Using Armed Forces in International Relations and Russia's Point of View: International-Legal Aspects

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The purpose of the present material is to examine the international-legal aspects of utilizing armed forces in international relations, current trends in this area, Russia's situation, and the extent to which such use of Russia's armed forces conforms to Russian and international law. The article will also make recommendations for improving Russia's position.

International-legal Aspects of Using Armed Force

After undergoing complicated transformations, Russia is vitally interested in preserving stability in the world. When armed conflicts arise, whether between nations or inside their borders, and particularly if these conflicts are near Russia's borders, they run directly counter to Russia's national interests and cause significant harm. Utilizing armed forces in support of international peace in accordance with the norms of international law has great significance for Russia, as do the trends in the development of these norms.

Throughout human history, war has been seen as the natural means for implementing foreign policy and resolving disputes among nations.[1]

The situation changed after World War II. The UN Charter prohibited resorting to war or using armed forces in order to resolve disputes or implement foreign policy. International law, as it has evolved over the past fifty years, forbids war and permits the use of an armed force only in the following instances:

--Against a state which has committed an act of aggression or violated the peace (within the framework of the UN system, the so-called collective security system);

--By a state exercising its right to self-defense in the face of an armed attack.[2]

Safeguarding the Collective Security Through UN Efforts

If a state commits an act of aggression, violates the peace, or carries out actions which endanger the peace, measures which do not involve the use of armed force may be taken against that state (Article 41 of the UN Charter), or, if that is insufficient, measures involving the use of armed force may be taken (Article 42 of the UN Charter). Armed force may be used as follows:

1. By the UN itself;

2. By states and groups of states as charged by the UN in its name, or;

3. By regional groups in accordance with a decision of the UN Security Council (Chapters VII and VIII of the UN Charter).

When a state or group of states uses armed force for the purposes indicated, the resulting actions are referred to as coercive actions. The Security Council makes decisions regarding such actions and all members of the UN must comply with its decisions and carry them out (Article 25 of the Charter).

The Article defines the sequence for the creation of a UN armed forces, the establishment of the military staff committee, and other measures. Between 1946 and 1949 attempts were made to work out the principles for the creation of a UN armed force. However, these efforts failed in the face of the political situation of the day.

For coercive actions, the UN utilized the armed forces of various states who then acted in the name of the UN and by its charge. It was the Security Council that took decisions on coercive actions, although Western countries attempted to give this same power to the General Assembly, when these Western countries had the majority there (and these attempts were not always unsuccessful.)

In recent years, due to the changed political situation, the UN has begun implementing its peacekeeping missions more effectively. The Security Council's decision to act against Iraq after the latter's aggression in Kuwait provides an example of this improvement.

The UN's active use of armed forces for coercive actions in order to prevent armed conflict between states, as well as against acts of aggression, coincides with Russia's interests. Furthermore, as a permanent Security Council member with veto power, Russia can always prevent any decision which is inappropriate.[3] Naturally, the extent of Russia's involvement in any given UN action will be determined after consideration of the political, economic, financial and other aspects, including Russian public opinion.

Trends in the Development of Legal Standards

In recent years, the Security Council has begun to interpret more broadly certain of the concepts in its Charter, i.e., a "threat to peace" or a "violation of peace," both of which give the UN the right to employ coercive actions. In 1993 the Security Council elected to use force against Libya--albeit without the use of armed forces--in order to force the handing over of terrorists accused of having been behind explosions on American and French airplanes. The Council viewed international terrorism as creating a threat to peace and security. Its decision stated that "...halting acts of international terrorism, including those in which states are directly or tangentially involved, is of significant importance for maintaining world peace and security." (Security Council Resolution 883 of November 11, 1993). Russia supported this resolution.[4]

This recognition, i.e., that international terrorism may endanger the peace, makes it possible for the Security Council to apply armed force in such instances.

Further, one observes a growing tendency on the part of the Security Council to apply armed force not only in armed conflicts arising between states, but also for "non-international" conflicts that arise between various political and ethnic groups inside a state's borders, or simultaneously on the territory of several states. Almost concurrently with the actions against Iraq due to the latter's aggression, i.e., in an inter-state conflict, the Security Council voted to use armed force against the Baghdad government over the latter's conduct of armed actions against the Kurds in Northern Iraq. The Security Council's decision noted that the situation was creating a threat to peace and security.

There is a growing trend on the part of the Security Council to apply armed force in non-international armed conflicts (civilian, ethnic, etc.). Such missions conducted under UN aegis are termed peacekeeping missions. In this case, the use of armed forces vis-a-vis the parties to a conflict has differed significantly from their use for

coercive actions against states, i.e., in this case UN armed forces are deployed to a state's territory with that state's consent, and the forces carry out different functions and have different weapons, etc., than is the case in coercive actions. It is true, however, that one also sees an increasingly clear tendency to utilize armed forces in peacekeeping operations and in non-international armed conflicts in order to implement certain forceful measures: in Somalia, for example, in Haiti and in Yugoslavia. In Yugoslavia, given its disintegration into separate states, one sees both international and non-international armed conflicts.

In this process it becomes essential to distinguish clearly the difference between coercive actions and peacekeeping operations. Coercive actions are carried out against the will of the states drawn into the conflict, while peacekeeping is done with a state's consent. Forceful measures may also be employed in peacekeeping operations; for example, peacekeeping forces may disarm outlaw groups and formations, but they do so with the permission of the state upon whose territory the operation is being carried out. Hence, such measures do not fall under the category of coercive actions.

In light of the reasons presented above, it is advisable that Russia support the Security Council's broader interpretation of the Charter provisions giving the Council the right to use armed force to halt non-international armed conflicts,

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and also to combat the growing threat of international terrorism. Russia would also be well advised to continue to work (as the USSR actively worked in its final years) for the creation of an international UN Armed Forces, as envisioned in the UN Charter.

New Trends in Peacekeeping Practices of the World Community

An analysis of the UN's peacekeeping operations of recent years reveals a number of new, recent trends in the approaches taken by international organizations (the UN, the OSCE, NATO, and others), as well as in world public opinion towards peacemaking and peacekeeping operations.

In addition to the aforementioned trend towards conducting peacemaking and peacekeeping actions not only in international conflicts, but also in non-international ones inside a state's borders, the international-legal concept of "lawful intervention" is being increasingly applied, i.e., the intervention of one state (or group of states) in the internal affairs of another state, upon the latter's request. When a lawful government requests help, such intervention is permissible from the point of view of international law. However, a controversial issue remains, i.e., the legal status of a request for help that comes in the name of a state when the request is submitted by one of the political groups struggling for power. In particular, this issue arises with some intensity in connection with the well-known argument that troops of the Commonwealth of Independent States (CIS) are carrying out their functions in Tajikistan at the request of the Tajik government, inasmuch as during the period of the military operations in Tajikistan the ruling and opposition groups have replaced each other in power more than once.

The concepts of "peacekeeping" and "peacemaking" as used within the UN system cannot be fully applied to the military actions of Russian forces--or to the actions of the combined forces of Russia and other CIS countries--within the newly independent states. There are a couple of reasons for this. First, several of the criteria for UN peacekeeping operations are not observed. Second, and more important, these operations are not based on UN Security Council decisions. A more adequate

justification from the standpoint of international law (though less attractive from the point of view of propaganda) is to base such armed operations on the definition of "legitimate intervention" into a conflict on another nation's territory at the request of that other nation (Tajikistan), or to base them on an international agreement (as is the case in Moldova and Georgia).

Current UN practice points to a new trend in international law, i.e., the acceptability of deploying an armed force onto the territory of a country when the political structure in the conflict region is paralyzed, has collapsed, lacks effective control over the state's territory, or when there are several political forces claiming to have legitimate power in the conflict region but there is no stable balance among these political forces.

Contrary to former criteria, in several of the thirteen currently ongoing UN peace operations (including Yugoslavia and Somalia), the UN armed forces have been using not only light weapons, but also heavy weapons, motorized-rifle hardware and air power. There has been an observable change in the approach to the limits and forms of the application of armed force in the course of peacekeeping operations. If in the past UN mandate formulations strictly limited the use of armed force to cases of self-defense, now the same mandates allow "preventive defense," "pursuit," and the "driving out" of the warring sides, as well as the preventive deployment of armed forces and "preventive demonstrations of power" by armed international contingents.

The Use of Armed Force by Regional Organizations

The UN Charter and modern international law recognize the possibility of using regional agencies and accords for regional peacekeeping. Past practice has been to use geographic criteria to define regions--Africa, Latin America, etc. Now, however, in addition to geographic criteria, functional criteria have come into use. Hence, even states located in different geographic areas are now included in [the same] regions: the USA, Canada, Tajikistan, Turkmenistan, Kyrgyzstan, Kazakhstan and Uzbekistan are all included in the European structure of the OSCE; the League of Arab States now includes Arab states located in both Africa and Asia.

The UN Charter clearly states that coercive actions against states, as carried out by regional agencies, are prohibited unless these actions have the authority of the Security Council.

Peacekeeping and security in the CIS, and preventing armed conflict in the region, all have central significance for Russia. Particularly pressing is the issue of non-international armed conflicts which arise on the territory of CIS member-states. Russia actively utilizes her armed forces here for armed operations aimed at suppressing conflicts. By analogy to the international operations of the UN, these operations are frequently called peacekeeping operations (Tajikistan, Moldova, Abkhazia, South Ossetia). However, the international organizations themselves (the UN, the OSCE, the Security Council, etc.), as well as foreign experts and world public opinion, do not recognize the military actions in which Russia is involved in these regions as having the status of peacekeeping operations.

The CIS does have UN recognition as a region (UN General Assembly Resolution of 24 March 1994), albeit over several objections from a number of Scandinavian and West European countries who reject any CIS right to conduct independent, regional peacekeeping operations.

Russia has every reason to seek full CIS recognition as a region which would fall under Chapter VIII of the UN Charter, with all pertinent consequences thereof, including the right to utilize armed force to prevent armed conflicts in the region. Peacekeeping operations conducted by CIS countries--with Russia's active participation--are carried out at the request of, or with the consent of, the appropriate countries and of the conflicting sides. They are not coercive actions as defined in the UN Charter, i.e., actions carried out on a state against its will. If the CIS enjoys full recognition as a regional organization for safeguarding security, then no UN Security Council mandate is needed for carrying out peacekeeping operations in the CIS; an appropriate joint declaration on this issue by the RF Foreign and Defense Ministries is in complete accord with the law.[6]

Nonetheless, special note should be taken of the fact that Chapter VIII of the UN Charter only considers legal those operations which are carried out by a mandate (a decision of the highest collective body, where the decision includes a definition of the goals and limits of the use of force) of a regional organization responsible for providing the security of the region (in this case, the CIS); in no case are operations based on decisions by individual countries of the region considered legal. Of all the operations on the territory of the former USSR, only the one in Tajikistan is being carried out in accordance with a collective decision by the heads of the CIS states. Hence, only in the case of the actions of multi-national force in Tajikistan is it possible to appeal to the CIS mechanism to legitimize the peacekeeping operations; this is not possible in the case of Moldova, South Ossetia, Abkhazia, or Nargorno-Karabakh.

Considering the persistently negative attitude of the Moldovan leadership toward CIS structures, as well as Moldova's virtual refusal to participate in the formation of a CIS collective security system, it is obvious that acceptance of any CIS decisions on the "frozen" conflict in Trans-Dniestria is unrealistic. Georgia's late entry into membership in the CIS, it would seem, gave rise to the definite possibility that the peacekeeping actions in South Ossetia, and particularly in Abkhazia, could be accorded the status of operations under CIS aegis. However, Georgian authorities are appealing significantly more to the structures of the CSCE/OSCE [than to CIS structures], and other CIS countries, with the exception of Russia, are not prepared to make their contingents available for collective actions.

The role of regional mechanisms for preventing regional armed conflict will probably grow, since the UN itself is overburdened with peacekeeping operations. From 1948 to 1994 the UN conducted 34 such operations; it is currently carrying out 13. Between 1948 and 30 Jun 1994 more than 650,000 men took part in these operations; currently 71,543 men are engaged in them. Outlays in the period between 1948 and 30 April 1994 totaled approximately 10.4 billions US dollars, including about 2.1 billion US dollars in outstanding contributions to the UN.[7] The need to increase regional organizations' roles in security, peacekeeping and the conduct of peacekeeping operations is mentioned in the declaration on improving cooperation between the UN and regional bodies, adopted at the last (49th) session of the UN General Assembly in December of 1994, as well as in a speech by the UN Secretary General on the occasion of the 50th Anniversary Session of the General Assembly, which took place in 1995.[8]

Russia's involvement in peacekeeping operations in CIS countries helps stop armed conflict, saves innocent civilian lives, prevents economic destruction and increases stability. It also prevents the spread of armed conflict onto Russian territory from neighboring countries, and it opens up

additional possibilities for influencing the situation in these countries. In this process, it is essential to ensure that an adequate legal basis undergirds the conduct of such operations, and it is also necessary to regulate the issues which arise in connection with the involvement of Russian service members in such operations (issues of political control, the funding of the operations, recruiting and staffing the military contingents, etc.).

In accordance with the UN Charter and the norms of modern international law, such operations may be carried out upon the decision of regional bodies and also pursuant to regional accords. Within the framework of the CIS, the regional body vested with the right to make decisions on conducting peacekeeping operations is the Council of the Heads of the CIS Member-States . If the Kiev Accord of 3 Dec 92 establishes that such decisions are adopted with the approval of the full Council, then the CIS Charter of 1 Jan 93 permits, in principle, that similar decisions may be adopted only by interested CIS member-states.

The peacekeeping operations in South Ossetia and Trans-Dniestria were undertaken on the basis of accords between the interested parties. All interested sides agreed to the conduct of operations in South Ossetia: Georgia, North Ossetia, South Ossetia, Russia and their representatives entered into an amalgamated control commission which provided political control over the conduct of the peacekeeping operation.

In Trans-Dniestria the issue was resolved by an accord between Russia and Moldova with the participation of Trans-Dniestria, whose representatives, along with the representatives of Russia and Moldova, formed the Combined Control Commission, which guided the conduct of the peacekeeping operations.

And so, accords were utilized which had been concluded within the framework of the region. Naturally the question arises as to whether the aforementioned accords fall under the concept of "regional agreements" as mentioned Chapter VIII of the UN Charter. The answer is not unequivocal. The idea of the Charter is to show that it is not universal agreements that are meant, but other kinds of agreements. Some may believe that only an accord which has the participation of all states of the given region is truly a regional accord. However, it is in Russia's interests to insist on a different approach: a regional agreement can be one which is not signed by all the states of a single geographic area, but which concerns the problems of a given region.

By agreement among themselves, states have the right, with the participation of the conflicting sides, to conduct a peacekeeping operation which is carried out in their name, and not in the name of the UN. These are not coercive actions in the sense of Chapter VIII of the UN Charter. Only in those instances in which peacekeeping operations are conducted in the name of the UN must the decision be made by the Security Council. Coercive actions, regardless of who carries them out, must be based on a Security Council decision.

The criterion for determining whether or not actions are coercive is the position of the state in relation to whom the actions are conducted. Coercive actions are those measures which are taken by the Security Council without a state's permission and against its will, particularly when the use of armed force is involved. When the actions are taken with a state's consent, such actions cannot be viewed as coercive. In the course of such non-coercive actions, the armed forces conducting the

operation may use armed force to maintain order, for example, against armed groups. However, this does not change the nature of the actions; they remain non-coercive from the standpoint of the UN Charter, as they are carried out with the consent of all sides involved in the armed conflict (including the state on whose territory the armed conflict is occurring.)

Interpreting the Right to Self-Defense

A state has the right to use armed forces in self-defense if it comes under armed attack. (Article 51 of the UN Charter). In this case, the state itself determines when it has the right to use its armed forces, as well as the degree and scale of their use, basing its decisions on reasonable, proportionate retaliatory actions. Once the UN Security Council has been informed, the state has the right to continue using its armed forces in self-defense until such time as the Security Council adopts a decision regarding the state that committed the armed attack.

An armed attack is usually understood to involve actions by the armed forces of one state against the territory of another state and/or its armed forces. The definition of aggression as accepted by the UN in 1974 broadened somewhat the interpretation of the right to self-defense: the right arises when the armed forces of one state, which had been brought onto the territory of another state with that state's consent, remain on the latter's territory after cessation of the actions contained in the agreement; the right also arises when a state sends armed bands, groups, irregular forces or mercenaries onto the territory of another state, when these actions are serious in nature. Thus, this definition of aggression expanded somewhat the right to self-defense.

In recent years the world community has taken an expanded view of the right to self-defense. In June of 1993 the USA launched a missile attack on Baghdad because of an attempt by Iraqi authorities to organize a terrorist act against former President George Bush. That is, citing its right to self-defense, the United States used its armed forces against Iraq. The Russian government supported this interpretation. A Russian Foreign Affairs Ministry commentary (during the night of 26-27 June 1993) on this US action against Iraq, contained the following statement: "In the opinion of the Russian leadership the actions of the USA are justified, inasmuch as they derive from a state's right to individual and collective self-defense in accordance with Article 51 of the UN Charter...."[9]

A broader interpretation of the right to self-defense appears in the Principles of the Military Doctrine of Russia, approved by the RF President on 2 November 1993. This document states that a nation's right to self-defense confers in the case of an armed attack on its citizens.[10]

Such an interpretation of the right to self-defense, which expands the possibilities for a state's using its armed forces, is not in the interests of Russia or the interests of the international community as a whole. This represents a return to the past, a pull-back from the line that places limitations on a state's right to use its armed forces for foreign policy or for resolution of international disagreements. In the 21st century the use of armed force may continue with the same intensity, or it may even increase, but such use will have to be implemented by the Security Council and its nature should be chiefly that of police operations against those who infringe on peace. Under today's conditions, an expansion of the right to self-defense may be inappropriately used by such militarily powerful countries such as the USA, or by extremist countries. As a permanent member

of the UN Security Council with veto power, Russia's interests are served not by an increased use of armed force on the part of individual countries, but rather by an expanded use of such force based on decisions by the Security Council. It is unrealistic and unnecessary for Russia to use her armed forces beyond her own borders to defend Russian citizens based on the right to self-defense. This same defense may be provided through political, diplomatic, economic and other means. Furthermore, the Russian-speaking population in CIS countries and the Baltic region are for the most part not Russian citizens. The USSR, in concluding mutual-assistance agreements, chose to take a narrow interpretation of the right to self-defense, i.e., only in the case of armed attack.

It seems to the author that in any further work on Russia's Military Doctrine and in the implementation of foreign policy actions, it would be advisable to return to a narrower interpretation of the right to self-defense, as it derives from Article 51 of the UN Charter and the UN's 1974 definition of aggression.

The Stages and Forms of the Use of Armed Forces in Peace-Enforcing and Peacekeeping Operations

Based on an analysis of the utilization of armed forces between 1992-1995, both for peacekeeping operations under UN sponsorship and for the peacekeeping and peace-enforcement operations of Russian armed forces and those of the contingents of CIS countries, the following stages and forms of the use of armed forces in peacekeeping operations may be identified:

The anticipatory, "preventive" deployment of armed forces to a conflict region in order to prevent the escalation of a conflict:

1. Shows of force in support of political warnings to the combatants;

2. Separating the potential positions from which the combatants might launch provocations and armed actions;

3. Conducting, if necessary, a partial evacuation of the conflict area;

4. Providing, if necessary, food, medical assistance and humanitarian aid to the population.

The creation of demilitarized zones in conflict regions:

1. Monitoring communications used by the combatants for operational purposes;

2. Monitoring ceasefire compliance;

3. Implementing no-flight zone conditions in the conflict area;

4. Providing and protecting corridors for delivery of humanitarian cargo.

If the above listed represent the non-violent, auxiliary forms of the use of armed forces in a conflict region, then the following forms of armed forces actions apply to the forceful stage of the conflict,

and they correspond to the forms of peace-enforcement operations, as well as to post-conflict actions aimed at restoring the peacetime infrastructure in the conflict area:

1. Disarming and eliminating illegal armed groups in a conflict area;

2. Protecting lawful civilian authorities in the conflict area;

3. Restoring violated state and administrative borders;

4. Protecting refugees and displaced persons, setting up and guarding refugee camps, making sure that medical aid gets through;

5. Protecting ethnic minorities subject to repression and provocations from the surrounding, dominant ethnic group;

6. Positioning armed forces between hostile groups (putting up a "screen") for the time period needed to organize and conduct negotiations;

7. Incrementally separating the combatants (creating an expanding demilitarized zone);

8. Assuring the conditions necessary for holding free elections of civilian authorities after cessation of the conflict;

9. Escorting humanitarian aid convoys, both those of national and international organizations;

10. Protecting basic human rights in the conflict area;

11. Preventing damage or destruction of strategic facilities in the conflict area (arsenals of weapons of mass destruction and conventional weapons, dams, major facilities of the national economy, etc.)

12. Protecting diplomatic intermediaries and negotiation missions between international and non-governmental organizations engaged in resolving the conflict.

The above functions of the Russian armed forces in conflict areas differ notably from the functions assigned the armed forces by the Principles of the RF Military Doctrine and by the Law on Defense, as well those assigned by the Law on States of Emergency, and by other existing laws. As has already been mentioned, these functions should be provided for in a special Law which would regulate the use of RF armed forces abroad. It should be noted that the Federal law "On the Sequence of Making Available RF Military and Civilian Personnel for Participation in Operations to Maintain or Enforce International Peace and Security, and Other Types of Peacekeeping Activity," which could serve to legitimize the actions of Russian armed forces in conflict areas on the territory of the newly independent states, that this law in most of its articles is oriented towards providing contingents and personnel for operations based on decisions of the UN, the OSCE or the CIS (Preamble to the Law, Articles 7-11) and does not apply to most of the operations in the newly independent states.

Russian Law on Using Armed Forces and on Peacekeeping Operations

The RF Constitution of 1993 contains only one provision on limiting the use of Russia's armed forces. This is Article 102, Paragraph 1.g., which gives the Federation Council the authority to decide issues on the possible use of Russia's armed forces beyond her borders. Other of the Constitution's provisions on military issues do not regulate the use of armed forces (for example, Article 71, Paragraphs k., m. and n.), but they establish that the Russian Federation has authority in matters of war and peace, national defense and the protection of her borders. They further establish that the President approves Russia's Military Doctrine (Article 83, Paragraph z.) and that he is the commander-in-chief with power to declare martial law (Article 87) or states of emergency (Article 88) on the territory of Russia.

In addition to the Constitution, other legal documents address the use of armed forces: the Law on Defense of 24 September 92;[11] the previously mentioned Principles of the Russia's Military Doctrine as approved by the President on 2 November 93; and the RSFSR Law on States of Emergency dated 17 March 91.[12]

The Law on Defense, which serves as the primary legal document on the use of Russia's armed forces, provides that the purpose of the armed forces is to repel aggression and to carry out missions in accordance with the international obligations of the RF (Article 10). According to Article 26 of the Law, which addresses the same topic, Russia's defense and her rendering of military assistance to other nations will be carried out in accordance with international law and international treaties. Further, Russia will declare a state of war in the event of an armed attack on Russia by another state or group of states (Article 20). Based on the foregoing, Russia may use her armed forces in the following circumstances:

a. In the event of an armed attack on Russia, i.e., to exercise the right of self-defense;

b. In order to meet her international obligations, which comes, specifically, under the measures for collective security.

The Law on Defense is at odds with a number of provisions of the 1993 Constitution. For example, the Law calls for the Supreme Soviet [Council] to adopt the basic tenets of the Military Doctrine, whose draft version is submitted to it by the President (Articles 4 and 5), but according to the Constitution, approval of the Military Doctrine lies within the competency of the President (Article 83, paragraph z.)

Article 4 of the Law states that the Supreme Soviet will make decisions on using the armed forces of the RF beyond its borders. The Constitution, on the other hand, confers this competency on the Federation Council. Article 26 of the Law states that the RF will render military assistance to other states based on international treaties and under the control of the Supreme Soviet, but the Constitution contains no such provision.

Since the 1993 Constitution contains a provision that laws passed in the RF shall not contravene the Constitution, the Law on Defense of 24 September 92 is in need of review.

The RSFSR Law on States of Emergency (17 May 91) calls for the Ministry of Internal Affairs and the KGB to assure compliance with the Law. The Law allows for the possibility that the Armed Forces may be used, but only in certain specific instances as listed in the Law. Specifically, for

natural disasters, epidemics, epizootic outbreaks, and major accidents which threaten the life and the health of the population and which require emergency rescue.

Several of the Law's provisions are outdated. Changes are needed in Articles 5,6,11,12,14,16 on the role and rights of the President of the USSR, the Supreme Soviet of the RSFSR and its Presidium during states of emergency. The law must be made to conform with the 1993 Constitution.

The Law on the Security of the RF of 5 March 92, which is sometimes cited in discussions on the use of Russian armed forces, contains no provisions on this issue.[13] Several of its provisions do not conform to the 1993 Constitution and require review.

The Principles of the Military Doctrine, in addition to describing the defense functions of the military in time of war or when repelling aggression, also permit the use of Russia's military within the bounds of Russian territory and set forth the missions the military carries out to prevent and halt domestic conflicts on RF territory. This document contains no provisions directly applicable to any actions of Russian forces in conflict areas on the territory of other nations in peacetime, if these are peacekeeping operations under UN auspices.

Reference has already been made above to the need to make corrections to Russia's Military Doctrine. Further, a law should be published which would define the conditions of martial law when it is declared by the President, as is envisioned in Article 87 of the 1993 Constitution. It would also be advisable to work on unifying the laws of CIS countries on the use of their armed forces during CIS peacekeeping operations.

Certain international-legal aspects of the events in Chechnya deserve discussion. Virtually every nation recognizes that this is an internal Russian matter. The following question arises in this context. By international law, even during non-international armed conflict the parties must abide by certain rules on the protection of the peaceful populous, prisoners of war, the wounded and the sick. These provisions are anchored in the 1949 Geneva Convention on the protection of the casualties of war and in its Protocols of 1977. "In case of armed conflict which is not international in nature and which arises on the territory of one of the High Treaty Signatories, each of the parties to the conflict shall be obliged to apply, as a minimum..." several of the provisions of the Geneva Convention Supplementary Protocol No. 2 (1977). These documents are viewed by the international community as humanitarian international-legal documents, whose intent is to reduce the number of victims during any armed conflict which may arise on a state's territory. The great majority of countries, including the USSR, and now Russia, are signatories to these acts. The Protocol says that nations must apply the Protocol during armed conflict between governmental armed forces and "organized armed groups, which, being under responsible command, exercise control over part of the territory (of a country) such that it allows them to carry out constant, coordinated military actions and to follow the current Protocol." (Article 1, Paragraph 1.)

In the statements of Russian officials the military operations in Chechnya have been characterized as governmental actions in support of constitutional order and not as armed conflict.

If these same statements are juxtaposed with the Protocol, the events in Chechnya do not come under the concept of armed conflict as set forth in the Protocol, inasmuch as this Protocol does not apply to instances of disturbances of the domestic order or sudden conditions of domestic tension,

such as riots, isolated and sporadic acts of violence and other analogous acts, because these are not armed conflicts. (Point 2 of Article 1 of the Protocol.)

Meanwhile, the terms "armed conflict," "armed formations" and "organized armed groups" have been used in official Russian documents in relation to Chechnya:

--In the RF Presidential Order "On Several Measures to Strengthen Law and Order in the Northern Caucasus," 1 December 94 (No. 3334);

--In the official propagation of this order by the Presidential State Legal Directorate, 2 December 94;

--In the Presidential Order of 9 December 94 (No. 3422);

--And in the Resolution of the RF Government of 9 December 94, Article 3454. All of these were published in the RF Legislative Assembly for 1994, Nos. 32 and 33. It follows from these documents that in Chechnya we are dealing with armed conflict, and not simply with unrest. For example, in the Resolution of the Government to the Ministry of Defense it was proposed that: "...in the event that seizure proves impossible, then effect the destruction of air and armor hardware, artillery and heavy weapons." Since the foregoing makes clear that the concept of "armed conflict" applies to the events in Chechnya, it then follows that the supplemental Geneva Convention Protocol on the protection of victims applies.

The 1949 Geneva Convention and the Protocol contain a number of provisions which could be used to defend Russia's position. The Convention states (Article 3) that the application of its provisions: "...will not bear on the legal status of the conflicting parties." Therefore, the Federal Government's assessment of Dudaev's formations is not affected by the application of the Protocol. The Convention (Article 3) also specifies that the Protocol contains nothing which can address a government's obligation to support or restore law and order in a state or to protect its national unity and territorial integrity, and nothing which can be used for direct or indirect intervention in the internal or external affairs of the state on whose territory the armed conflict is taking place.

Thus, inasmuch as Russia--a signatory to the victim-protection Protocol--is obliged to observe this Protocol, it would be advisable to take steps to implement the Protocol in relation to the actions of the Russian troops in Chechnya.

Characteristics of Peacekeeping Operations on the Territory of the Newly Independent States

It is worthwhile to note several characteristics of the peace-enforcement and peacekeeping operations involving Russian forces which have been conducted, and are currently being conducted, on the territory of the newly independent states. These characteristics significantly affect the world community's attitude towards the actions of Russia and the CIS countries in this area.

First and foremost, it is essential to establish that the legal basis for the armed operations of Russian troops on the territory of other states is incomplete. The regulatory documents and guidance for peacekeeping operations (which have received high praise from international experts), as developed

within the framework of the Headquarters for the Coordination of CIS Military Cooperation, officially only apply to the actions of the collective forces in Tajikistan; they do not apply to the contingents carrying out missions in conflict areas on the territory of Moldova, Abkhazia or South Ossetia. Pursuant to the current Constitution of Russia, the presence of any Russian contingents beyond Russia's national borders must be legitimized by decisions of the Federation Council for each and every case. The Federation Council's original 1994 refusal to adopt a decision on the deployment of contingents to Abkhazia indicates that any presence of Russian contingents outside Russia's borders could become the object of serious internal political debates. For no other region where Russian forces are participating in actions outside Russia's borders has the issue of legitimizing their presence (as required by the Constitution) been brought before the Federation Council for discussion.

The problem is the lack of a clear system of national or international (civilian) political control over the armed forces which are carrying out peacekeeping missions in conflict areas. Absent is any systematic form of feedback or accountability on the part of the civilian leadership, or of the military contingent carrying out the missions in the conflict area, before higher legislative bodies or national parliaments. At meetings of the Russian government and the governments of other participating CIS states, parliamentarians and the public are not given a public assessment of the course and effectiveness of the operations in conflict areas outside Russia's borders.

One positive fact is that the UN Security Council and structures of the OSCE are informed--through RF Ministry of Foreign Affairs channels--about the general course of operations involving Russian forces in conflict areas on the territory of the newly independent states. However, according to assessments by foreign parliamentarians, the information given is not sufficiently detailed, is "excessively diplomatic" in nature and is not intended as a source of regular feedback.

Between 1993 and 1995, UN structures and especially the CSCE/OSCE missions, have focused increased attention on the conflict situations and peacekeeping operations on the territory of the newly independent states. There are permanent CSCE observer missions in Nagorno-Karabakh, Moldova, Tajikistan, Georgia and other locations. To date, one of the basic conclusions of international observers is that they refuse to view the operations in the conflict areas of the former USSR as legitimate international peacekeeping operations, and realistically speaking, this fact deserves due consideration. As these operations are conducted, it becomes apparent that they do not conform to a number of important standards which are applied by the UN and CSCE in similar cases.

The following non-conforming areas may be pointed out:

1. The absence of UN Security Council resolutions and CSCE decisions on the conduct of operations and the parameters of the political mandate for the operations on the territory of the newly independent states. Agreements between states function as mandates, i.e., agreements between Russia and Moldova, and between Russia and Georgia; only in the case of the Tajik operations is there a collective agreement between the heads of the CIS states. There is no regular renewal of the mandate in accordance with the changing political situation in the conflict areas, and the mandate (on the level of the heads of state, in accordance with the status of the original agreement) has not been subjected to a single official review since 1992;

2. The legislative bodies of the states drawn into the conflict (first and foremost, Russia) lack adequate political (and civilian) control of the armed forces in conflict areas;

3. Bringing in countries and forces as intermediaries (primarily Russia), when those countries and forces have their own interests in the conflict areas;

4. Violations on the part of intermediary forces and contingents of the principle of impartiality, furthering in a number of instances the interests of one of the conflicting sides to the detriment of the interests of the other side;

5. Having military contingents, rather than the appropriately authorized civilian authorities, carry out political, negotiative, intermediary and legal functions in the conflict areas.

At the same time it must be recognized that the new trends in the changing format of UN peacekeeping operations in recent times, as enumerated here earlier, are contributing to a gradual convergence between the broader interpretations of peacekeeping operations in UN and OSCE circles, on the one hand, and the parameters of operations involving Russian troops and CIS contingents on the territory of the newly independent states, on the other. More work remains to be done in international organizations, and the legal footing for operations must be improved, i.e., in the future, operations on the territory of the newly independent states need to be included in the context of the internationally recognized, legitimate criteria which the UN, the OSCE and the European Council apply to peacekeeping and peace-enforcement operations.

Endnotes

1. The well-known English jurist L. Oppenheim wrote: "From a legal point of view, war was seen as the natural function of the state and the prerogative of unlimited sovereignty." L. Oppenheim, International Law, Moscow, 1949, Volume II, Part 2, page 201. BACK

2. The UN Charter has so far preserved Articles 53 and 107 which permit the use of armed force against "enemy states," which is understood to mean Germany and Japan. However, the term "enemy state" as mentioned in these Articles, as well as in Article 77, has clearly become obsolete.BACK

3. An important tendency may be noted in the use of the veto right over the course of the UN's existence: between 1945-1990 the veto was used 268 times, and in this process, during the 40s and 50s, when Western countries dominated the Security Council, the Soviet Union used the veto 100 times and the Western countries (France) only two times; subsequently, when socialist and unaligned countries made up the majority, in the 70s and 80s, the USSR used the veto only 19 times and the Western countries 120 times. Since 1990 and the end of the bipolar stand-off, the veto has hardly been used. BACK

4. Security Council speech by Russia's representative to the UN, Yu.M. Vorontsov, on 11 November 1993. (*Diplomaticheskyy vestnik* MID, Russian Federation, Nos. 23-23, 1993, p. 52). BACK

5. The number of non-international conflicts is growing. For example, the absolute majority of all UN peacekeeping operations carried out in 1988 involved armed conflicts between states, and only one involved a non-international conflict. Subsequently, of 21 operations carried out by the UN, eight involved conflicts between states and thirteen (or 62% of the total) involved non-international. BACK

6. Joint Declaration of the Russian Federation Ministry of Foreign Affairs and Ministry of Defense, 29 March 1994, *Diplomaticheskiy vestnik* 7-8, 1994, p. 22. BACK

7. UN Informational Reference Note, July 1994. BACK

8. Document A/50/60 S, 1995/1, 3 Jan 1995. BACK

9. Ministry of Foreign Affairs, Russian Federation, *Diplomaticheskiy vestnik* 13-15, p. 40, 1993. BACK

10. The Principles of our Military Doctrine state that Russia "...will not use armed forces or other troops against any state, except for individual or collective self-defense in the event of an armed attack on the Russian Federation, its citizens, territory, armed forces, other troops, or its allies." (*Izvestiya*, 18 November 1993).BACK

11. *Records* of the Conference of National Deputies of the RF and of the Supreme Soviet [Council] of the RF, No. 42, 1992, Article 2331.BACK

12. *Records* of the Conference of National Deputies of the RF and of the Supreme Soviet of the RF, No. 22, 1991, Article 773. BACK

13. Published in the *Records* of the Conference of National Deputies of the RF and Supreme Soviet of the RF, No. 15, 1992, Article 769. BACK