Preemption by Armed Force of Trans-boundary Terrorist Threats: The Russian Perspective

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A zealous legalist would argue that Russia, or rather its predecessor the Soviet Union, has repeatedly demonstrated its inclination to use armed force in the absence of an actual attack against itself. Precedents that would likely be cited include the “Winter War” of 1939–40 against Finland, and the interventions in Hungary in 1956 and in Czechoslovakia in 1968. Some might add the deployment to Afghanistan in 1979 or, in paradoxical contradistinction to those examples, the Wehrmacht attack against the USSR which was launched in 1941, at least as claimed by Nazi leaders and some contemporary historians, to forestall an imminent Red Army assault.

Whatever the merits of those alleged precedents, in its declaratory policy and formal acts, the Soviet Union abided by a rather narrow, or restrictive, interpretation of the principle of non-use of force. It acceded to the Treaty for the Renunciation of War (the Kellogg-Briand Pact) of 1928¹ and was a party to the Convention for the Definition of Aggression of 1933.² Although the latter might seem a less classical source, Justice Jackson in his opening address for the United States at the

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Nuremberg Military Tribunal described it as “one of the most authoritative sources of international law on this subject.”

In a conspicuous departure from the Soviet-era official and doctrinally strict, i.e., narrow, interpretation of the right of self-defense, Russian officials have, since 2002, increasingly been indicating that it might be permissible to use armed force against extraterritorial sources of imminent threat to Russian security, even in the absence of an actual armed attack originating from those sources. Those statements, made by politicians, senior military commanders and ultimately by the president, were enthusiastically endorsed by a handful of Russian legal academics.

The qualifier that usually accompanies the term “use of force” is “preventive,” and Russian official statements do not seem to be sensitive to nuances of meaning between that and other adjectives, such as “preemptive,” or “anticipatory,” or “interceptive.” As to the location and nature of the sources of those threats and the targets of the preventive use of force, while earlier declarations announced an intention to engage them globally, their personality notwithstanding, eventually the declarations came to express a readiness to deal with sources of terrorist threats in the space adjacent to the Russian territory.

The earlier remarks that caught international attention had been made in July and August 2002 by Defense Minister Sergey Ivanov and other military commanders, and several ranking parliamentarians. These statements, incidentally, were made soon after President George W. Bush broached preemption in his commencement address at the US Military Academy.

Those statements were prompted by the events that occurred on the Russian-Georgian border. Russia claimed that Chechen insurgents found refuge in the Pankissi Gorge in Georgia, an area where Georgian law and order was nonexistent. The area was convenient for insurgent rest and recreation, and to regroup and reenter Russian territory. Those allegations had been vehemently denied by Georgian authorities, although apparently the US “Train and Equip” mission to Georgia had, as one of its principal objectives, the establishment of viable indigenous law-enforcement units that could regain control over the mountainous and hard-to-reach Pankissi Gorge area. Russian politicians asserted that even though Georgian authorities could not be implicated beyond doubt in providing shelter to insurgents, they definitely lacked the capability and determination to deny access to and freedom of insurgent activity in the area.

President Putin in his statement on September 11, 2002 commemorating the victims of the 9/11 terrorist attack against the United States looked for legal support for the Russian position. He said that “should the Georgian leadership be unable to secure the area adjacent to the border and continue to ignore the UN SC Resolution 1373 of 28 September, 2001 . . . , we shall reserve the right to act in
accordance with Article 51 of the UN Charter that entitles every member-State of the United Nations to enjoy an inherent right to individual or collective self-defense. President Putin went further and instructed the uniformed services to draft engagement plans “to pursue terrorists and destroy their bases that have been reliably located and identified.”

That statement by President Putin prompted an angry response from the Council of Europe whose Parliamentary Assembly insisted that “Article 51 of the UN Charter and Resolution 1269 (1999) of the UN Security Council, as well as Resolution 1368 (2001) of the UN Security Council of 12 September do not authorize the use of military force by the Russian Federation or any other State on Georgian territory.” It further called on the Russian authorities to refrain from “launching any military action on Georgian territory as expressed by the President of the Russian Federation on 11 September 2002.”

Not only was the Parliamentary Assembly’s declaration rather unfair to President Putin, it was also inaccurate. The Russian president looked to Security Council Resolution 1373 for authority, and that reference was conspicuously ignored by the Council of Europe. It should be recalled that Resolution 1373 specifically urged UN member-States to deny terrorists movement across borders and to ensure that refugee status is not granted to persons suspected of terrorist activity. Russia was concerned that Georgia was unable or unwilling to abide by those and other provisions of the resolution. Additionally, President Putin had not ordered that immediate military action be undertaken on the territory of a sovereign State. Rather, he ordered that contingency plans be made, conditional on Georgia’s capacity to effectively control its own territory.

Putin’s statement may also be interpreted as an implicit extrapolation, whether conscious or not, of the right of hot pursuit from the realm of the law of the sea to trans-boundary law-enforcement. His phrase about “pursuit of terrorists” obviously alluded to situations when culprits would be pursued and apprehended, or accounted for, either on the Russian territory, or, pursuit having commenced on the Russian territory and continued across the border, on the territory of an adjacent State. It is also worth noting that the Russian president construed Article 51 of the UN Charter as entitling a State to the right of self-defense against an armed attack by actors other than a State.

It is true that Article 51 does not unequivocally refer to a State as a perpetrator of an attack; however, if one were to accept that “Article 2 (4) explains what is prohibited, Article 51 what is permitted,” and Article 2 (4) refers to relations between members of the United Nations, that is, States, then Article 51 should apply to States, too. It should be recalled that in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the
International Court of Justice uttered a dictum, albeit argumentative, that “Article 51 of the Charter recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State.”17

While suspected terrorist bases in certain neighboring countries and prospective targeting of those bases have been a recurring theme in remarks by Russian senior officials since 2002, most often they have not been country-specific.18

In most instances, the statements describing situations that would justify the employment of the armed forces beyond Russian territory to preempt an attack are related to a terrorist threat. Occasional references to threats to lives and security of large numbers of Russian citizens or a “Russian-speaking population” imply military support for their evacuation from a zone of an armed conflict or a humanitarian disaster. Even fewer statements are also made that it is admissible to use force preemptively to meet the demands of unspecified “Russian interests” or of its alliance commitments.

The declared targets of forceful action are individual terrorists, organized groups of terrorists and their bases. The means to be used in a preemptive strike against those targets are almost unrestricted, nuclear arms being the only clear exception. According to the defense minister, such a strike would not amount to full-fledged combat action, but would be delivered “to avert a single terrorist threat.”

As to the geography of preemptive action, it is realistic to look at areas adjacent to Russian territory. An utterance by the chief of the General Staff that those strikes could be delivered “anywhere on the globe”19 appeared inconsistent with the statements of the commander-in-chief addressing “interdiction of organized terrorist groups attempting to penetrate our territory” and “pursuing and engaging terrorists.”20

Official declarations always underscored that Russian forces will target terrorists and their infrastructure, rather than persons and institutions of a sovereign State on whose territory the former found refuge. Whether done consciously or not, this seems to be an attempt to stave off prospective charges of committing an act of aggression. It is worth noting that political and military leaders never miss a chance to underscore that armed force would be used in strict compliance with the constitution, statutes and international law.

So far those declarations have not comprised a comprehensive official doctrine explaining under what circumstances and according to what criteria Russia would be inclined to use a military tool to meet a ripening threat. The constitution, however, addresses “an imminent threat of aggression”21 against the Russian Federation (Article 87.2), in which case the president shall introduce martial law by a decree. A decree on the introduction of martial law and a decree on the introduction of the
state of emergency are the only acts by the president that require approval by the Council of Federation; all other decrees remain his unilateral prerogative.

The federal constitutional law “On Martial Law” describes the imminent threat of aggression as “activities by a foreign State (States) committed in violation of the UN Charter and generally recognized principles and norms of international law that immediately indicate that an act of aggression against the Russian Federation is being prepared, including the declaration of war against the Russian Federation” (Article 3.3). The legal gap is further filled by a recent federal law “On Counteracting Terrorism” of 2006, as amended, which supersedes an earlier federal law “On Combating Terrorism” of 1998, as amended.

The new law explicitly provides for the use of armed force against targets outside Russian territory, on the high seas and, presumably, in international airspace. In this context, it does not speak about preemption; however, the broad range of tasks indicates that military power might be required to deal with threats that are not necessarily imminent.

Terrorism is defined in very broad terms as “an ideology of violence and practical impact on the decision making by bodies of State power, bodies of local self-government and international organizations, by way of intimidation of population and/or by other illegal violent actions” (Article 3(1)). The law is more specific when it further defines “terrorist activity” as comprising such diverse elements as planning, preparation, funding and perpetration of a terrorist act; incitement to commit a terrorist act; organizing a terrorist group; recruiting, arming and training of terrorists; complicity in planning and committing a terrorist act; and propagandizing of terrorist ideology and calls to engage in it. Finally, a terrorist act is defined as “explosion, arson or other acts intimidating population and putting human life at risk of death, leading to substantial loss of property, or to other grave consequences, with an intent to exert impact on the decision making by bodies of State power or international organizations, as well as a threat to commit those acts with same purposes” (Article 2(3), as amended). It is against those acts, or perpetrators thereof, or means employed to commit them that the armed forces shall be used under the new law.

The law is conspicuously vague as to the outer limits of the airspace where the military may be ordered to engage a terrorist threat. It does not speak about international airspace. Moreover, it refers to an aircraft “not responding to radio messages from ground controllers to cease violating the rules of navigation in the airspace of the Russian Federation, or to radio messages and visual signals being transmitted by the aircraft of the Russian Armed Forces” (Article 7(2)). Unaddressed is the question of whether that provision could come into conflict with Article 3 bis of the Chicago Convention of 1944.
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Turning to sea space, the law refers to internal waters and the territorial sea, as well as to the continental shelf and to “national maritime navigation.” Obviously, the continental shelf may extend as far as 350 nautical miles from the baselines. As to “national maritime navigation,” it is not immediately clear whether the law implies navigation within territorial limits or extends to ships flying the Russian flag anywhere on the seas, with a possible exception of those chartered by foreign entities.

There is no need, however, to read between the lines of the law to deduce grounds for the use of the Russian military against terrorist targets beyond national borders. Article 10 specifically addresses the issue of trans-boundary deployment of units, as well as engagement of targets outside Russian territory without crossing the border. Remarkably, the law never mentions foreign territory as an area of deployment; rather, the phrase that is used in the lead-in paragraph of Article 10.1 is “interdiction of international terrorist activity beyond territorial bounds of the Russian Federation.”

As to internal procedures, the order to fire at terrorists from Russian territory will be given by the president unilaterally in the exercise of his constitutional powers as the supreme commander-in-chief. To send troops across the border, the president would first need to obtain consent from the Council of Federation. While the original version of the law required that the president submit information regarding the proposed strength of the unit, the areas of deployment and its duration, that provision was deleted by the Federal Law of July 27, 2006.

The law addresses “the interdiction of terrorist activity,” which implies preemption due to the broad range of elements of “terrorist activity” as they are defined by the law. The law makes a general reference to international treaties as sources of authority, along with Russian legislation, for trans-boundary employment of the armed forces; however, soon after the adoption of the federal law “On Counteracting Terrorism,” Defense Minister Sergey Ivanov stated that the law by itself provides sufficient grounds for unilateral and preemptive use of force against terrorist targets on foreign soil.

This author is not qualified to appraise the true capacity of the Russian military to engage terrorists who threaten Russian citizens and assets abroad. Unfortunately, however, the recent drama with Russian embassy personnel in Baghdad sadly proved that neither Russia nor local authorities, not even the occupying powers, were able to control the hostage crisis or save lives of internationally protected persons.

The law “On Counteracting Terrorism” lists several principles, some of which would sound similar to ones found in the established international law. For example, consider the principle of “proportionality of measures undertaken to counter
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terrorism to the level of terrorist threat” (Article 2 (2)). One can immediately trace the origins of that principle back to the 1837 Caroline incident, in which the Caroline, a vessel used to supply Canadian rebels fighting British rule, was captured, set ablaze and sent over Niagara Falls. One US citizen perished.

Several Soviet, and now Russian, students of international law have at least acknowledged the Caroline doctrine, and some have given it a careful examination. While it has not been widely accepted in Russia, some of the official statements regarding the preemptive use of force could be construed as falling within the purview of the Caroline doctrine, which, if properly adapted, could add a degree of legitimacy to current approaches.

Traditionally, the most often quoted source for the Caroline doctrine has been a paragraph in the diplomatic note from Daniel Webster, the US secretary of state, to Henry Fox, the British minister in Washington, DC, dispatched on April 24, 1841. It is from this note that current international law derives the principles of necessity and proportionality. But we might discover no less substantive statements on questions of law in other parts of Webster’s letter, as well as in a later note from Lord Ashburton, the British minister plenipotentiary on special mission, to Secretary Webster, and in the address of President Tyler to the US Congress in the aftermath of the Caroline case.

If the Russian government were to contemplate putting into effect provisions of the federal law “On Counteracting Terrorism” that regulate deployment of Russian armed forces outside Russian territory, it might consider several decision-making guidelines on the preemptive use of force—first and foremost, necessity and proportionality. Recourse might be had to Lord Ashburton’s allusion to circumstances under which the principle of “inviolable character of the territory of independent nations” could be suspended. According to the British minister, “it must be so for the shortest possible period, during the continuance of an admitted overruling necessity, and strictly confined within the narrowest limits imposed by that necessity.” That limitation could be developed further to include severe restrictions on the choice of target, which should only be the immediate source of the threat, and that that source ought to be in the space adjacent to the State’s own territory. The decision should also include consideration of the scale of the threat and the expected gravity of the consequences of inaction.

A decisive argument in favor of a preemptive use of force would be the explicit consent to or request of a State on whose territory the source of the threat is located because that State is not capable of coping with it. It might be worthwhile to consider an attack if a neighboring State, on whose soil or under whose flag on the high seas or in international airspace the threat is maturing, is expressly unwilling to control it.
A unilateral resort to force might have to be considered if the imminence of threat does not leave time to refer the issue to the United Nations Security Council or to a regional arrangement, or if there is a continual record of passivity of those institutions in similar situations, but in any case the Security Council will have to be notified to comply with requirements of Article 51 ("Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council...") of the UN Charter. That means that the existence of a threat, its gravity and imminence will have to be proven beyond reasonable doubt, and that, in turn, would necessitate the disclosure of sources and means of collection of information, bearing in mind that what one party would deem to be waterproof evidence justifying a preemptive strike, could be strongly rejected by another party. Resort to armed force would also be proof that other means, including diplomatic and law-enforcement, turned out to be ineffective, or may have been used unskillfully.

A State using armed force to divert a seemingly imminent attack shall be expected to bear full responsibility for injuries and damages inflicted upon innocent persons and their property. A precursor for those injuries might well be inaccurate information about the exact location of a source of terrorist threat and its preparedness for an attack.

Finally, the location and duration of preemptive action must be clearly defined to the personnel involved in it, who should be given precise orders and rules of engagement. No action may commence without reliable and executable plans of evacuation.

Those guidelines are general and some are self-evident. They would need to be made specific for a particular contingency.

Russia is not the only State that declared its intention to use, as an extreme means, armed force to eliminate an imminent threat of a massive terrorist attack and, should dire need arise, project its force beyond its borders. Of course, those making such statements should make sure that resolute declarations are supported by adequate resources and the strong will to use them. Otherwise those declarations are likely to be counterproductive and self-harming.

There is a question that could bother a zealous legalist: as more nations, some of them bearing enormous might, submit that they would use armed force in self-defense not only to react to an actual attack, but also to preempt an imminent assault, or even prevent it from materializing in the future, would it not give impetus to claims that a customary rule of international law has already been conceived?
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Notes

3. 2 Trial of the Major War Criminals Before the International Military Tribunal: Nuremberg, 14 November 1945 to 1 October 1946, at 98, 148.
5. The latter term may be attributed to Yoram Dinstein. See Yoram Dinstein, War, Aggression and Self Defence 190–92 (4th ed. 2005).
8. Information on the Georgia Train and Equip Program may be found on the website of the US embassy in Georgia at http://georgia.usembassy.gov/gtep.html.
10. Id.
12. Id.
13. In that Resolution (U.N. Doc. S/RES/1373 (Sept. 28, 2001)), the Security Council decided that “all States shall prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents” (para. 2g), and called upon all States “to ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists” (para. 5g).

1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be
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within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.

2. The right of hot pursuit shall apply mutatis mutandis to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.

3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State.

4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.

5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.


15. In an attempt to foresee and deal with the consequences of possible intrusions of foreign law enforcement officers, members of the Commonwealth of Independent States negotiated and signed on June 4, 1999 the Treaty on the Procedures for the Stay of, and Interaction Between, Law-Enforcement Officers on the Territories of States-Members of the Commonwealth of Independent States. While such stays, as a general rule stated in the opening two sentences of Article 6(1), should have the consent of the receiving State, the remaining provisions of that paragraph allowed for restricted non-consensual penetration of a foreign territory in “hot pursuit” of persons who committed criminal offenses on the territory of a party engaged in such pursuit. The treaty allowed for such penetration if timely and proper notification and a request for permission was impracticable. While effective February 6, 2001, the treaty was not ratified by Russia or Georgia. For official publication of the treaty, see SODRUZHESTVO (COMMONWEALTH), THE INFORMATION BULLETIN OF THE COUNCIL OF HEADS OF STATE AND COUNCIL OF HEADS OF GOVERNMENT OF THE CIS, No. (32), at 27–33. On December 22, 2006 the Chairman of the Government of the Russian Federation signed an executive order instructing the Ministry of Foreign Affairs to notify the depository of the treaty of Russia’s “intention not to become a Party” thereof. Sobraniye Zakonodatel’stva Rossii (The Collection of Laws of the Russian Federation) No. 52 (Part III), art. 5640 (Dec. 2006) [hereinafter SZRF].


18. For a more extensive discussion of statements made by senior Russian officials and respective citations, see Bakhtyar Tuzmukhamedov, Uprezhdnyuschee Primenenie Sily: Vozmozhnye Kriterii Dopustimost (Pre-Emptive Use of Force: Conceivable Criteria of Permissibility), RUSSIAN YEARBOOK OF INTERNATIONAL LAW 2005, at 47 (2006).
19. Supra note 6.
20. Supra note 9.
21. The Russian Constitution and statutes apply the term "aggression" at variance with its use in the UN Charter and with the definition of aggression within the meaning of UN General Assembly Resolution 3314. Under the latter, the act of aggression is to be established by the UN Security Council, rather than by a national authority, and until the Council has acted, a trans-boundary use of armed force remains an armed attack. G.A. Res. 3314, U.N. GAOR, 29th Sess., 2319th plen. mtg., U.N. Doc. A/RES/3314 (Dec. 14, 1974). President Putin repeatedly referred to incursions of insurgents from Chechnya, a constituent entity of the Russian Federation, into Dagestan, another such entity, as "aggression." See, e.g., the Russian official version of his interview on Larry King Live, Sept. 8, 2000 at http://president.kremlin.ru/appears/2000/09/08/0000_type63579_28866.shtml. His words, "direct aggression," were translated into English as "armed direct attack," in the transcript of the show at http://transcripts.cnn.com/TRANSCRIPTS/0009/08/lk1.00.html. However, the term "aggression" applies to a trans-boundary armed attack, rather than to a use of armed force confined to national borders, and it should not be attributed to non-State actors unaffiliated with governments; otherwise, such attribution might offer extra weight to such actors' claims to official status. President Putin occasionally demonstrates awareness that the way he applies the term "aggression" may not be proper in the legal sense. In the aftermath of the 1999 insurgent attack into Dagestan, he spoke about the "fearless resistance to aggression" of the Dagestani citizenry. But, according to Putin, "It should be said that if we abstract ourselves from precise legal terms, that indeed was an aggression committed by international terrorists." See http://president.kremlin.ru/appears/2000/12/29/0000_type63376_type63378_5951.shtml.
22. SZ RF No. 2, art. 375 (Feb. 2002).
23. SZ RF No. 11, art. 1146 (Mar. 13, 2006).
25. In the absence of a universally recognized conventional definition of terrorism, the UN Security Council suggested a legal ersatz definition according to which terrorism may be described as criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.
26. The amendment, known as Article 3 bis, was adopted on May 10, 1984. It was prompted by the downing nine months earlier by Soviet Air Defense of the Korean Air Lines Boeing 747-200 Flight KAL 007. It provides as follows:
   a) The contracting States recognize that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations.
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b) The contracting States recognize that every State, in the exercise of its sovereignty, is entitled to require the landing at some designated airport of a civil aircraft flying above its territory without authority or if there are reasonable grounds to conclude that it is being used for any purpose inconsistent with the aims of this Convention; it may also give such aircraft any other instructions to put an end to such violations. For this purpose, the contracting States may resort to any appropriate means consistent with relevant rules of international law, including the relevant provisions of this Convention, specifically paragraph a) of this Article. Each contracting State agrees to publish its regulations in force regarding the interception of civil aircraft.

c) Every civil aircraft shall comply with an order given in conformity with paragraph b) of this Article. To this end each contracting State shall establish all necessary provisions in its national laws or regulations to make such compliance mandatory for any civil aircraft registered in that State or operated by an operator who has his principal place of business or permanent residence in that State. Each contracting State shall make any violation of such applicable laws or regulations punishable by severe penalties and shall submit the case to its competent authorities in accordance with its laws or regulations.

d) Each contracting State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State or operated by an operator who has his principal place of business or permanent residence in that State for any purpose inconsistent with the aims of this Convention. This provision shall not affect paragraph a) or derogate from paragraphs b) and c) of this Article.


27. The latter is described as “employment of armaments from the territory of the Russian Federation against terrorists and (or) their bases beyond” the territory of the Russian Federation (Art. 10.1 (1)).

28. Article 102.1(d) of the Russian Constitution delegates to the Council of Federation the power of “making decisions on the possibility of the use of the Armed Forces of the Russian Federation outside the territory of the Russian Federation.” Until the adoption of the federal law “On Countering Terrorism,” that provision had been invoked to authorize the deployment of Russian units to international peacekeeping operations. For an in-depth discussion of the distribution of national defense powers in Russia, see Bahktiyar Tuzmukhamedov, Russian Federation: the pendulum of powers and accountability, in DEMOCRATIC ACCOUNTABILITY AND THE USE OF FORCE IN INTERNATIONAL LAW 257 (Charlotte Ku & Harold K. Jacobson eds., 2002).

29. SZ RF No. 31 (Part I), art. 3452 (July 29, 2006).


31. Four Russian embassy personnel were kidnapped in Baghdad on June 3, 2006 from a Russian embassy vehicle. A fifth was killed during the attack on the vehicle. On June 25, a group linked to al-Quida reported that it executed the four diplomats. See Al-Quida group claims Russian deaths, UPI, June 25, 2006, available at http://www.arcamax.com/cgi-bin/news/newsheadlines/releases/8-88252-152190?review=4.

32. Most notable are DAVID LEVIN, MEZHIDUNARODNOYE PRAVO I SOKHRANENIYE MIRA (INTERNATIONAL LAW AND THE PRESERVATION OF PEACE) 148 (1971); EDUARD SKAKUNOV, SAMOOBORONA V MEZHIDUNARODNOM PRAVE (SELF-DEFENSE IN INTERNATIONAL LAW) 21, 57–58, 80–81 (1973). More recent references may be found in Vladimir Kotlyar, Pravo na


34. The letters exchanged between Webster, Fox and Ashburton and an extract from President Tyler's message to the Congress are also available at http://www.yale.edu/lawweb/avalon/diplomacy/britain/br-1842d.htm.

35. Letter from Lord Ashburton, Minister Plenipotentiary on Special Mission, to Daniel Webster, US Secretary of State (July 28, 1842), in 4 TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES OF AMERICA, supra note 33, at 451.

36. Id.