

“Counter-Terrorist Operation” in Chechnya: On the Legality of the Current Conflict

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As evidenced by the statements of many of Russia’s most senior political, military and diplomatic figures, since the beginning of the operation in August 1999 (an operation first designed to drive the “illegal bandit formations” from Dagestan, but quickly developing to encompass the much larger goal of bringing Chechnya firmly back into the fold of the Russian Federation), the question of the legality of the military operation in Chechnya has been an important issue both inside Russia as well as in the larger international community. Given the nature of current events in the North Caucasus, what follows does not claim to be a comprehensive analysis of what is a very complex issue, more a first attempt at collating and analysing a range of materials on the subject with a view to presenting the reader with a clearer idea of the Russian position on this issue.

For its part, Russia has been keen to underline the fact that in terms of its Constitution, federal and international law, Russia is behaving completely within the law. Its present military action in the region, it would argue, is commensurate with the scale of the problems that it faces there and that, on the whole, military action is legally justified, Russia acting well within its acknowledged rights to maintain both Constitutional order and its territorial integrity. However, reports of atrocities committed by Federal forces, the existence and use of “filtration camps” in the “liberated” areas of Chechnya “to screen” the population, the amount of force being used to pacify the population, have compelled a number of figures in the West to publicly announce their misgivings over Russia’s conduct of military operations in the Caucasus.

This is an important issue and given the possibility that Russia may find itself in a similar position elsewhere, this chapter will examine Russia’s legal arguments for deploying and using Federal forces in the area and assess whether its legal arguments are more than mere window dressing. As in any case when military action has eventually to be tackled by the legal authorities, the words and definitions used can mean very different things, either taken out of context, or instinctively transposed from one legal system to another, without taking into proper account that although the words may be the same, they may have very different meanings. Hence the title of this chapter: officially, Russia is not at war with Chechnya. It has been consistent in defining its military activity in the region as a “counter-terrorist operation” and a strict interpretation of what is meant by this phrase in Russian law will help the reader gain a better understanding of Russian actions.

The Experience of the 1990s

In examining the immediate background to the conflict in Dagestan/Chechnya, one of the ambiguities which has arisen in comprehending the Russian position is that there seems to be a commonly-held perception in the West that Chechnya’s self-declared independence from the Russian Federation had been quietly accepted by Moscow and that Moscow would not be prepared to repeat its earlier folly of 1994-

1996, when it spectacularly failed in its attempt to reimpose federal rule by military force over the errant republic. However, this perception is based on a false premise. As far as Russia was concerned, despite Chechnya's declaration of independence in November 1990, the election of Dudayev as president in October 1991, the subsequent attempt, when all else had failed, at reimposing Federal rule on Chechnya by military means in 1994-1996, and the August 1996 Khasavyurt Agreement (which simply introduced a moratorium to the conflict), Russia had carefully NOT granted any sign of constitutional independence to this "subject" of the Russian Federation.¹ Russia viewed – and views – Chechnya as part of the Russian Federation. This is an important point to bear in mind when examining one of the main charges levelled against the Chechen political leadership, that of "state treason", in actively encouraging the invasion of one constituent part of the Russian Federation – Dagestan – by another, the Chechen republic.

Russia's Chief Military Procurator, Colonel-General Yu Demin, in a press interview, was keen to emphasise both the previous constitutional order of Chechnya and the internal political weakness of its president, Aslan Maskhadov:

"According to the Constitution of the Chechen Republic currently in effect, which was approved by the lawfully-elected parliament on 12 March 1992, it is a democratic law-abiding state. However, President Maskhadov curtailed the activity of the Chechen parliament, elected under Russian law in 1996, to such a degree that this representative body of power was, in fact, denied the right to exercise power over life in the republic. At the same time, Maskhadov himself does not wield power on the entire republic's territory. The power in the republic was usurped by various bandits, who called themselves field commanders. They are staging terrorist acts, taking hostages, and making bandit attacks on the territory of neighbouring republics which are component parts of the Russian Federation.

And according to the Criminal Code of the Chechen Republic of Ichkeria, which President Maskhadov approved by his edict passed in July 1996, all extremists such as Khattab, Basayev and Raduyev should be outlawed and prosecuted. But nobody is doing that. The terrorists feel at home on the republic's territory and are not only not hiding, but are even declaring jointly with Chechnya's government structures their opposition to federal troops.

*In this connection, let me emphasise also that the Chechen republic, too, is a Russian Federation component. Therefore, the movement of troops onto its territory, just as any other part of the Russian Federation, is lawful."*²

There almost seems to be a hint that in unleashing military hostilities against Chechnya, Russia, in effect, was not only trying to preserve its own constitutional order, but also restore Chechnya's: a novel and interesting line of argument under the circumstances! A few weeks after the publication of Demin's interview, the Russian Ministry of Justice published a preliminary legal assessment of the activities of the Chechen republic's "organs of power" between 1996-1999, condemning not only the latter's non-compliance with the terms of the 1996 Khasavyurt Agreement (which had brought an end to the first Chechen war), but also the general state of lawlessness in the republic:

“In 1996, the Khasavyurt Agreement created the legal conditions for the establishment in Chechnya of constitutional order, by peaceful means, reform of the organs of state power. But the Chechen organs of power did not put into effect one single point of the Agreement. Chechnya, it would appear, was in the hands of a group of people directly connected to committing acts of terrorism, kidnapping people, seizing hostages, trading in drugs, weapons and other crimes.”³

Thus, from the point of view of two of the key elements of Russia’s power structures – the Chief Military Procurator’s Office and the Ministry of Justice – there is no doubt concerning the legality behind the use of Federal forces in Dagestan/Chechnya in 1999/2000; as far as both these key players are concerned (“key” in relation to the subject matter of this particular chapter), the activities of the Maskhadov regime throughout 1996-1999 created the necessary legal background for military intervention by the federal power, leaving aside, for the moment, the other important arguments put forward by Russia for military intervention, ie maintaining constitutional order and the territorial integrity of the state.

That the Russian authorities felt the need “to get it right”, in ensuring that Federal forces this time round knew that they were acting legitimately, within the confines of Russia’s Constitution and laws, was underlined in a detailed article written by the Chief of the Operations Directorate, General Staff, Colonel-General Yu Baluyevskiy, published in the Ministry of Defence’s main newspaper, *Krasnaya Zvezda*:

“The military campaign of 1994-1996, planned initially to take the form of a ‘blitzkrieg’, was sudden and unexpected above all for the Russian Army, for society and even for the organs of state power in Russia.

*This is further evidenced by the following fact: when on the territory of the Chechen Republic military operations had already been conducted for some 6 months, the legislative organs [still] could not determine whether or not the use of troops in the region was legal. Despite the declared aim – restoration of constitutional order in Chechnya – the military campaign of 1994-1996, right up until a decision of the Russian Constitutional Court, was carried out **outwith** [my emphasis – SJM] a legal framework, which put the servicemen of the Federal group of forces in an ambiguous position. Conducting military operations with an enemy knowing that, at any moment, carrying out the orders of the command staff could be declared illegal is, we would all agree, fairly difficult. Firmness of morale, as is well-known, is an indispensable part of any victory. More than that, in society [as a whole] the practical attitude towards the soldiers who have taken part in military activities can form and be summed up by the phrase, “I did not send you there.”⁴*

One other aspect which has to be looked at, however briefly, is the increasing number of “terrorist” crimes recorded by the authorities since 1993. It is important to realise that, given the nature of the regime throughout the 1990s, rightly or wrongly Chechnya has been viewed both by Russia and elsewhere as a “rogue republic”, where corruption and crime are rife and lawlessness is virtually a way of life. Therefore, it has been very simple for the Russians to make the link between the “rebel fighters” in Chechnya and domestic terrorism (events in Moscow and Vologdonsk on the eve of the attack on Dagestan helped to strengthen this link).

However, it would also be erroneous not to make the point that, for whatever reasons, Russia has witnessed a large increase in the number of internal terrorist acts, ranging from seizing hostages, kidnapping people, to hijacking passenger planes, throughout the 1990s. According to the latest Russian figures (admittedly incomplete, as some of the relevant statistical data has not been released by the authorities for reasons of “security”), in 1993 there was an officially recorded total of 164 terrorist crimes committed on the territory of the Russian Federation; by 1999, this figure had increased to 882.⁵ Thus, although there has been some comment in the West concerning Russia’s over-playing of the terrorist card, there can be little denying the fact that there has been a genuine increase in the level of domestic terrorism in Russia and, whether it is carried out for political, religious or economic reasons, the problem still remains and is a real one. Interestingly, within the terms of Russia’s Criminal Code, a person can be prosecuted under a whole range of Articles for “terrorist crimes”, but it was not until 1 January 1997 that one could be prosecuted for organising or being a member of an “illegal armed formation”.⁶ Russia did not pass its first Law on Combating Terrorism until July 1998.⁷

The Russian legal and military authorities have used the failed experience of the earlier campaign (determined that the men on the ground – as well as society at large – understood that they were fighting a good fight and that, on this occasion, there was to be no legal dilly-dallying concerning the question of whether the operation was legal), and played on the perception and fear that Russia is facing a potential wave of political and religious terrorism in the future. Whilst it would be wrong to overemphasise this, it cannot be lightly dismissed as some propaganda point being made by the Kremlin. If the figures presented here are accurate, then Russia has genuinely experienced a large growth in the number of acts of domestic terrorism, thereby allowing the Russian power ministries very fertile soil in which to cultivate the idea in ordinary people’s minds, that Chechnya and terrorism are virtually indistinguishable and that, in Russia’s south, there is a very real threat of international terrorism being used to further weaken Russia’s hold on a strategically vital area of traditional Russian influence and power.

“Counter-Terrorist Operation”: Russia’s Current Legal Stance

Let no one be in any doubt that this is not simply a question of semantics: definition of the nature of the military operation in Dagestan/Chechnya has had a direct impact on the level of force used; the role of each of the power ministries (especially important in relation to the inter-action of the Interior Ministry Troops and MoD soldiers) and, on a wider scale, Russia’s aims in relation to securing an eventual peaceful settlement. Russia has been precise in its choice of vocabulary and, having realised the subtle differences between the terms “armed conflict”, “counter-terrorist”, “anti-terrorist”, etc, Russia’s military operation begins to assume a more controlled, logical nature.

An early indication of Russia’s legal justification for its military operations in the south came in the form of a TV interview of Interior Minister Vladimir Rushaylo, broadcast not long after the opening of military operations in Dagestan:

“If we use the term war, that is a legal term. War has to be declared. The relevant proclamation has to be made, a decision taken by the structures of power.”

In this case, what we have is the invasion, by bandit formations which are multi-national in their make-up, into the territory of Dagestan from another subject of the Federation ... I would not like to talk about these bandit formations in a national context, since the individuals taking part in the military operations on the side of the illegal bandit formations are representatives of different nationalities ... in our view, we should not use the term 'national' or 'religious', which are incidentally being used by the representatives of the illegal armed formations. They do not have anything to do with religion or any kind of national qualities. What we are talking about is international terrorism, since these attempts are being made from outside...we have operational information at our disposal. The actual presence of mercenaries among the dead representatives of the illegal armed formations testifies to the fact that the forces are being controlled from abroad.”⁸

In Rushaylo's statement, we can already begin to discern the kernel of Russia's further legal justification of its actions in the North Caucasus: in short, that it is fighting an attempt by international terrorism to weaken Russia's influence in a constituent part of the Federation. This was further advanced by V Putin, in his address to the State Duma on September 14 1999, following a number of bomb attacks in Moscow itself:

*“We were supposed to discuss the situation in Dagestan. But I think that you will agree that now, after new terrorist acts in Moscow, the question can and must be addressed **on a broader plane**. **The point at issue is the security of the state in the full meaning of the word**. [Emphasis throughout as in the original – SJM].*

*It is from this viewpoint that we are acting in the North Caucasus today. It is with this goal in mind that the **joint command** of the armed forces in Dagestan and **an operational staff** to guide the counter-terrorist operation have been created...It is clear to us that both in Dagestan and in Moscow we are dealing not with independent fighters, but with **well-trained international saboteurs**. They are **not self-taught men**, but specialists in subversive operations and demolition work.*

*Those who organised and initiated this series of ruthless terrorist acts have far-reaching plans. They expect **to fan political tensions in Russia**. Their main task is **to destabilise the situation in the country**. Their goal is to demoralise power, **undermine the foundation of the state**, hinder the normal work of state agencies.”*

In responding to questions of whether Russia was operating within the necessary legal norms of the state, Putin answered affirmatively:

*“We have the requisite legal basis. We even have specially created **organisational mechanisms** ... Today, we qualify the actions of the bandit groups as **acts of international terrorism** and use this as the basis for the necessary counter-operations. The regions of Dagestan where the federal forces are working now are **the zones of counter-terrorist operations**. A special legal regime is established there, which **in fact** includes many elements similar to **the state of emergency regime**. This regime includes body searching, the examination of citizens' property and means of transportation, the inspection of documents, the*

detainment of persons, as well as the temporary ban on the free movement of transport and citizens. It also includes many other measures stipulated in the law 'On Combating Terrorism', which you approved in July last year."⁹

In this address to the Duma, a number of points became clearer: first, that Russia saw the operations in the south as responding to a threat directly being made against the very security of the state itself; secondly, that the military action in the south was, within the terms of Russia's Constitution and law, a "counter-terrorist operation" from the very beginning and (bearing this in mind) thirdly, the key to a deeper understanding of the legal basis for Russia's military involvement lies within an examination of Russia's Law on Combating Terrorism; fourthly, given the presence of mercenaries, the conflict could be portrayed as an "international terrorist" threat, thereby strengthening Russia's legal hand in its use of regular soldiers (as well as making use of the increased fire-power of the Russian military), as opposed to simply relying on the men and equipment at the disposal of Russia's Interior Ministry; finally, in "internationalising" the conflict, Russia was still careful to emphasise that not only was it operating within the terms of its own Constitution and Federal law, but that it was an *internal* problem. After all, as far as the Kremlin was concerned, Chechnya was still part of the Russian Federation and Federal law still applied there. Russia did not need, or want, the outside world mediating in what it argued was purely an internal matter for its own government to solve.

One of the key elements in the legal justification for Russia's military action in the North Caucasus has been the application of various measures of the Law on Combating Terrorism (hereinafter simply referred to as "the Law"). Approved by the Federation Council on 9th July 1998, the Law was the first such law passed in Russia to deal specifically with the terrorist threat, reflecting both the changing nature of conflict within the Russian Federation, as well as the belated realisation that terrorism was not only a problem for various governments and nations abroad, but that it was also a growing problem for Russia, both within the borders of the Russian Federation as well as within the borders of the former USSR. Thus, the Law provided legal definitions of "international terrorist activity", "counter-terrorist operation", the roles of the MVD and MoD Troops. Given the acknowledged importance of the Law to the legal case, those Articles most relevant to the conduct of the present military operation will be examined here.

In the Law "international terrorist activity" (Article 3) is defined as:

*"terrorist activity, carried out by 1) terrorist or terrorist organisation, on the territory of more than one state, or causing harm to the interests of more than one state; 2) citizens of more than one state in relation to citizens of another state, or on the territory of more than one state."*¹⁰

Included also in the definition of "terrorist activity" is *"the organisation of illegal armed formations ... to carry out a terrorist action"*.

Thus, it was relatively straightforward for the Russians to paint the armed incursion into Dagestan in August 1999, given the use of foreign mercenaries and volunteers, as a clear example of "international terrorist activity", formed into "illegal armed formations", excluding, of course, the ones formed by the Chechens themselves.

The term “counter-terrorist operation” is also defined in Article 3, as “*special measures, aimed at stopping terrorist activity, ensuring the safety of people, disarming the terrorists, as well as minimising the consequences of terrorist actions.*” Within this context, “a zone for the conduct of counter-terrorist operations” (Article 3) was defined, as well as the level of involvement of each of the relevant power ministries, including the MoD and the MVD. In listing the roles of the power ministries, the Federal Security Service comes first, then the MVD, the MoD coming second from the bottom, just before the Federal Border Guards Service. Of course, by itself this order may not be important, but it could indicate that at the time the Law was drafted and then passed, many still thought that the other power ministries would play a much more important role in the fight against terrorism than the one now being carried out by the MoD.

The role of the MoD in the fight against terrorism was described in Article 7:

*“... the [function of the] Ministry of Defence of the Russian Federation will be to maintain the defence of weapons of mass destruction, missile and infantry weaponry, shells and explosive devices, the defence of military sites, as well as participating in the defence of the national seas, the air space of the Russian Federation [and] **in the conduct of counter-terrorist operations** [emphasis mine – SJM].”*

The Law also defined the legal regime to be in operation in the zone of counter-terrorist operations and included all the steps outlined by Putin in his September 1999 address to the State Duma: travel restrictions; checking documents; detaining people breaking the law; searching people’s homes, etc. In terms of who would be in control of the counter-terrorist operation, the Law also mentioned the creation of an operational staff (Article 10), headed (possibly, but not necessarily) by a representative of the Federal anti-terrorist commission, all military personnel being subordinated to him throughout the course of the operation.

However, the Law, whilst providing some of the justification for Russia’s military action in the North Caucasus, does not supply the full legal justification necessary for Russia’s military actions. There is simply not enough “law” here for the state to enjoy full legal support for its actions, hence the calls for Russia to introduce a state of emergency, a request that was turned down by Putin as early as September 1999, when he simply declared that the relevant 1991 Law on the State of Emergency was “obsolete.”¹¹

Needless to say, in presenting its legal case for the current use of military force to restore “constitutional order” to Chechnya, Russia is relying on more than this one law. The report prepared by the Ministry of Justice and published in December 1999 stated that:

“The aim of the present leadership of Chechnya is to tear off this important, in a geostrategic sense, region from the RF [Russian Federation] and create a criminal enclave there. These activities present a real threat to the territorial integrity and constitutional order of Russia. The leaders and members of the illegal armed formations ... as well as those who have directly taken part in the attacks of the bandits, kidnapping of people, murder, seizing hostages, terrorist acts, people guilty of making and passing of counterfeit money...independent of their attachment to the power structures of Chechnya are subject to the Criminal Code, in accordance with Articles 105 (murder), 126 (kidnapping), 205 (terrorism),

*206 (taking hostages), 208 (organisation and membership of illegal armed formations), 209 (banditism), 210 (organisation of a criminal group), 317 (attempt on the life of a member of a law-enforcement agency), 186 (preparation and passing of counterfeit money), 222 (illegal trade in weaponry)."*¹²

Thus, in terms of Russia's Criminal Code, the leaders of the Chechen republic are indictable on a number of offences. However, this is still far from the whole legal picture presented by the Russian authorities. As the Justice Ministry's report continues:

*"The activity of the Chechen bandit formations and terrorist groups is directed and financed by international extremist organisations. After confirmation of the facts, in established legal procedure, the leadership of Chechnya must bear criminal responsibility for state treason, in the form of rendering assistance to a foreign organisation or its representatives in the conduct of hostile activity to the detriment of the external security of the RF (Article 275, Criminal Code of Russia)."*¹³

Hence the charge of state treason being levelled against the Chechen leadership; since Russia has never formally recognised the "independence" of Chechnya, any attempt by the latter to unseat the ruling power of any constituent member of the Russian Federation makes the leadership of Chechnya criminally responsible on the charge of treason to the state.

According to the 1993 Russian Constitution, Article 65, the Chechen Republic is still a constituent member of the Russian Federation, whose status as a "subject" of the Russian Federation can only be changed "in joint agreement between the Russian Federation and the subject of the Russian Federation in conjunction with federal constitutional law."¹⁴ In the Khasavyurt Agreement of August 1996, Chechnya's status within the Russian Federation was not to be formally decided upon until 2001. Chechnya may have appointed its own government ministers and attempted to behave independently of the Russian Federation, but the vast majority of the other "actors" on the world stage did not formally recognise Chechnya as an independent state. This strengthens Russia's legal argument that Russian Federal law still applied over the republic, and thus, for instance, the movement of troops into Chechnya was legal.¹⁵

Strictly in terms of the 1993 Constitution, Federal and criminal law, Russia has argued that it is acting well within its rights and international legal precedents in protecting both its constitutional order and its territorial integrity. This is a view further endorsed by the recently adopted National Security Concept (January 2000) and Russia's new Military Doctrine (April 2000). For instance, the National Security Concept states that:

*"Russia's national interests in the domestic political sphere lie in the stability of the constitutional system and of state authority and its institutions; in ensuring civil peace and national accord, territorial integrity, unity of the legal domain and law and order ... and in removing factors causing and feeding social, inter-communal and religious conflicts, political extremism, national and religious separatism and terrorism."*¹⁶

In Russia's Military Doctrine, the threat and the response to that threat posed by situations similar to the one in the North Caucasus is even more clearly defined:

*“6. The main internal threats are:
an attempted violent overthrow of the constitutional order;*

illegal activities by extremist nationalist, religious, separatist and terrorist movements, organisations and structures aimed at violating the unity and territorial integrity of the Russian Federation and destabilising the domestic political situation in the country;

the planning, preparation and implementation of operations aimed at disrupting the functioning of federal bodies of state power and attacking state, economic or military facilities, or facilities related to vital services or the information infrastructure;

the creation, equipping, training and functioning of illegal armed formations.”¹⁷

In reacting to the threat, the Doctrine specifically states that:

“the Russian Federation Armed Forces and other troops can also be used for protection against unconstitutional actions of illegal armed violence threatening the integrity and inviolability of Russian Federation territory ... in internal armed conflicts – to rout and liquidate illegal armed formations, to create the conditions for a full settlement of the conflict on the basis of the Constitution of the Russian Federation and federal legislation.”¹⁸

Judging from all of the above, the Russian case would appear to stand on firm national and international legal ground, using existing legislation, as well as internationally held principles of maintaining territorial integrity and upholding constitutional order, especially if one also accepts that this is an internal matter (a point that the Russians have been very careful to emphasise repeatedly, just in case any outside body thinks that Chechnya could be used as a pretext for intervention). Despite this, however, a number of Russia’s top military and political figures have expressed reservations about Russia’s legal arguments in relation to the continued military activity in Chechnya. On 25 January 2000, on the web-site of *Moskovskiye Novosti*, appeared an interview of the former Minister of Interior Troops, General A Kulikov, in which he argued that Russia should have already introduced a state of emergency in Chechnya, ensuring that the government and the Federal forces would still be operating within “the legal field”, as he put it.¹⁹ A couple of days later, in an interview broadcast on Radio *Ekho Moskvy*, the Commander of Moscow Interior Troops District, General Arkady Baskayev, was even more forthcoming, saying that unless a state of emergency was declared in Chechnya,

“the military, including my own Interior Troops, are effectively breaking the law. These so-called mopping-up operations which we carry out are, basically, actions which are only carried out in a period of martial law or a state of emergency.”²⁰

In that same week, an article appeared in the highly-respected military weekly, *Nezavisimoye Voyennoye Obozreniye*, written by two leading military academics in which they expressed their dissatisfaction at the way the Armed Forces of the Federation were involved in a legally dubious conflict:

“the Armed Forces of the Russian Federation, having completed their tasks in solving an internal armed conflict, continue to be a hostage to the incompleteness of legal provision, in so much as not in any of the documents in the military package will you find even a mention of the possibility of our troops being involved in a large-scale counter-terrorist operation similar to that being carried out by the power structures in Dagestan and Chechnya, neither its content nor its practicalities (sushchnost’) defined.”²¹

In April 2000, S Stepashin, former Prime Minister of Russia, and a number of other state deputies proposed their own draft law concerning a state of emergency, arguing that “events in Chechnya” prove that “a definite and very serious legal vacuum” existed in relation to current military activity in the region.²²

However, Russia’s political authority still has not seen the need to introduce either martial law or a state of emergency and as things now stand (June 2000), Russia is considering the introduction of another form of legal administration in the republic, that of direct federal, or direct presidential, rule.

Importance of the Legality of the Operation

One of the main reasons why the Russian political and legal authorities have spent not inconsiderable effort and skill in justifying the present military campaign in the North Caucasus is the need for Russia to be seen doing “the right thing”, that it is, in other words, fighting a “good” war. This is especially important within Russia itself. As long as its own people are convinced that Russia has “right” on its side, moral and legal, and as long as the casualties stay low and a sense of normalcy seems to be returning to the republic, the military campaign could still prove to be one of Putin’s more astute moves.

In listing a number of factors which, in his opinion, distinguished the present military campaign in Chechnya from the one conducted in 1994-1996, the former First Deputy C-in-C Ground Forces, Russian Federation, Colonel-General E Vorob’yev, stated that:

“in the first place, in the summer [1999], units of the militants were the first to begin military operations on the territory of Dagestan. And then, having been rebuffed, fell back to the territory of Chechnya. Federal forces had to respond to the challenge of the terrorists...Thirdly, the command understands that, during military operations, it is necessary to ensure the maximum protection of the peaceful population and prevent its destruction...Fifthly, military operations in Chechnya will not decide the status of this republic as a subject of Russia. This matter will be decided after the liberation of the territory of Chechnya from the militants.”²³

Thus, Russia was responding to an attack and was well within its rights to do so (leaving aside the fact that it was an internal attack and thus Russia could respond with as much force as it saw fit); the military command has taken steps to ensure that the civilian population have been given opportunities to quit the zones of active military operations throughout the length of the campaign (as well as, on occasion, declaring “amnesty” for those “militants” who have had enough); the Federal forces have been and are fighting there, knowing that they are not the prime movers behind a solution to the problem. In other words, they will not be held to blame if

the politicians get it wrong in terms of finding a solution. The Federal forces, as well as society at large, are well aware that they have a specific military/policing function to perform, not a political one. Chechnya's eventual fate is not going to be settled by the gun, but by political means. This point was reinforced by the offer of dialogue with the current Chechen leadership as far back as October 1999, when the Russian government offered "measures of settlement" to Maskhadov's government, an offer that was turned down.²⁴

Thus, in overall terms, from a Russian perspective, Russia is fighting to maintain its territorial integrity, its Constitutional order, and the status of the republic will not be decided on the battlefield, but through a renewed dialogue with a different Chechen leadership.

The fact that all of this can easily be justified, both in terms of international and national law, should not detract from the very deeply held motives and beliefs why Russia is fighting in the first place.

The Role of the MVD Troops and the MoD's Soldiers

It may seem odd that the combined use of MVD and MoD troops should have presented any real legal difficulty in bringing about a military solution to the conflict in the North Caucasus. However, in describing Russia's legal justification for using military force, it has become apparent to a number of commentators that the delineation of function between the two main power ministries directly involved in the fighting still needs greater clarification and that this is an issue which will need rectification sooner rather than later. Already changes have been made to both Russia's National Security Concept and its Military Doctrine, allocating a greater internal role to the country's Armed Forces in helping to solve internal armed conflicts and, no doubt, when the time comes to revise Russia's Law on the State of Emergency, it too will reflect the growing realisation that, in the foreseeable future, the Russian Armed Forces will have a greater policing role than in the past. There is as much threat from the enemy within, as from the enemy at the border.

Even before the present military operation in the Caucasus, there were a number of tentative signs that Russian specialists were becoming ever more aware of the need for a thorough re-examination of the internal role of the Armed Forces in general, and their relationship with Interior Ministry Troops in particular. An early example of this was an article which appeared in July 1998, in which the authors outlined the five main internal areas for the future operational activity of the Armed Forces, these being:

*"1) fight against illegal armed formations; 2) combating civil disorder; 3) peace-support operations; 4) liquidating the consequences of natural disasters; 5) fight against terrorism and organised crime."*²⁵

I will concentrate on examining what the article had to say about the functions of the Armed Forces in two of the five categories listed, namely the fight against illegal armed formations and the fight against terrorism and organised crime. In its analysis the article begins with the simple assertion that

*"Events of the past 10 years allow us to state that one of the main tasks for the power structures of Russia and the other countries of the CIS **will be the struggle against illegal armed formations** ... In the functional*

sphere of the AF [Armed Forces] will be military-political as well as purely military tasks ... on the purely military side of things, the tasks will include the detection, ejection and blockading of illegal armed formations and their subsequent liquidation. Amongst specialised functions will be the so-called 'cleansing' of the territory with the aim of discovering possible ambush and diversionary groups of militants."

The article also produced a list of basic functions concerning the role of the Armed Forces in combating illegal armed formations:

"Conduct of non-traditional military activities (partisan warfare, underground activities, sabotage, organisation of actions to free prisoners); conduct of special operations (intelligence-gathering, diversionary, anti-terrorist, psychological); carrying out the defence of strategically vital objects; patrols, organisation of check points, maintaining curfew regime and counter-intelligence measures, etc."

If all of these were to be put into effect, what then would be the role of the Internal Forces? Not a lot, by the look of things.

In the fight against terrorism and organised crime, the internal role of the Armed Forces is listed as follows:

"conducting intelligence-gathering operations; disarming explosive devices; operations to free hostages; conducting military operations; conducting research etc."

Unfortunately, nothing in the article describes what the authors meant by the phrase "conducting military operations." However, they were keen to emphasise that given the nature of the terrorist threat facing Russia/CIS, it would be very unlikely that the other power ministries would be able to cope without the material assistance of the Armed Forces:

"in essence, today, we are coming into contact with, for us, a completely new type of military operation - large-scale anti-terrorist operations involving elements of combined arms battle, in which units of the MoD, MVD, FSB [Federal Security Service], FPS [Federal Border Guards Service] and others take part."

A more thoughtful piece on the nature of the internal threat facing Russia and how best it could be tackled was published in an issue of *Voyenno-meditsinskiy Zhurnal (Military-Medical Journal)*. The article was written by two colonels in the Army's Medical Service, and amongst other things, analysed the reasons behind the appearance of internal armed conflicts and speculated on the best ways to tackle illegal armed formations; the creation of temporary operational groupings; the experience of the first Chechen War (1994-1996), etc.²⁶

With particular reference to the creation of temporary operational groups - the type used in the present military campaign - the article had the following to say:

"as a rule, the basis of the temporary operational groupings will be units of the MVD Interior Ministry Troops, certain units of the MoD, FPS, FSB, FAPSI [Government Communications Service] and of the other power ministries

under a single command ... On the temporary operational groups may be placed the following tasks:

- *isolation of the region of conflict;*
- *elimination (disarming) of the illegal armed formations;*
- *securing and defending important military objects;*
- *stopping armed clashes and separating opposing factions;*
- *accompanying columns through the conflict zone;*
- *evacuating the population from the regions of military activity;*
- *assistance to the Interior Troops MVD organs and the Border Guards in the fulfilment of their duties.*"²⁷

The article argued that the "organ of administration" for the temporary operational grouping should be formed on the basis

"of the operational headquarters of the Interior Troops" as "the prerogative for solving the task of localising and neutralising internal armed conflicts belongs to the MVD, its Interior Ministry Troops. The use of the Armed Forces in such conflicts is an extreme measure and is carried out on the legal basis of the RF only in the case when federal organs of power and forces of law and order are not in a position to localise and neutralise [the conflict]."

To further support its assertion that the MVD should be given priority in solving internal armed conflicts, the article somewhat untactfully reminded its readership that

"in the period of armed conflict in the Chechen Republic [1994-1996], the administration of the group of Federal forces was placed on the command and staff of North Caucasus Military District, in so far as the task for localising and neutralising the conflict was placed on the Armed Forces."

In short, in internal armed conflicts, primacy should be given to the MVD and the Armed Forces should act in a supportive role, only to be used in an exclusive role when MVD is not up to the job.

Within a few weeks of the beginning of the present campaign to drive the "illegal armed formations" from the territory of Dagestan, however, it became apparent that while the MVD might have had the constitutional firepower to prosecute the conflict, it would be the Armed Forces who would provide the necessary punch to drive "the militants" out. In the words of one expert,

*"they [the MVD units] have mastered the organisation behind the creation of special zones, patrols, establishing check-points, the use of manoeuvrable fire-power groups, helicopters for fire support, etc. However, the fundamental, more accurately to say, the distinguishing feature of these measures is their passiveness, their defensive nature. Therefore, they cannot cause a heavy enough defeat of the criminals and bring them to final defeat."*²⁸

Emphasising also that, despite their rich experience in operating in the North Caucasus over the years, the Interior Ministry Troops were no match for the well-

trained “bandit formations” (“more like regular units”), the conclusion was inevitable:

“to successfully fight against such an enemy and to avoid large and unnecessary losses demands trained units of AF [Armed Forces], with the necessary equipment and military technology.”²⁹

However, despite the inevitability of the conclusion, the author was under no illusion concerning the legal difficulties of using the Army in such a situation, arguing that the law was a lot clearer in relation to the role of the Army in helping the peasants gather in the harvest, than using the Army to defend the territorial integrity of the state from internal attack.³⁰

This idea that the MVD to all intents and purposes was less able to cope with the more active stage of combat operations in the Caucasus was repeated in another article, published well into the present military campaign. Experience, as much as anything else, dictated how the course of military operations should continue:

“the peculiarity of the counter-terrorist operation is the transition from active defence to active offensive operations. Such operations have to be conducted according to one plan and one concept, under one command...First of all, the conduct of a large-scale operation on one’s own territory demands the use of significant contingents (forces) of Interior Troops MVD, as well as specialised units of FPS, FSB, FAPSI, MChS [Ministry of Emergency Situations] and others. However, it would appear that they cannot solve the allocated tasks by themselves. They require the strength and means of the Ministry of Defence. Secondly, against the background of the reform of the Armed Forces, the country does not have a sufficient number of properly equipped military capable units. Therefore, in order to create the Federal Joint Grouping of Forces required the use of military capable units from all services of the Armed Forces, as well as from units of the other power ministries.”³¹

In other words, in order for Russia to successfully undertake the campaign against the “illegal armed formations”, “active offensive” steps had to be undertaken, something which the MVD was not able to cope with, hence the use of the Armed Forces. However, given the relatively poor state of the Russian Armed Forces, in their turn, they too would not be able to cope with the full range of tasks presented by the situation in the Caucasus, therefore other units from the power ministries – as well as the MVD Interior Troops - had to be used in the establishment and functioning of the Federal Joint Grouping of Forces. So, is this a question of the Army assuming more of an internal role, or the other power ministries assuming a more active, offensive role in the future?

Russia’s adoption of both a new National Security Concept and a new Military Doctrine have not only reaffirmed the internal role of the Armed Forces, but also redefined the internal threat to the country’s stability, in such a way as to give greater prominence to the role of the Armed Forces in helping to solve future internal armed conflicts. In a sense, what seems to be happening is that practical experience – gained through the fighting in Chechnya – and the very real internal threats to the Russian Federation have come together to force the leadership to realise the legal gaps in using its Armed Forces and the legal interaction between them and the Interior Ministry Troops. The MVD, more police than Army, has grown nervous that given the shifting nature of the conflict, Federal forces may have

begun to operate outwith “the legal field”, hence the calls (made by the MVD, not by the Army), for the establishment of a state of emergency, turned down by Putin early in the campaign. For its part, the Army has a definable enemy and a definite task to perform and, as long as it feels that it is involved in “a good fight”, will be less concerned about constitutional legalities surrounding the whole operation. The appointment of Colonel-General V Tikhomirov, a man steeped in the military, who had never previously put on the uniform of the MVD, to the post of C-in-C of the Interior Ministry Troops on 22 January 2000, rendering easier the military’s control of the Interior Ministry Troops, was a sign that the military was very much in charge of the “counter-terrorist operation” in Chechnya.³² There is a curious paradox at work here: a growing trend towards an increasing “internalisation” of the role of the Armed Forces, at the expense of the MVD whose *raison d’être* is internal order, a process underlined by the amendments to both the country’s National Security Concept and the Military Doctrine and one which looks set to continue in the future.

The Overall Significance of the Operation to Russia

The well-known Russian historian, R Medvedev, writing about why Russia is currently fighting in the south, wrote that:

*“from the soldier to the general, the whole army knows, or at least feels and senses, that on this very military operation the fate of Russia now depends.”*³³

In other words, leaving the legal issue aside, there is a much deeper feeling at work here, which cannot simply be explained by references to the Constitution, or legal statutes and laws. The fact is that Russia *feels* that it is right in what it is doing, simply because it feels that *it is fighting for its very existence as a multi-national state*:

*“there are deeper reasons and motives for the conflict, the roots of which go far back into the history of all of Russia and the entire Caucasus, as well as including the Northern Caucasus and Chechnya, over many decades, if not even centuries. In getting closer to the truth, one could say that the Russian Army today is defending the unity of the Russian Federation, as a state, this Federation not only unites the Russian people, but all other peoples which inhabit this territory.”*³⁴

There is a hint here that if Chechnya won its independence through force of arms, or if Russia was to allow the establishment of a “no-go” zone in the Caucasus, then the very existence of the Federation itself as a multi-ethnic, multi-national state would be in serious doubt and that, which had been built up over centuries, would descend into a multi-ethnic, warring mess, similar to the situation in the former Yugoslavia over the past decade.

One of the most comprehensive Russian statements published concerning the reasons behind Russia’s fight in the south was penned by the present C-in-C of Interior Ministry Troops, Colonel-General V Tikhomirov (although when the article was published in the Russian Ministry of Defence’s newspaper, *Krasnaya Zvezda*, he was then temporary acting Commander of Urals Military District). The very title of the article is a give-away as regards its content: “The struggle for the Caucasus is the struggle for Russia.”³⁵ In the article he examined the basic reasons for Russia’s

determination to win the military operation in the Caucasus. Initially, he put forward a number of points as to why the region as a whole is important to Russia:

“In the 20th century, in connection with the energy resources of the Caspian Sea ... and the revival of the Great Silk Road, the role of the Caucasus has grown to key position in Eurasia. The desire to gain access to the real and potential riches of this region and attempts to establish control over the transport network have made international competition extremely fierce.”³⁶

As in the past, Russia has found itself at war with a number of other powers in the region:

“During the past 300 years, Russia has on more than one occasion defended the Caucasus in military confrontation with Turkey, Iran, Great Britain, France and Germany. With the collapse of the USSR came a reduction of Russia’s military presence in the Black Sea-Caspian region, a sharp fall in its economic and political influence. The geostrategic vacuum which formed was quickly filled by many competitors and enemies. Under these conditions, any attempt by Russia to restore its influence in the Caucasus was met with severe opposition.”³⁷

However, in his view, today’s conflict has an added twist to it:

“The severe opposition [to Russia attempting to restore its influence in the region] is borne out even more by the current counter-terrorist operation in Chechnya and Dagestan. Its successful conclusion was not written into the plans of those who see Russia as the biggest obstacle in the region to consolidate their own geostrategic interests ... Permanent instability in the North Caucasus would smoothly fit into the plans for the creation of the new world order. First and foremost, the constant ebb and flow of ethnic conflict would block the realisation of the plans for transporting the energy resources of the Caspian over the territory of Russia.”³⁸

Thus, within the opening three paragraphs of his article, Tikhomirov has outlined why Russia is fighting in the region: Russia is there by dint of history, for sound economic reasons and is attempting to maintain its own geostrategic presence there, much to the discomfort of the plans and ambitions of others.

Tikhomirov continues:

“In this light, the aims of those countries who are assisting the Chechen extremists in preparing the militants, in supplying them with money and food, in allowing their territory [to be used] as a transit point for mercenaries and weapons to be sent to Chechnya, become clearer. The escalation of tension in the North Caucasus creates a threat of expanding the zone of instability from the Urals to the Volga with the future [prospect]...of breaking Russia up as a unified state and creating on its territory a confederation of European, Siberian and Far Eastern republics.”

In conclusion, Tikhomirov wrote:

“Thus, it is vitally important for Russia that it successfully completes the military operation in the Caucasus. If it does not, then the people’s faith in the might of the army, in the ability of the Russian state to solve conflict

situations, defend its national interests, could be finally undermined once and for all. Irreversible and decisive will be the languorous destruction of Russia's territorial integrity. In all honesty, today our country has a chance to show its capability to be a great Eurasian power, to sow in the Russian people a confidence and strength of spirit, strengthen its belief in the historic destiny of Russia, as a guarantor of stability on the continent and to enter the third millennium as never before certain in its future."

Although Tikhomirov was obviously writing for a readership already convinced that Russia was fighting a good fight, nevertheless it would be wrong to dismiss these extracts out of hand. Most Russians would probably agree with the basic point that Russia is fighting in the Caucasus for something a lot deeper than simply claiming back a lost territory. In fighting in the south, Russia not only hopes to restore constitutional order and, of course, reassert its territorial integrity in the region, but also to send a warning shot across the bows of anyone who may have thought that Russia would quietly slip away from the region, like a thief in the night. As Russia has been a key player in the area, for better or worse, for over 300 years, it is not going to quietly slip away. It is ready to defend its interests in the region by military force, if needs be. Both Tikhomirov and Medvedev are right to point out that there is a much bigger picture at work here – in his address to the PACE Assembly meeting in Strasbourg on 27 January 2000, Russia's Foreign Minister told the Assembly that *"Russia is essentially protecting the borders of all Europe from a barbaric invasion (emphasis mine -SJM) of international terrorism"*³⁹ – and that it is, as they see it, the very fate of Russia itself. This seems to be an underlying theme running through most Russian statements on the subject: it is not simply a question of bringing constitutional order back to an errant part of the Russian Federation, this is a direct challenge to the Russian Federation itself and the Federation is not going to allow itself to disintegrate like the USSR or, for that matter, the former Yugoslavia.

ENDNOTES

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