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RUSSIA

RIGHT OF THE PRESIDENT TO USE MILITARY FORCE ABROAD

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RUSSIAN FEDERATION

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Executive Summary

The Russian Constitution introduced parliamentary control over the President's decisions to use armed forces beyond Russian territory. The grounds for such use have been continuously expanded from participation in peacekeeping operations only, to operations against terrorists and their bases abroad, and according to 2009 amendments to the Defense Law, may include operations aimed at preventing military attacks on Russia, Russian military installations, its citizens located abroad, or to defend any other country from a potential military attack. The requirement to seek parliamentary approval for each military operation abroad was simplified by recent legislative resolutions, which allow the President of Russia to be the sole decision maker regarding the use of troops abroad for short-term operational activities or for antiterrorist operations.

I. Introduction

On January 20, 2011, the International Affairs Committee of the Russian Federation State Duma (lower chamber of the legislature) recommended adoption of the Bill on Ratification of the Treaty Between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms during the third (final) reading by the plenary session of the State Duma.¹ The Bill will now be referred to the Federation Council (upper chamber) for its adoption as a law and will then be submitted to the President for signature.

Article 4.2 of the Bill lists extraordinary events and circumstances under which Russia may terminate its participation in the Treaty, including a substantial violation of Treaty conditions by the United States of America that may lead to the creation of new threats to Russian national security; the construction, by the United States, another nation, or a group of nations, of a missile defense system that might decrease the efficiency of the Russian strategic nuclear forces; the enlargement of strategic offensive arms by the United States, another nation, or a group of nations, or a decision by any of them in the field of military capacity building that might create a threat to Russian national security; or the construction, by the United States, another nation, or a group of nations, of a system that might hurt the functioning of the Russian missile defense system. Article 4.3 of the Bill obligates the President of the Russian Federation

¹ Information on the Duma's legislative activity and the text of the Bill are available in Russian on the State Duma of the Russian Federation website, <http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=382931-5&02> (last visited Jan. 21, 2010).

to take political, diplomatic, or other measures to eliminate these extraordinary events or circumstances, or neutralize their consequences.²

It appears that these “other measures” as stated in the Bill might include a variety of actions (e.g., economic). The possibility of using military force outside of the Russian Federation territory in response to these “extraordinary events” cannot be completely excluded from this list of actions if these events, for example, were to be viewed by the President of Russia as carrying the potential for a military attack on Russia, its citizens regardless of their actual location, or even on another state. Additional grounds for using military forces abroad were introduced by 2009 amendments to the Russian defense legislation. These additional grounds are vague but appear to expand the power of the President to use Russian troops abroad.

II. Constitutional Provisions

Article 102-1.G of the Russian Constitution instituted parliamentary control over the presidential right to use armed forces abroad. According to the Constitution, the Federation Council of the Federal Assembly of the Russian Federation makes the decision regarding the possibility of using Russian armed forces abroad, upon the request of the Russian Federation President. Also according to the Constitution, the President’s request for parliamentary approval to use Russian armed forces in foreign countries is required for each case in which Russian troops are sent abroad. The Federal Law on Procedures for Providing Russian Military and Civilian Personnel for Participation in Peacekeeping Operations, as passed in 1995, established that each such request must be accompanied by a timetable with a defined date for the full return of Russian troops from abroad.³ In the event that the operation is prolonged, or that it is impossible to meet the deadline for the return of troops, an additional presidential request to the Federation Council and a new parliamentary approval are required.⁴ The Rules of Procedure establish that such a request from the President must be reviewed within five days of its submission to the legislature, and that within two days of its adoption by a simple majority of the Federation Council members, the resolution approving the use of Russian troops abroad must be forwarded to the President.⁵

Parliamentary approval is not needed when the use of Russian troops abroad is based on the requirements of an international treaty previously ratified by the Russian Federation and is a form of fulfillment of Russia’s international obligations.⁶ Some Russian commentators believe that because the federal government of the Russian Federation is responsible for taking measures aimed at defending the country, providing national security, and implementing foreign policy of

² *Id.*

³ SOBRANIE ZAKONODATEL’STVA ROSSIISKOI FEDERATSII [SZ RF] [COLLECTION OF RUSSIAN FEDERATION LEGISLATION, official gazette] 1995, No. 26, Item 2401.

⁴ Reglament [Rules of Procedure] of the Federation Council of the Russian Federation Federal Assembly, sec. 21, arts. 159-161.

⁵ *Id.* sec. 17.

⁶ KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 15.4.

the Russian Federation pursuant to article 114.1 of the Constitution, the government may also submit such requests to the Federation Council.⁷

It is also not clear if parliamentary approval is needed when the Russian navy is deployed on the open sea, for the navy's international visits, air force flights over the open sea, and other similar situations. "Literally, such an approval is required; however, it might be issued not for each individual case but for a category of circumstances, for example, for a temporary or permanent presence of Russian military contingents in specific areas of the globe,"⁸ according to one commentator.

The constitutional definition of "armed forces" is broader than the definition given by ordinary law and, in addition to the regular military, includes all uniformed services of the Russian Federation subordinated to the President, including the troops of the Federal Security Service (in Russian, abbreviated as FSB) whose officers are subject to all Russian military laws and regulations.⁹ According to this constitutional interpretation, the use of FSB military personnel abroad is subject to parliamentary approval and control, similar to that necessary for the use of regular armed forces abroad.¹⁰ However, the FSB is not formally a part of the Ministry of Defense, and military formations of the FSB, including its special purpose detachments, are not officially considered to be a part of the Russian Federation armed forces. Not being a part of the Ministry of Defense would have prohibited them from conducting special operations abroad, according to the Federal Law on Combating Terrorism adopted on February 26, 2006 (Antiterrorism Law),¹¹ which officially permitted the overseas use of Russian armed forces (Ministry of Defense only), subject to parliamentary control prescribed by the Constitution.

III. Legislative Requirements for Using Armed Forces Abroad

A. Use of Armed Forces for Antiterrorism Purposes Under 2006 Resolution

Until 2006, Russian law did not allow for the use of armed forces outside of Russian territory for purposes other than peacekeeping operations or those stated in treaties concluded between Russia and other countries.¹² Following the murder of four Russian Embassy employees in Iraq and in order to legitimize the President's directive to find and kill the terrorists

⁷ YURI KUDRIAVTSEV, *POSTATEINYI KOMMENTARI K KONSTITUTSII ROSSIISKOI FEDERATSII* [ARTICLE-BY-ARTICLE COMMENTARIES TO THE RUSSIAN CONSTITUTION] (Moscow: Pravovaia Kultura, 1996), at <http://vuzlib.net/beta3/html/1/17949/18060/>.

⁸ *Id.* (all translations by the author of this report, P.R.).

⁹ BORIS TOPORNIN, *KONSTITUTSIIA ROSSIISKOI FEDERATSII. NAUCHNO-PRAKTICHSKII KOMMENTARI* [SCHOLARLY COMMENTARIES TO THE CONSTITUTION OF THE RUSSIAN FEDERATION] 590 (Moscow, Yurist, 2003).

¹⁰ GAGIK ARUTIUNIAN, *KONSTITUTSIONNOE PRAVO: ENTSIKLOPEDICHESKII SLOVAR* [CONSTITUTIONAL LAW: ENCYCLOPEDIC DICTIONARY] 101 (Moscow, Norma, 2005).

¹¹ ROSSIISKAIA GAZETA [Government-owned daily newspaper, official publication], Mar. 10, 2006, No. 48.

¹² For example, the protection of Tajikistan's state border with Afghanistan was provided by Russian troops according to the Treaty on Military Cooperation between Tajikistan and Russia of April 16, 1999.

who committed this crime,¹³ which was characterized by the Directive as “damag[ing] to state interests and a challenge to national security,” on July 7, 2006, the Federation Council of the Federal Assembly of the Russian Federation unanimously passed a resolution entitled, “On Using Formations of Armed Forces of the Russian Federation and Special Purpose Detachments Outside the Territory of the Russian Federation With the Purpose of Preventing International Terrorist Activities.”¹⁴

Citing the necessity of securing the sovereignty of Russia and article 51 of the U.N. Charter, which provides for the state’s right to self-defense, the Federation Council approved the request of the Russian Federation President to authorize him to use Russian armed forces and special purpose detachments abroad.¹⁵

In response to the President’s proposal, the Federation Council adopted a Resolution

- permitting the Russian President to use armed forces and special purpose detachments abroad to prevent international terrorist activity against Russia or its citizens, or stateless individuals permanently residing in Russia;
- obligating the government of Russia to supply military units involved in operations abroad with all necessary resources for the fulfillment of their mission; and
- stating that this resolution will be in force indefinitely during the “entire period of time needed to eliminate the threat of a terrorist act abroad against Russia or its citizens, or stateless individuals permanently residing in Russia.”¹⁶

While the adoption of this Resolution appeared to be in accordance with the constitutional requirement of parliamentary control over the presidential right to use armed forces abroad, its provisions contradicted other constitutional norms and federal legislation.

Despite the fact that approval of each particular use of Russian armed forces abroad is within the exclusive jurisdiction of the upper chamber of the Russian legislature, the Federation Council Resolution of July 7, 2006, freed antiterrorist operations abroad from parliamentary control and allowed the President to use the Russian military abroad independently and without time restrictions, keeping secret information on a unit’s size and the operation’s location.

Commenting on the adoption of this Resolution, the Chairman of the Federation Council, Sergei Mironov, mentioned the future possibility for the President to use the forces of the Main Intelligence Directorate of the General Staff of the Ministry of Defense without parliamentary approval. Also, in urging the members of the Federation Council to approve the request, he

¹³ Steven Lee Myers, *Putin Orders Death for Killers of Russian Embassy Workers in Iraq*, N.Y. TIMES, June 29, 2006, at A9.

¹⁴ SZ RF 2006, No. 29, Item 3144.

¹⁵ *Id.*

¹⁶ *Id.*

stated that the Resolution would allow the President of Russia to “expedite the execution of his orders without wasting time during parliamentary consideration.”¹⁷

B. Use of Other Special Operations Forces Abroad

On July 31, 2006, immediately after their publication in the Russian official gazette, amendments to twelve laws relevant to the fight against terrorism entered into force. These amendments were aimed primarily at simplifying judicial procedures associated with the conduct of antiterrorist operations and lessening judicial protection of individuals suspected of terrorist activities. The necessity of bringing domestic legislation into line with the European Convention on Combating Terrorism, which was recently ratified by the Russian Federation, was cited as a reason for the passage of these amendments.¹⁸

One of newly passed provisions amended the Federal Law on the Federal Security Service of the Russian Federation (FSB Law). In particular, an additional paragraph was added to article 9 of the FSB Law, which stated as follows:

According to the decision of the Russian Federation President, special purpose detachments of the Federal Security Service can be used against terrorists and/or their bases located outside of the Russian Federation territory in order to eliminate security threats to the Russian Federation.¹⁹

A new section to article 13 of the FSB Law, which regulates the application of operational and investigative techniques by FSB officers, allowed the special purpose detachment personnel of the Federal Security Service to “apply combat equipment, weapons, special means accepted by the Federal Security Service as warfare, and physical force against terrorists and/or their bases located outside of the Russian Federation territory in order to eliminate security threats to the Russian Federation.”²⁰

C. 2009 Amendments to the Federal Law on Defense

In August 2009, President Dmitry Medvedev of the Russian Federation introduced a bill in Parliament to extend the list of grounds on which Russian troops could intervene beyond Russia’s borders. As stated in a BBC report, the bill “augmented an existing law which allowed the President to use military units abroad for peacekeeping and antiterrorism purposes only.”²¹ When this bill became law in December 2009, it broadened the range of situations in which Russian troops could be deployed abroad but kept the requirement that the Federation Council must approve such deployments.

¹⁷ Parlamentskoe Obozrenie [Parliamentary Review, Materials of the Press Service], 2006, No. 13-14, http://www.council.gov.ru/inf_ps/parlisurvey/2006/07/41/item1337.html.

¹⁸ SZ RF 2006, No. 31, Item 3452.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Kremlin Bill On Using Army Abroad*, BBC NEWS (Aug. 10, 2009), <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/8194064.stm>.

Article 10 of the 1996 Federal Law on Defense²² was amended with the addition of Section 2.1, to permit operational use of Russian military formations abroad to

- resist military attacks on Russian military units, other troops, or bodies deployed outside of the Russian Federation territory;
- resist or prevent a military attack on another state that requested assistance from the Russian Federation;
- protect Russian citizens located beyond Russian borders from a military attack on them; and
- fight piracy and protect international shipping routes.²³

A newly added article 10.1 stated that the decision on operational use of Russian military formations abroad for the purposes specified above must be made by the President of the Russian Federation based on a relevant resolution of the Federation Council; however, it did not define when such a resolution must be passed. Also, the amendment allowed the President to independently decide on the size of units, location, and timing of operations, and addresses logistic issues regarding such units that fall within the exclusive jurisdiction of the Ministry of Defense. It appears that this provision allows the Ministry of Defense to include conscripts and draftees in these units even though, under previous laws, only volunteers and contractors could participate in operations abroad.²⁴

IV. Removal of Parliamentary Control Over Short-Term Military Operations Abroad

The receipt of parliamentary approval was never a problem for the Russian President because “the Federation Council is packed with members loyal to the Kremlin.”²⁵ For example, the authorization to conduct war in Georgia in 2008 was granted five days after the combat operations ended.²⁶ However, as soon as amendments to the Defense Law allowing the use of Russian troops abroad for purposes other than peacekeeping and the fight against terrorism were adopted, the President of the Russian Federation requested the Federation Council to grant him the right to make decisions on the operational use of Russian armed forces abroad. On December 16, 2009, the Federation Council adopted a resolution authorizing the President of Russia to decide on the operational use of armed forces abroad for those purposes specified in

²² SZ RF 1996, No. 23, Item 2750.

²³ SZ RF 2009, No. 45, Item 5270.

²⁴ Alexander Goltz, *Tonkinskoe Zakonodatelstvo [Tonkin Legislation]*, EZHEDNEVNIYI ZHURNAL (Aug. 12, 2009), <http://www.ej.ru/?a=note&id=9354>.

²⁵ *Medvedev Seeks Sole Right to Send Troops Abroad*, RADIO FREE EUROPE/RADIO LIBERTY (Dec. 9, 2009), http://www.rferl.org/content/Medvedev_Seeks_Sole_Right_To_Send_Troops_Abroad/1899223.html.

²⁶ SZ RF 2008, No. 35, Item 3994.

article 10(2.1) of the Defense Law without asking the Federation Council for approval as required by the Constitution.²⁷

Apparently, this resolution supersedes the authorization provision of the Defense Law, which mandates parliamentary approval for sending troops abroad and initiating military activities beyond Russian borders. It is not clear if a relevant constitutional amendment will be required, but the President's intent to disengage the legislature from making decisions regarding military operations abroad was indirectly confirmed by the President's representative in the Federation Council, who said that "the President will continue to ask the Federation Council for approval of long-term deployments of troops abroad,"²⁸ leaving the decision making on the short-term use of troops abroad exclusively with the President of the Russian Federation.

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²⁷ SZ RF 2009, No. 51, Item 6168.

²⁸ *The Federation Council Empowers the President to Use Troops Abroad*, EASTWEEK (CENTRE FOR EASTERN STUDIES) No. 43 (Dec. 16, 2009), <http://www.osw.waw.pl/en/publikacje/eastweek/2009-12-16/federation-council-empowers-president-to-use-troops-abroad>.