Forces that they do so only to extent necessary to achieve legitimate objectives. Again, this may be implicit in the reference to 'approving democratic principles and standards. ..' but it could usefully be mentioned specifically. Proportionality is the test that applies in considering whether rights such respect for private life, home and correspondence (Art. 8), freedom of expression (Art. 10) or freedom of association (Art. 11) under the European Convention have been restricted only to the extent 'necessary' in pursuit of a legitimate aim.

Finally, one anomaly in the drafting of Clause 9.3 can be mentioned. The drafting appears to suggest that associations, but not individual citizens, have rights of access to information; this seems anomalous. It is unclear also how these rights of access to information are to be enforced. A process for appeal or review by an independent person in cases where access to information is refused is highly desirable in order to safeguard against abuse.

2. Accountability

Accountability requires the political neutrality of the armed forces. There can be no true accountability if those who hold the armed forces to account are not truly separate from them. Both the professional independence of the armed forces and the democratic nature of the political process depend on a strict separation. The armed forces are one of most visible and powerful agencies of the executive branch of the state. In the Russian Federation the Constitution rests (according to Article 10) on a separation of powers between the legislative, executive and judicial branches.

Many countries mark the separation in one or more of the following ways: by prohibiting serving members of the armed forces from sitting in the legislature, from serving as a government minister, and from being actively involved in a political party. The proposed amendments to Clause 9 of the Federal Law 'on the Status of Military Personnel'[34] go a long way in this direction.

[34] Dated May 27, 1998; see *Draft Law*, Clause 2, II, 2.

In one sense the Separation of Powers can constitute a *barrier* to democratic control of the armed forces- if constitutional objections are raised to the assumption of an effective oversight or scrutiny role by parliamentarians on the grounds that their remit is solely with law-making. Something like this seems to underlie controversy about the role and powers of the State Duma under the proposed amendments to Clause 5.2 of the Federal Law 'On Defence'.[35]

The power of parliamentarians to conduct effective and probing investigations into defence matters is a fundamental attribute of democratic (rather than merely civilian) control of the Armed Forces. Accountability to parliamentarians underlines the constitutional duty of the Armed forces to the State, rather than to the executive branch. It is an aid to accountability to the public, since elected members – and especially opposition parties- have a duty to inquire into policy failure, inefficiency, and wrong-doing. This helps the electorate to form an accurate impression of the performance of government and the Armed Forces and is an encouragement in its own right to effective implementation of executive policy. Hence, democratic control strengthens civilian control. Moreover, legislators have a proper concern that the laws that they pass are correctly implemented and a duty to investigate where the law is defective and to improve it.

From this perspective, rather than Clause 5 going too far in granting unconstitutional powers to the State Duma, arguably it does not go far enough. The wording of Clause 5 refers to the Duma 'carr[ying] out . …hearings on defence and military development'). However, the scope could be clearer. The Duma may wish to have authority not merely to discuss future developments in defence policy but also to consider the expenditure and administration of the armed forces and, possibly, the conduct of specific military operations. Specifying these matters might help to avoid future conflicts over the scope of committee investigations.

[35] Dated May 31, 1996. See *Draft Law,* Clause 2, I, 2.

In the same way it can be argued that the Draft Law would be strengthened by including in Clause 13 of the Federal Law 'On Defence'[36] (Main Duties of the Ministry of Defence) a statement that the Ministry of Defence duties include a duty to co-operate fully with the relevant committees of the Council of Federation and the State Duma. Apart from presenting the Annual Report (Clause 13), there ought to be some mechanism for the Minister of Defence to appear before the Security and Defence Committees of the State Duma and the Council of Federation to respond to other investigations or inquiries. This would highlight the importance of effective Parliamentary oversight.

Much the same point (about a duty to co-operate fully with parliamentary investigations) could be made concerning the *Main Duties of the General Staff of the Armed Forces* (Clause 15 of the Federal Law 'On Defence'). Presumably, primary contact for the committees of the Council of Federation and of the State Duma will be with the Ministry of Defence, nevertheless, there may be occasions where specific evidence from the General Staff is relevant to their inquiries.

If the constitutional objection to the State Duma adopting such powers has legal credibility, it perhaps suggests that the Constitution itself is defective in giving too weak a role to the elected chambers and is in need of reform.

Accountability also suggests that adequate mechanisms exist for investigating and remedying wrong-doing both within the armed forces affecting individual service men and women and for the citizen who claims that the armed forces have wronged him. Such mechanisms may be through the regular courts, military courts (in the case of disputes only involving military personnel) and specialised investigators and ombudsmen.

Some constraints on the type of procedure derive from Article 6 of the ECHR which requires a fair and public trial by an independent and impartial tribunal both for criminal offences and civil rights and obligations. Similarly, Article 13 of the Convention requires an effective domestic remedy for violation of a person's Convention rights. Each of these

[36] Dated May 31, 1996. See *Draft Law,* Clause 2, I, 8.

provisions will be relevant to the human rights both of civilians and members of the armed forces.

Whatever the mechanism, it is suggested that there are three essential characteristics:

- Independence and security of tenure for the judge or investigator.
- Adequate powers to compel evidence and /or to investigate
- Freedom to grant adequate binding remedies

These are the benchmarks against which the proposal in the Draft Law to create a State Commissioner on military personnel business[37] should be judged.

The State Commissioner on Military Personnel Rights

The creation of this office is an innovative and potentially important development. Its success will depend on whether it establishes a genuinely independent method of operation so as to win the trust of military personnel and whether the office has adequate legal powers and resources.

So far as the process of appointment is concerned, the guarantees in Clause 28.3 should safeguard independence.

The investigative powers of the Commissioner are unclear in some respects. Under Clause 28.4 the Commissioner has the right to *'apply'* for documents etc. As translated this suggests that the Commissioner can request them- it does not make clear that he is entitled to receive them. Nor does it specify the penalties for obstructing the Commissioner's investigation- this should be an offence under military law. In the same way the Commissioner should have a right to interview witnesses (and to require them to testify).

[37] New Clause 28 of the Federal Law 'on the Status of Military Personnel, dated May 27, 1998; see *Draft Law,* Clause 2, II, 4.

The Commissioner seems unable to give an individual remedy even where a complaint is found to be justified, although Clause 28.3 seems to envisage general recommendations for reform where a complaint is upheld. Unless the Commissioner is able to give a remedy there will be little incentive for individuals to raise complaints. Equally, unless military personnel are guaranteed that they will not be punished or victimised for raising an issue with the Commissioner they may be deterred from raising justifiable complaints. Specific protection against victimisation for complaining would strengthen the office.

It is unclear whether the Commissioner will conduct investigations in person (or supervise staff who do so) or whether other military personnel may be used (Clause 28.2 implies this). If it is the latter there is a risk that the process will not be seen to be credible and independent. It would be preferable either to employ a permanent staff of independent investigators or to second military staff for a fixed period to the Commissioner's office.

The key to accountability is the ability of independent bodies to have access to information, which brings us to the third principle- transparency.

3. Transparency

By transparency is meant the availability of public information concerning the Armed Forces.

Access to information serves several key purposes:

- It is a check on legality
- It is a guarantee that the policies of the executive branch are being carried out- and so strengthens civilian control of the armed forces.
- It makes real the idea that all administration (including the functions of defence and national security) are carried out in the name of the public. Where public

servants use powers and money entrusted to them in the name of the public there is a presumption that the public are entitled to an account of the use made of them.

- Access to information can also serve to expose incompetence, fraud, waste and maladministration in the armed forces.

In the light of these arguments the proposed wording to enlarge the right of mass communications media 'to participate in the civil control of defence'[38] is commendable. The wordings includes a number of specific rights which will strengthen the ability of the mass media to play its important role in investigation of the Armed Forces and informing the public.

Of course, there is also a case for justifiable military secrecy and for the classification of information. However, any exceptions to access laws should be tightly drawn so that only genuine *operational* details (such as the deployment of weapons and military units) fall within them. Most military *procedures* do not fall into this category and are well within the justifiable interest of the public and of parliamentarians. It is therefore necessary to ensure that both the State Duma and those who act on its behalf, such as State Commissioner on military personnel rights, have adequate powers of access to information.

Despite the investigative role of the mass media referred to above, most disclosures of wrong-doing by State officials come in practice from insiders. It is in the public interest that the route for such disclosures remains open. Moreover, even where justifiable exemptions to openness apply, they should not be left to the armed forces themselves to determine. It is essential that there should exist an independent official (such as an Information Commissioner or ombudsman) who is able to see all the relevant information and to make a binding determination about disclosure and whether a legal exemption has been correctly applied. This is a safeguard for the public. It is also in the interests of the armed forces since it is the best answer to any charge that secrecy has been used improperly to cover wrong-doing.

[38] Amendments to Clause 9 of the Federal Law 'On Defense', dated May 31, 1996; *Draft Law*, Clause 2, I, 5.

These points have implications for the suggested amendment to Clause 7 of the Federal Law 'on the Status of Military Personnel'[39]. This states that:

> Military personnel have no right to divulge State or military secrets. …under implementation of their rights for freedom of speech, expression of their views and beliefs, access to receive and promote information (*sic*)

The reasons for restricting the rights of service personnel in accordance with military discipline are clear enough. However, arguably, this clause goes too far. Some legal systems recognise additional defences to criminal liability under State Secrets Law, for example, a defence of disclosure in the public interest or of prior publication, or impose a requirement that the disclosure should meet some standard of damage to specified state interests before liability will arise. The purpose is to protect legitimate freedom of expression or to prevent secrecy law being used to cover official wrong-doing. The European Court of Human Rights has recognised that there are limits to the restrictions that are permissible to freedom of expression, in order to protect these public interests.[40]

The reasonableness of the case for a blanket restriction on freedom of expression should be considered in the context of the classification system as a whole. Do legal controls exist to prevent the wrongful classification of secret information? At what point does information become 'de-classified' and how? What rights of access do parliamentarians in the Defence Committee have to classified information necessary to fulfil their oversight functions? The weaker these other procedures are, the stronger the case is for public interest disclosures by members by military personnel.

Conclusion

Law-making is not a substitute for real change. It is relatively easy to enact laws. It is much harder to build a stable democratic society in which the rights of individuals are

[39] Dated May 27, 1998.

[40] *Guardian v UK* (1991) 14 EHRR 29.

respected, secrecy is kept within its proper boundaries, and political life and public debate flourish with a degree of healthy scepticism. Armed Forces which are disciplined, effective and properly under civilian control are pre-conditions for a stable democracy. What legislation can contribute to this process is to give a legal framework for new working relationships between democratic institutions and to help inculcate democratic values among members of the Armed Forces themselves. That is why the exercise of framing laws to govern civil-military relations is so important and the values of legality, accountability and transparency deserve respect.

APPENDIX 1

GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES (DCAF)

Mission

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) was established in October 2000 on the initiative of the Swiss government. The Centre's mission is to encourage and support States and non-State governed institutions in their efforts to strengthen democratic and civilian control of armed and security forces, and to promote good governance, rule of law, and international cooperation in this field.

To implement its objectives, the Centre:

- Collects information and undertakes research in order to identify problems, to establish lessons learned and to propose the best practices in the field of democratic control of armed forces and civil-military relations;

- Provides its expertise and support in tailor-made form through appropriate projects and programmes to all interested parties, in particular governments, parliaments, international organisations, non-governmental organisations, academic circles. In relations with national governments, a particular emphasis is given to the principle of "help for self-help".

Areas of Expertise and Current Projects

DCAF deals with a whole range of actors including armed forces, border guards, police, state security agencies, intelligence, parliamentary and governmental oversight structures, and civil society organisations. The work of DCAF is primarily aimed at, but not limited to, countries in transition towards democracy in the Euro-Atlantic region.

DCAF's key areas of analysis include:

- security sector reform;
- parliamentary oversight of armed forces, police, state security forces, and intelligence;
- legal dimension of defence and security sector reform;
- conversion and force reductions;
- civil society building in post-conflict situations;
- security sector reform and human security.

DCAF's key practical projects on the ground include

- advice and practical assistance on security sector reform to governments;
- provision of expert staffers to parliamentary oversight structures, such as defence committees;
- assistance in drafting legislation related to defence and security in line with European standards and norms;
- training on modern civilian border guard techniques;
- assisting governments in re-organising and demobilizing their military forces;
- assisting governments in dealing with defence budget transparency, defence procurement and planning.

Organisational Structure and Budget

DCAF is an International Foundation under Swiss Law. DCAF's Foundation Council is currently made up of 45 governments including Switzerland, 40 other States from the Euro-Atlantic region, 3 African States and the Canton of Geneva.

DCAF's International Advisory Board is composed of a group of over 60 eminent experts in the various fields of DCAF's involvement.

DCAF staff includes some 60 experts on defence and security matters comprising about 30 different nationalities. The Think Tank carries out in-house research and analysis,

contracts research projects, engages in joint ventures with partners, and networks existing knowledge, notably through the activities of its working groups.

DCAF's Outreach and International Projects Divisions implement the results of this analysis through practical work programmes on the ground. These Divisions are currently directing several dozen projects within various countries in transition towards democracy.

The Swiss Federal Department of Defence, Civil Protection and Sports and the Federal Departments of Foreign Affairs are the largest contributors to DCAF's budget (10 million Swiss francs in 2003).

Detailed information on DCAF's organisation and activities can be found on the DCAF website: www.dcaf.ch

APPENDIX 2

THE DCAF LEGAL POLITICAL ASSISTANCE GROUP (LPAG)

The DCAF Legal-Political Assistance Group (LPAG)[41] was set up in 2002 to meet a growing demand from parliaments for assistance with their law-making activities. The LPAG is a non-permanent body of renowned experts on legal and law-making matters who may constructively assist with the theoretical and practical aspects of legislative activity. Jointly operating under the direction of the DCAF Deputy Director and Head of International Projects, LPAG members are invited to collaborate on projects that are suited to their particular expert fields.

Collaboration usually takes the form of attending and contributing papers at a conference, participating in workshops, and/or critically commenting on legal texts. In each country where the LPAG operates, DCAF seeks to collate and publish in written and electronic form[42] the collected security sector laws of the country concerned. The laws are also added to the DCAF legal database[43].

Mandates for cooperation with the LPAG currently exist with the following institutions:

- The Russian State Duma Defence Committee
- Ukrainian Verkhovna Rada Foreign Relations Committee
- The Parliament of Georgia
- The CIS Parliamentary Assembly in St. Petersburg

LPAG Activities 2002 & 2003

[41] http://www.dcaf.ch/partners/LPAG.html
[42] For electronic versions of DCAF publications see http://www.dcaf.ch/publications/publications2/electronic_versions.html
[43] http://www.dcaf.ch/legal/intro.htm

Conferences

In the CIS (in cooperation with the Centre for Political and International Studies (CPIS)).

Round-Table discussions of draft laws in the context of international good practices have taken place in Russia in cooperation with the Centre for Political and International Studies (CPIS).

- November 2002 Moscow – CIS Model Laws on Parliamentary Oversight of Armed Forces and Civil Military Relations
- November 2003 Moscow – CIS Draft Model Law on Peacekeeping

Conferences have also taken place in Ukraine in Kiev (September, December 2002 – Ukrainian law draft on Parliamentary Oversight of Armed Forces).

- December 2002 Kiev - Hearing on Money-Laundering (in cooperation with Rada Foreign Relations Committee and NATO representative to Ukraine), leading to legislation on Money-Laundering
- September 2002, December 2002, February 2003, September 2003 Hearings on Parliamentary Oversight of Armed Forces and Security Sector Law Draft law on Oversight issues accepted February 2003.

Seminars

Members of the LPAG also participate in DCAF's Civil Society Working Group's 'The Civil Society Building Project (CSBP) in Russia'. The Project's activities consist of ten seminars in Moscow on various aspects relating to civil society with particular emphasis on legislative aspects. The Working Group's activities form a complementary adjunct of the LPAG. The proceedings are being published and widely distributed to political and academic institutions in Russia and other Former Soviet countries.

Inventories of Security Sector Legislation

Russian and English versions of the Russian Federation's security sector laws have been published in Moscow in December 2002 (Russian) and March 2003 (English) in cooperation with the Centre for Political Centrism in Moscow. This is now a template for

the type of cooperation and publication sought with LPAG partners. Similar inventories are being established for Ukraine and Georgia.

Members

LPAG members are invited to activities according to their specializations and the needs identified by the respective parliaments.

Mr. Yevhen R. Bersheda,	*former Ambassador of Ukraine to Switzerland; Ukrainian Academy of Sciences*
Dr. Hans Born,	*Senior Fellow, Geneva Centre for the Democratic Control of Armed Forces*
Mr. Roy Cullen,	*MP (Canada); Parliamentary Secretary of Finance Ministry*
Mr. Simon Lunn,	*Secretary General, NATO Parliamentary Assembly*
Dr. Wim van Eekelen,	*Dpty Secretary General NPA, former WEU Secretary General & Netherlands MP*
Mr. Anthony Foley	*Senior Legal Advisor, Ministry of Defence, Republic of Ireland*
M. François Godet	*Legal Advisor, Geneva Centre for the Democratic Control of Armed Forces, Switzerland*
Lt. Todd Huntley	*JAGC USN, and Member of DIILS*
Professor Ian Leigh	*Director, Centre for Human Rights, University of Durham, UK*
Mr. Leigh Merrick	*Former NATO Representative to Ukraine, UK*
Gen. Karlis Neretnieks	*President, National Defence College, Sweden*
Dr. Michael Noone,	*Catholic University of America, Washington DC*
Mr. Ioan Pascu,	*Professor, Defence Minister of Romania*
Lt. Col. Andreas Pruefert	*Chairman, EUROMIL*
Dr. Janusz Onyszkiewicz	*Former Defence Minister, Warsaw, Poland*
Cptn. Shackley Raffeto	*Judge, JAGC USNR, and Member of DIILS*
Dr. Velizar Shalamanov,	*George C. Marshall Association, Sofia, BG*
Dr. James Sherr,	*UK National Defence Academy*
Mr. Bruce Weinrod,	*Managing Director and General Counsel ITTA, Formerly Deputy Assistant Secretary of Defence for European and NATO Policy, Washington DC*

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APPENDIX 3

FOUNDATION FOR POLITICAL CENTRISM

ABOUT THE RUSSIAN COMMENTATORS

1. Sulakshin Stepan Stepanovich, The President of the Fund for Development of Political Centrism, Political Science Doctor, Physical and Mathematical Science Doctor, Full Member of the Military Science Academy (Head of Authors Collective).

2. Belous Vladimir Semenovich, Leading Scientific Officer of the World Economy and International Relations Institute of the Russian Academy of Science, Correspondent Member of the Military Science Academy, retired Major-General.

3. Belkov Oleg Alexeevich, Professor of the Moscow State University, Doctor of Philosophy of Science, Professor, Full Member of the Military Science Academy and of the International Academy of Informatization.

4. Damaskin Oleg Valerievich, Leading Scientific Officer of the Scientific-Research Institute of Law and Order Consolidation of the General Prosecutor's Office of the Russian Federation, Doctor of Law, Professor, II Class State Council of the Russian Federation, Honored Lawyer of the Russian Federation.

5. Zakharov Vladimir Mikhailovich, Leading Scientific Officer of the Strategic Research Institute, Military Science Doctor, Professor, Full Member of the Military Science Academy.

6. Zolotarev Pavel Semenovich, the President of the International Fund for Support to Military Reform, Technical Science Candidate, Professor of the Military Science Academy, reserve Major-General.

7. Kazakov Ilia Gennadievich, Consultant to the Industry Legislative Support Centre, Historical Science Candidate.

8. Kotlyarov Ivan Ivanovich, Professor of the General Headquarters Academy, Legal Science Candidate, Professor.

9. Maslyuk Stanislav Grigorievich, Political Science Doctor, Military-Civil Relations Expert.

10. Medushevsky Andrey Nikolaevich, Leading Scientific officer of the Russian History Institute of the Russian Academy of Science, Doctor of Philosophy of Science, Professor.

11. Nokolaichuk Igor Alexandrovich, Head of the Department of Information Projects of the All-Russia State TV and Radio Broadcasting Company, Technical Science Candidate, Senior Scientific Officer.

12. Otyutskiy Ganadiy Pavlovich, Head of the Information Technologies in Sociology Chair of the Sociology and Management of the Moscow State Sociology University, Physical Science Doctor, Professor, Full Member of the Military Science Academy.

13. Pershin Alexander Andriyanovich, Professor of the Political Science Chair of the Military University of the Armed Forces of the Russian Federation, Leading Scientific Officer of the Operative Frontier Research of the Federal Frontier Service of the Russian Federation, Doctor of Philosophy of Science, Professor.

14. Pozdnyakov Alexander Ivanovich, Professor of the Military Academy of the General Headquarters, Doctor of Philosophy of Science, Professor, Full Member of the International Academy of Informatization.

15. Serebryannikov Vladimir Vasilievich, Head Scientific Officer, Deputy Head of the National Security Sociology Centre of the Russian Institute of Social and Political Research of the Russian Academy of Science, Doctor of Philosophy of Science, Professor.

16. Feldman Dmitry Mikhailovich, Professor of the International Relations Sociology Chair of the Moscow International Institute of International Relations (University) of the Ministry of Foreign Affairs of the Russian Federation, Political Science Doctor, Professor.

17. Cheban Velery Vsavolodovich, Advisor to the Chairperson of the Defence Committee of the State Duma, Doctor of Philosophy of Science, Full Member of the Military Science Academy.

18. Chernavin Yuriy Alexandrovich, Professor of the Moscow State Social University, Doctor of Philosophy of Science, Professor.

19. Shakhov Alexander Nikolayevich, Professor of the Political Science, Sociology and Culture Chair of the Moscow State Regional University, Doctor of Philosophy of Science, Professor, Full Member of the Military Science Academy.

20. Shakhov Mikhail Nikolayevich, Science Pro-Rector of the Institute of Business, Law, and Information Technologies, Doctor of Philosophy of Science, Professor, Full Member of the Military Science Academy.

21. Shmelev Boris Alexandrovich, Head of the Comparative Political Research Centre of the Institute of International Economic and Political Research of the Russian Academy of Science, Pro-Rector of the International Higher School, Historical Science Doctor, Professor.

22. Shinev Stanislav Borisovich, Senior Lecturer of the Philosophy Chair of the Moscow State Academy of Instrument Making and Information Science, Philosophic Science Candidate, Senior Lecturer.

23. Chernavin Yury Alexandrovich, Professor of the Moscow State Social University, Doctor of Philosophy of Science, Professor.

ABOUT THE WESTERN COMMENTATORS

Cole, Eden, is Coordinator of Outreach at the Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, Switzerland.

Doel, Theo van den, was a member of the Dutch Parliament (1994-2003), and was formerly a Dutch member of the OSCE Parliamentary Assembly and NATO Parliamentary Assembly.

Dunay, Pal, is currently Director of the International Training Course (ITC) at the Geneva Centre for Security Policy (GCSP).

Foley, Michael, is a Senior Legal Advisor at the Ministry of Defence in the Republic of Ireland.

Fluri, Philipp, is Deputy Director and Head of Outreach at the Geneva Centre for the Democratic Control of Armed Forces (DCAF), Geneva, Switzerland.

Greene, James, is Programme Director at the EastWest Institute (EWI) Kyiv Centre, Kiev, Ukraine.

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Leigh, Ian, is Professor of Law and Co-Director of the Human Rights Centre at Durham University, UK.

Noone, Michael, is a Professor of Law at the Catholic University of America.

Raffetto, Shackley, USN (Ret.), is Chief Judge, Second Judicial Circuit, State of Hawaii, USA and a member of DIILS.

Schreier, Fred, Col. (Ret.), is Former Director of Swiss Intelligence, Ministry of Defence, Switzerland.

Sherr, James, is an Analyst at the Conflict Studies Research Centre (CSRC), Defence Academy of the United Kingdom, Shrivenham, UK.

Stroot, Jean-Pierre, is a retired Physicist; Head of the Geneva Pugwash Office; President of the Board of the Geneva International Peace Research Institute (GIPRI), Geneva, Switzerland, and was formerly Director of Research, IISN, Belgium; and a Research Associate at CERN, Switzerland.