

**RUSSIAN DEFENSE LEGISLATION AND RUSSIAN DEMOCRACY**

**Stephen J. Blank**

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## FOREWORD

As recent events demonstrate, Russia's political system has yet to stabilize. This is particularly the case with civil-military relations for, as the course of the Chechnya invasion reveals, control by the government over the military is erratic and the military is all too often politicized. In this vein, legislation on civilian control of the military and on peacemaking operations in Russia and the Commonwealth of Independent States (CIS) is a particularly important barometer of the course of Russia's democratization and stabilization.

In this study, Dr. Stephen Blank dissects that legislation and finds that it reflects and contributes to the drift away from democratic rule towards a form of presidential power that is unaccountable to either legal or parliamentary institutions. Furthermore, these laws will also politicize the military still further and promote the use of Russian armed forces in so-called peacemaking operations that actually contribute to Moscow's openly proclaimed program to reintegrate the CIS around it. Therefore, these draft laws should arouse considerable concern among those charged with, or interested in, monitoring Russia's troubled evolution to democracy.

RICHARD H. WITHERSPOON  
Colonel, U.S. Army  
Director, Strategic Studies  
Institute

## SUMMARY

Since the Russian Federation is the product of the coups of August 1991 and September-October 1993, control over the military is crucial for its survival. Many analysts have looked at issues of civilian control over the military in Russia primarily from the military's side. For them the main question then becomes the loyalty of the armed forces to the government. This monograph takes a different tack and examines the question from the vantage point of state policy towards the military. Although that policy is evolving over time, recent draft laws on defense and peacemaking indicate the Yeltsin Administration's intention to formalize a particular type of relationship with the various types of armed forces in Russia: army, navy, air forces, Ministry of Interior (MVD) forces (whose function is internal policing and pacification of territories inside the Russian Federation), Border Troops (whose function is to guard the old Soviet borders against military operations, e.g., from Afghanistan into Tadjikistan), etc.

Therefore this essay analyzes in detail the provisions of these draft laws that seek to regulate and formalize the manner in which the state undertakes different kinds of peace operations and the general structure and hierarchy of the country's defense system. These laws also should provide for the pattern of the separation and distribution of powers between the executive and legislative branches with regard to military issues. The conclusions emerging from the body of these draft laws are disquieting.

Essentially, these laws reserve much, if not all discretion to the President and his personal office and remove both the President and the Ministry of Defense from effective, democratic, parliamentary accountability, scrutiny, and control. The Draft Law on Peacemaking allows Yeltsin to start peace operations at home or abroad without consulting either house of Parliament and to obtain funding and authorization for deployment of troops without Parliament, yet does not require him to obtain the approval of the UN for such actions outside Russia.

At home the war in Chechnya that began without any notification of Parliament (even in violation of Russia's own Federation Law and the existing Law on Defense) similarly betrays

an indifference to the rule of law and control over military operations that is very disturbing. Especially in view of the possibility for "mission creep" to affect so-called peace operations that then become protracted campaigns, it is all too likely that Russia could blunder into a long-term war without any parliamentary examination of or control over those events.

The Draft Law on Defense shares the same problems by exempting Yeltsin from active parliamentary scrutiny over defense policy. For instance, there are loopholes in this law that suggest Yeltsin can commit forces to preventive war and even to a launch on warning posture without first consulting with Parliament. Similarly there are references to mobilization and to conscription that evoke the spirit of the old Soviet military economy and military manpower system which held the Soviet Union's economy and manpower in a permanently mobilized readiness for war.

Likewise, this law contemplates a reorganization of the defense establishment that goes a long way towards further politicization of the armed forces under Yeltsin. There are implications in this law and in recently announced reform plans that the Ministry of Defense can or will be led by a civilian and that its functions will be confined to raising, training, and supplying troops. Operational control will then devolve on the General Staff, whose Chief will be directly accountable to Yeltsin and undoubtedly chosen for his loyalty. But this reorganization, if it occurs, will not strengthen parliamentary control over the military, which will be effective only under Yeltsin's control.

As a result, these laws contribute to the broader trend in Russian politics of 1993-95 that effectively places the President and his agents above the law and beyond legal or parliamentary accountability. The draft laws considered here are part of a broader trend towards what scholars call presidentialism, a system denoting a President who is virtually unencumbered by the division of and separation of powers and by a system of checks and balances. Accordingly, Russian legislation has empowered Yeltsin to centralize numerous programs and policies in his own office, not that of the regular government. These decrees allow him to combine executive and legislative power and control all governmental activity, e.g., all state spending, without

referring to the Parliament. Recent laws also empower the intelligence services to reunite foreign and domestic intelligence and plant informers in government offices, just as the KGB did.

In short, these draft laws on defense and peacemaking are part of the broader stream of decrees, laws, and legislation that are pushing Russia away from democratic forms of governance and towards a politicized and unaccountable relationship between the President and the armed forces. The main trend in these laws is to establish the politicization and division of the various armed forces so that they cannot constitute a threat to Yeltsin and are personally under his direction. But the politicization of the armed forces and their subordination to an authoritarian leadership is generally a harbinger of antidemocratic, unstable, and even aggressive regimes. Therefore a close study of these laws can only lead one to conclude that in civil-military affairs Russia appears to be regressing from democracy to earlier forms of governance. If so, we face a most uncertain future with regard to Russia's internal constitution and external policies.

## BIOGRAPHICAL SKETCH OF THE AUTHOR

STEPHEN J. BLANK is the Douglas MacArthur Professor of Research at the U.S. Army War College and has been an Associate Professor of Russian/Soviet Affairs at the Strategic Studies Institute since 1989. Prior to this appointment, Dr. Blank was Associate Professor for Soviet Studies at the Center for Aerospace Doctrine, Research, and Education of Air University at Maxwell Air Force Base. Dr. Blank's M.A. and Ph.D. are in Russian history from the University of Chicago. He has published numerous articles on Soviet/Russian military and foreign policies, notably in the Third World, and is the author of *The Sorcerer as Apprentice: Stalin's Commissariat of Nationalities, 1917-1924* (Westport, CT: Greenwood Publishing Group, 1994).

## **RUSSIAN DEFENSE LEGISLATION AND RUSSIAN DEMOCRACY**

### **Introduction.**

The Russian Federation is a child of armed coups: the failed Soviet coup of August 1991 and the successful anti-parliamentary coup of September-October 1993 by President Boris Yeltsin. Issues of civilian control over the armed forces naturally acquire a special urgency in such circumstances, particularly as the Russian state remains a very insecure and only partly democratic structure. For the most part the many analyses of civil-military issues in Russia have focused on the question of the military's loyalty to the Yeltsin government, not governmental policy towards the military.<sup>1</sup> Whether or not they were optimistic about the future course of those relations, these analyses largely sidestepped the issue of the military policy of the civilian authorities, i.e., Yeltsin's military policies since 1991.

While that subject merits an extensive analysis in its own right, Russia's aggressiveness in Chechnya and throughout the CIS suggests that Yeltsin's military policy is an evolving one, so it might best be analyzed by examining the draft laws on defense and peacemaking that Yeltsin is currently proposing. After all, the purpose of such legislation is to formalize a civil-military relationship under his authority. By focusing on these laws we can see the other side of the equation, i.e., the civilian government's views on control of the armed forces, and assess what the trends for the future are.

### **Current Issues in Civil Military Relations.**

In the wake of the 1991 and 1993 coups in Moscow, U.S. analysts have cited the loyalty of the Russian military to President Boris Yeltsin and its politicization as factors contributing to Russia's democratization.<sup>2</sup> However, today we see that this perspective is seriously flawed and even fundamentally at variance with current trends in civil-military relations. The Chechnya invasion of December 1994 illustrated how deeply flawed are Russia's mechanisms of civilian control and defense policymaking. More recently, in June 1995 when Chechen terrorists seized Russian hostages at Budyonnovsk and the Russian forces' botched two efforts to liberate the prisoners by force, this failure revealed continuing deficiencies in civil-military



relations. Press reports indicated that both operations were carried out with no plan or orders from Moscow or headquarters in Chechnya and were undertaken in response to the emotional impact on the soldiers of the prisoners' crying. As *The New York Times* reporter observed, "If true, that is itself a remarkable instance of the general lack of coordination and control of the Russian military throughout the war."<sup>3</sup>

Examining these issues, therefore, should provide a better grasp of the troubled civil-military relationship and its negative repercussions for a democratic, less militarized, and less imperial Russian polity. In 1994 President Boris Yeltsin submitted to the Parliament draft legislation on defense and peacemaking. Still before the Duma, these proposed laws illuminate Yeltsin's and the executive branch's thinking about these vital issues.

The current situation is particularly disquieting. Chechnya indicates that the policy process has been restricted to a few of Yeltsin's cronies who are either the victims of systematic deception or who have systematically deceived him. As Otto Latsis, a member of Yeltsin's consultative committee remarked, "The problem is not so much that decision-making procedures have been breached, but that there are no procedures at all."<sup>4</sup>

The recent military legislation is no less disturbing. These types of laws are, or should be, cornerstones of effective constitutional governance in all states. To the extent that they permit the executive to use military forces at home or abroad without legislative consent, they foster an antidemocratic trend. This happened in Chechnya where there was no consultation with Parliament nor an invocation of a state of emergency. Only under a state of emergency would it be permissible to deploy the troops and to do so in Russia proper might still be legally moot.<sup>5</sup> Yeltsin also violated his own law on Federation as well as the 1992 Law on Defense and flouted the 1993 constitution (which itself was probably not approved by a majority as was revealed in late 1994). If future adventures are to be ruled out and genuine civilian control established, effective legal safeguards are necessary. A detailed examination of these laws follows.

### **General Observations.**

Unfortunately the general character of these laws highlights a negative, antidemocratic trend in military legislation and policy. The Duma's overall evaluation of the Draft Law on Defense observes that the provisions on the armed forces' structure and objectives are never really confirmed by legislation, "and they are left hostage in their entirety to executive structures of government."<sup>6</sup> Furthermore, they confirm the opinions voiced by Pavel Felgengauer, Russia's most well-known defense correspondent, that Yeltsin's notion of civilian control is that he alone controls the armed forces lest someone else develop a power base.<sup>7</sup> Yeltsin's "civilian" control is to be exercised by direct personal and vertical subordination on the basis of political loyalty, not subordination by statute.<sup>8</sup>

### **The Draft Law on Peacemaking.**

This law will probably reopen controversy between the executive and Parliament over control of troops, funding, and assigning troops to theaters of conflict. It will not allay foreign suspicions regarding Russian peacemaking and its aims; rather, it will probably contribute to rising tensions. It renounces the explicit need for any UN sanction to intervene. While the law claims Russia will only intervene under recognized international standards, in fact Russia has done so according to its own criteria and frequently has shown its disregard for the sovereignty of CIS members. Nowhere does the law state that Russia will intervene only if asked from abroad or by UN invitation. Instead, the Law on Defense (discussed later) explicitly reserves to Russia the power to decide these issues.

*Paragraph 2* of the law gives the President the right to ratify or establish the instructions to Russia's representatives for examining the question of such interventions at the suggestion of the Ministry of Defense or Ministry of Foreign Affairs. Ratification here apparently implies that these ministries could draw up those instructions for the President's consideration. The draft law allows only that the instructions will be sent in timely fashion to the Federation Council and the Duma. No preceding legislative authorization is required for sending troops abroad or for conducting operations. Troops can be committed by executive order alone. Neither is there an opportunity for open parliamentary or public debate of any intervention before it takes place.

However, there is an interesting omission in this law. It says nothing about MVD forces. Their CINC, MG Anatoly S. Kulikov, admits that those forces are carrying out various kinds of peace operations inside Russia and are thus duplicating the functions of the regular armed forces. Since Kulikov (and presumably the government as well) maintains that these operations are similar to peacekeeping as defined by the UN, "namely, carrying out operations with an international force but without applying the pressure of force," Yeltsin can use those forces at home without reference to anything in this law or the Draft Law on Defense discussed below.<sup>9</sup>

*Paragraph 3* repeats this procedure regarding the monitoring of ceasefires or "contract volunteer forces" (i.e., volunteers who are paid by contract with the armed forces) who conduct a wide range of peacemaking activities. Again, only presidential authorization is needed and no parliamentary debate, funding, or authorization is called for or necessary.

According to *Paragraph 4*, only the Federation Council, i.e., not the Duma, legislates, at the President's proposal. It directs the mobilization and deployment of troops on a volunteer basis for participation in peace operations "not connected with the application of the necessary measures and use of the military forces." That phrase exempts the actual conduct of operations from any review and freezes out both houses of Parliament (the Duma and the Federation Council). The Council can legislate **only** the term of service and order of replacement, servicemen's guarantees and pay, and the type and composition of military formations. It has no input into strategic or operational questions. Neither must the MOD account to Parliament or report to it on any of these issues.

*Paragraph 5* states that the government, at the MFA's proposal, directs other state organs to send civilian personnel to participate in peacemaking operations but again omits the legislature. Without this legislation the MFA arguably would not have the power to compel assent from other ministries and state organs, a sign of the low standing of the MFA in security policy. While Yeltsin has recently sought to remedy the weakness of the MFA by legislation, the actual workings of the government, not laws on the books, will decide the issue of the MFA's real

power.<sup>9</sup>

*Paragraph 6* follows the same procedure for authorizing material-technical support to troops conducting these operations. Here again Parliament is left out so the government need not ask it for fiscal authorization or to authorize service by other, nonmilitary officials. These clauses deprive the Duma of fiscal and political control over these operations.

*Paragraph 7* discusses operations established by the UN under Article 42 of its charter, which regulates the establishment of peace operations. If the Security Council invokes Article 42 to conduct a peacekeeping or other operation, the President or the executive branch of the government, acting at his charge, negotiates and subscribes, on the basis of Article 43 of the Charter, to a special agreement with the Security Council. This accord defines the number, type, degree of preparation of forces, their general deployment, and the means of their service and support, including the right of departure under the Security Council's instruction. Since the Parliament is already excluded from the action, this clause means, *inter alia*, that the President or the MFA can negotiate an agreement with the UN as a member of the Security Council and commit troops without any public discussion of the merits of the issue.

Furthermore, in the event of an Article 51 situation where the necessary means, operations, and forces are called for by the right of states to act in their self-defense or collective self-defense, then the President consults with treaty partners and carries out an agreement with them to propose to the Federation Council and the Duma the use of Russian forces to act abroad on behalf of international peace and security. The Duma's inclusion is apparently to avoid a situation of going to war without public support. But in 1994, Yeltsin did not consult the Duma formally before sending peacekeeping forces to Yugoslavia at the Serbian government's request.

Therefore this language implies that under Articles 41-43 (Chapter VII) of the UN Charter, no parliamentary approval is needed. Absent an international crisis, as appropriate to Article 51, without parliamentary discussion Yeltsin could justify any CIS "peace operation" under Articles 41-43, even without UN support, as in Yugoslavia. At the same time, any UN approval of

Russian participation in peace operations need not go to Parliament. Similarly, Yeltsin can invoke Article 51 and bypass both the UN and Parliament. As it is, Russian officials claim they need no UN sanction for their current peacemaking operations or for Chechnya since it is part of Russia. So in both cases, abroad and at home, the Russian ruling elite has exploited the UN charter to freeze out the UN and the Parliament. But this paragraph could explain why Russia seeks that UN sanction in current operations and why it also seeks regional status for the CIS. Those two dispensations would emancipate the government from accountability to Parliament and the UN and place it in a position transcending legislative and UN authority.

This paragraph also implicitly reinforces the distinction between the near abroad which is not considered to fall under Article 41-43 where the UN may intervene in a crisis, and other, more distant states. Under Article 51, the self-defense clause, Russia can bypass the whole UN structure and create a straightforward "alliance" or collective security justification as in the Tashkent Treaty of 1992. This paragraph gives the government tremendous flexibility at home or abroad in justifying any contingency in terms of either Articles 41-43 or 51.

*Paragraph 8* repeats the earlier process in Paragraph 1-2. Here it states that the Federation Council-not the Duma-takes resolutions on the staffing (i.e., mobilization and/or deployment) of troops for either Article 41-43 or Article 51 interventions, or collective self-defense as under that clause. Once again the lower house is excluded and the Federation Council, which is much more responsive to the executive, is empowered to act alone. But since previous paragraphs have excluded it too and given the government great latitude or freedom of action in deciding how to proceed, the Federation Council can also be bypassed, as happened in Chechnya.

Paragraph 8 continues by stating that all international treaties or accords calling for the possible use of Russian military or civilian personnel in peacemaking operations are submitted to the Federation Council for ratification. But once a treaty is ratified, any individual intervention, especially in the "near abroad", could be carried out without seeking parliamentary authorization. The treaty serves as a "functional equivalent" of an open-ended authority to act with troops, if

need be. This, one may recall, is the justification that the Johnson administration used for Vietnam to bypass congressional examination of the facts on the ground. The Chechnya war, if it continues, could, in its own way, arouse a considerable public opposition that would shake the status quo.<sup>10</sup> The terrorist episode in Budyonovsk indicates that protracted war with terrorist operations against Russians is a real threat and the public dismay it aroused is no less ominous.

*Paragraph 10* refers to the Russian Federation's preparations to equip, train, call up, and prepare the military- technical base for peacemaking operations and forces. Once again it is silent on any submission of a fiscal authorization to the Parliament for expenses incurred by an unforeseen operation.

*Paragraph 11* takes up the question of expenses incurred by Russia in any UN operation in which it participates. It observes that if the expenses surpass those allocated for that purpose in the Federation budget, then the additional funds must be raised, but only in conjunction with a special federal law for this purpose. But that does not necessarily mean going to Parliament since the text omits any mention of it. In that case, one needs to refer to the constitution and laws in practice concerning special allocations beyond the budget. Since Yeltsin has governed by decree and now controls the State Bank and all government expenditures, he could simply print the money, or decree that funding be authorized for the UN operation.

Finally, the MFA must report to the government and to the Federation Council no less than once a year about Russian participation in such operations. But again the Duma is excluded and there is no *a priori* need to report on any individual operation while it occurs. Nor is there any mention that Parliament can compel an interrogation or hearing, or report of the MFA or any other institutions in that event. Furthermore the MOD, Ministry of Interior (MVD), and the intelligence agencies do not have to report to Parliament at all. The law's conspicuous silence on these agencies' obligations and accountability towards Parliament, either collectively or to individual chambers, confirms its antidemocratic nature. This is particularly sinister when one realizes that the MOD has been the agency that has taken the lead on peacemaking operations, and the intelligence organizations and MVD have either taken part in those military

operations or launched coups in Chechnya and Azerbaidzhan to unseat those regimes and replace them with pro-Russian ones. For these reasons this law does little to calm the fears that Russian peacemaking operations have aroused with regard to the accountability of the executive to Parliament or of the military to civilian authority. Where the MOD and the intelligence agencies are only accountable to Yeltsin for their activities, they are effectively free from any true institutional control. Instead, they become, like their Tsarist forebears, the President's personal instruments.

### **The Draft Law on Defense.**

Whereas the Law on Peacemaking pertains to one specific type of military activity, this law naturally embraces the whole of military organization and all kinds of military activities. Therefore its purview and legislative scope is much greater, as is its influence and impact upon all defense policy. This draft law is crucial to many future aspects of Russian military policy and Russia's overall democratization. For that reason this law's language arouses great concern. It magnifies the Law on Peacemaking's tendency to bypass the legislature and concentrate exclusive power and discretion-free from any accountability-in the office of the President.

This trend reflects a continuing quasi-Tsarist legal tradition towards personalism. It enforces a direct vertical subordination to the chief executive be he President, Tsar, or "Vozhd" (Leader-Stalin's title). This trend also personalizes defense policy and management of the main offices of the defense establishment by removing them from any effective institutional or legislative control other than the pleasure of the President. Accordingly, it becomes extremely difficult, if not impossible, to develop a nonpartisan defense establishment and institutional base for the Chief of Staff, the military service, geographical commands, and the defense minister. Personalism undermines the whole concept of a nonpartisan, unpoliticized, loyal military establishment under civilian control. And this warning applies even if the Defense Minister and the president are civilians, because the principles of subordination to the law, accountability to legitimate legal authorities, and noninvolvement in partisan politics would be undermined by such a politicization of the military. The consequences of this trend

are still only partly visible. The Chechnya adventure is its major legacy to date. However, if this law passes Parliament in its present form, it will legalize those personalist and politicizing trends and undo Russian democracy.

The preamble to the law contains the phrase "*Obshchie Strukturu i Sostav Vooruzhennykh Sil' Rossiiskoi Federatsii . . .*" (general structure and composition of the armed forces of the Russian Federation) and adds it to the list of organizations or topics covered in the law and is a change from the old law which had the word "*Organizatsiiu*" in place of "*Sostav*". This latter word is not only a purer Russian word, it suggests the notion of the law defining the composition and structure of the defense establishment and armed forces. Clearly the implication is that the armed forces' actual composition is now an important issue.

One may speculate why that is, but it might be connected with paramilitary formations like the Cossacks and questions of conscription vs. professionals, and perhaps difficulties associated with the recasting of the forces to make them more mobile. It may also reflect the attempt to take the Border Troops away from their own institution and subject them to the MOD, but that cannot be definitively established. Or it may be connected with recent efforts to create various new and augmented forms of special, elite units in Moscow to guard key government centers.<sup>11</sup> On June 21, 1995, Interfax reported a further augmentation of such forces. Possibly in response to the Budyonnovsk incident 23,000 army and interior troops were assigned to help the Moscow militia protect the city. This included 4,000 elite paratroopers from the 98th Guards Airborne Division from Ivanovo Oblast and the 106th Guards Airborne Division from Tula as well as students and cadets from training establishments.<sup>12</sup> This deployment is another of the continuing examples of the use of Army and MVD forces jointly for purposes of domestic policing, a degradation of the army's professional function and a sign of fears of popular unrest or of anti-government operations even in Moscow. This also is another case of the Interior forces being equated to the Army in status and missions. Finally, it may be an attempt to give the President total flexibility over the structure and composition of the armed forces, including Ministry of Interior, Border Troops, and other domestic coercive organizations. As Kulikov points out, although the law states that the Internal Troops can only be assigned new duties by passing another law,



Russian Federation laws which are passed in the interest of other ministries and agencies, in particular the Ministry of Defense, the MVD, and counterintelligence organs, do levy additional responsibilities on the Internal Troops. For example, the Russian Federation law on national borders made the Internal Troops responsible for the integrity of the borders in areas where there are military facilities and bases.<sup>13</sup>

Kulikov's remarks suggest that there is no clear demarcation in practice among the various forces making up Russia's composite armed forces so that the Internal Troops perform functions of peacekeeping and border defense that might otherwise be assigned to the Army and Border Troops. And those forces might substitute for the Internal Forces. The recent deployment in Moscow would also tend to confirm this observation. Furthermore, the government is apparently dramatically augmenting the MVD forces. Though Kulikov disputes reports that these forces now number 800,000 men, claiming instead to command a force of 264,000, a number of eyewitness accounts charge that the MVD forces also have heavy weapons and are structured and organized to carry out purely military operations against external enemies.<sup>14</sup> In other words, all the forces are, to a considerable degree, fungible forces operating directly under presidential authority and are not necessarily or even at all under effective legal or parliamentary control.

Two other key points would emerge from the upgrading of the MVD forces in number, training, and mission. First of all, those processes suggest considerable fear of domestic unrest on the part of the regime and a desire to preempt any public outbreak of disaffection by force. Second, the elevation of the MVD at the Army's expense, and the conversion of the Army into a quasi-police force for quelling internal unrest suggests a conscious strategy to downgrade the Army, and a policy of politicizing it while reducing its strength.<sup>15</sup>

More broadly such a strategy of dividing the instruments of force, the so-called power ministries, in this fashion apparently indicates that Yeltsin is pursuing a conscious strategy of keeping all institutions, especially these critical ones,

disunited, weak, and under-institutionalized, a classic Tsarist and Stalinist strategy. This would be a step beyond the tactics reported abroad that,

In recent years, Yeltsin has withdrawn from active governance but remains an intermittent arbiter between what is essentially two administrations-[Prime Minister Viktor] Chernomyrdin's civilian Cabinet and the more hawkish "power ministries" of Defense, Interior, and Security who answer directly to Yeltsin. The President likes to play the Cabinet off against the "party of war," keeping his options open.<sup>16</sup>

In that case Yeltsin's sophisticated strategy means introducing divisions even among the "power ministries" to prevent them from uniting among themselves.

If that is the intention, it would appear to comport with the first details of the military reform measures announced on April 11, 1995, and discussed below in conjunction with the draft Law on Defense. In any case, the meaning of the text of this paragraph is not clear here (perhaps deliberately?). But this concern for control and over the composition of the army is a distinguishing mark of this law and certainly suggests high-level concerns about these topics.<sup>17</sup>

Chapter I, *Article I* also highlights a theme of this new law absent in the 1992 law. In the 1992 law, defense meant a series of policies and measures to guarantee the state's readiness for defense against armed attack. That language may have reflected concerns of a possible coup that might drag Russia back towards authoritarian or even military rule. Here the language is "For preparation for defense and defense of the country from armed attack." The distinction between government and country is gone and the two concepts are fused together in an emotional bonding of nation and state. It is possible that this language is intended to reaffirm military men's loyalty to the state and persuade them that Yeltsin's government is truly pursuing the "Russian" interest. The concept of preparing the country, an expanded notion of preparation of the theater, suggests a desire to retain part, if not all, of the old mobilization system that was supposed to maximize preparedness and readiness even in peacetime.

Indeed, Article I, as a whole, expands the nature of defense to mean the state's military security, including the Federation's sovereignty and integrity. Obviously there is concern for a threat to Russia's integrity from within which was not mentioned in the earlier law even though no such threats are discernible. One possible impact is that this notion will be used to justify actions in Chechnya or in response to similar threats. Even though Yeltsin has stated that there is no threat of separatism, he did state in his annual report to Parliament that,

The institutions of state power have yet to accumulate sufficient weight to ensure that *force does not have to be applied to restore Russian sovereignty on their territory*. Today, the state has to resort to the exercise of its right to use strong-arm methods in order to preserve the country's integrity. (emphasis in original)<sup>18</sup>

Second, there is a stress on the legal organization of defense by the Federal constitution and laws, Russia's military doctrine, and international law. The inclusion of doctrine is to satisfy Defense Minister, Marshal Pavel Grachev's effort to make the November 1993 doctrine a juridically binding document.<sup>19</sup> But the new law also reinstates conscription and expressly assimilates all the other forces existing in Russia, railroad troops, MVD, Border Troops, etc. ("*Drugie Voiska*"-Other Forces) to defense. Moreover, this list is said to be exhaustive. The concern for paramilitary organizations is visible in the last paragraph that says the existence or establishment of other military formations staffed by civilians entering military service is subject to prosecution. Thus there is an apparent intention to control all formations of armed forces and to prevent formation of autonomous groups of armed men. That such laws are needed suggests the government's great anxiety about its control over the armed forces, the population, and Russia's integrity. Since the latter appears to be a phantom threat, this language hints at a traditional Russian military vice, namely an exaggerated threat assessment which is then used to justify an excessively large military establishment.

*Article II* reinforces the stress on the armed forces' preparation for combat and the old mobilization preparation of

the Federation's governing organs and subjects. The text expressly cites territorial mobilization as creating reserves of state material resources and mobilization reserves. It also offers a new and much more detailed list of factors in the organization of defense, including military-patriotic education, civilian control over both the armed forces and the MOD, and international military cooperation.

This expansion of the list of factors that make up the organization of defense appears to be a foreshadowing of the military reform plans announced on April 11, 1995.<sup>20</sup> Those plans outline a long-term process of sweeping military reorganization but also make many concessions to professional military demands and concerns. In the context of this article the language of the Draft Law on Defense apparently accedes to the military's demand for a revitalization of military education of youth that is aimed to indoctrinate a feeling of patriotism and service, as was the case for much of the Soviet period. The idea, evidently, is to give the military more status, and perhaps more control over that education.

A second, no less important fact is the mention of civilian control over the defense forces. The reform plan of April 1995 calls for the appointment of a civilian as Minister of Defense who would formulate "military and military-technical policy" (i.e., defense economic policy, R&D, and the equipping of the troops). He also would be responsible for providing financial and logistic support to the troops. However, at the same time President Yeltsin has taken personal control of key institutions in military-economic policy. On March 3, 1995, he reversed his own edict of December 30, 1994, concerning the Russian Federation State Committee on Military-Technical Policy. Now the first subparagraph of the new Paragraph 2 of the most recent edict states that the committee is "a federal executive authority and is under the purview of the Russian Federation Government, but it is under the jurisdiction of the Russian Federation President in matters assigned to him by the Russian Federation Constitution and Russian Federation legislative measures."<sup>21</sup> Paragraph 3 of this new edict reaffirms this subordination as well. Consequently the MOD, while diminished in authority, is still politicized and its functions are also swept up into those of the President's office. Or at least those functions that are to be assigned to the MOD under the new reform plan could, at any time, be taken

away and removed to direct presidential control.

At the same time the command and control over the armed forces would be vested in the Chief of Staff, who would be directly subordinate to the President, not the Defense Minister.<sup>22</sup> By stating that civilian control of the military is a recognized aspect of defense organization, the law not only buttresses Yeltsin's position as CINC, but also that of the projected civilian leadership of the MOD. This language implicitly gives legal legitimacy to any future civilian Defense Minister because his tenure would then enjoy the force of law (or in this case presidential support and the President's decree as well). This language could then be used to suppress or rebuff military pressure to name a general as a future Minister of Defense. If one remembers that every Soviet appointment of a Defense Minister after Stalin involved a bruising internal struggle between the armed forces who wanted an officer, and others pushing for a civilian, the importance of this statute and reform becomes clear.

But there are additional, less overt implications of this language as well. First, because the language of this draft law states that civilian control of the military is part of the defense organization of Russia and that the President is the CINC, the Minister of Defense is statutorily removed from the chain of command, at least implicitly, if not explicitly. This not only strikes at his power over the regular armed forces, it also can be used to prevent the Minister from consolidating the other forces under his control as Grachev clearly wants to do.

Thus, in the aftermath of Budyonovsk, where a high degree of incompetence manifested itself, Grachev stated his intention to propose that all departments with armed forces—the Border Troops, the MVD Troops, and those from the Ministry of Emergencies (Civil Defense, earthquake relief, etc.), as well as special sub-units of the security service be placed under his ministry and their leaders reappointed as Deputy Defense Ministers subordinate to him.<sup>23</sup> Clearly Grachev has figured out that military reform is antithetical to his power, status, and position, and will resort to all kinds of bureaucratic maneuvers to ditch the projected reform. But his actions also indicate that in a system such as Yeltsin's all politics is not merely "local" but also very much a type of traditional bureaucratic politics.

After all if all the troops are not to be under Grachev, the only other alternative would be to place them directly under Yeltsin in one super-organization and there is currently some talk that this might actually come to pass.<sup>24</sup>

The second implication of this language is that it reflects the official line that civilian control exists because the President is a civilian and has jurisdiction over the main issues of defense policy. A corollary of this argument is that civilian control exists because the President, the government, and the Parliament have legislative initiative and the executive is supposedly accountable for its actions to Parliament as stipulated by the 1993 Constitution. Allegedly as well, parliamentary bodies control defense funding and the introduction of states of emergency, alert, and foreign interventions.<sup>25</sup> Therefore, putting such language into the law is another way of legally depriving Parliament of the initiatives it supposedly had in 1993 since this law and the law on peacemaking deprive it of just those powers.

Although the claim is made that, because of these supposed factors of civilian control, such control exists, students of the Russian system well know that this principle is observed more in the breach than in the observance. As Igor Tishin writes,

However, one needs to keep in mind that in contemporary Russia effective implementation of these principles in the actual practice of civilian-military relations depends greatly on the level of political culture of civilian and military establishment as well as on the internal economic and political situation.<sup>26</sup>

There are still further important implications of the reform plan that are foreshadowed in the Draft Law on Defense. According to the reform plan, the Chief of Staff is the operational commander of the armed forces in any contingency, yet that is exactly what was not done in Chechnya where, apparently, Pavel Grachev acted as the operational commander from Moscow. The troops' and high command's poor performance in Chechnya seemed to have settled matters against Grachev and the MOD as far as this draft was concerned. Today MG Anatoly Kulikov, the CINC of the Internal Forces, is the operational commander in Chechnya, another sign of the breach of the intended reform plan. Evidently

expediency, and not legalism, will continue to govern such decisions.

Apparently as a result of the poor performance in Chechnya, the new reform plan builds on language implicit in the Law on Defense (see below) and will remove the MOD from the operational chain of command, confining it to the raising of troops, their training, provisioning, procurement, and logistic support. This is intended to preclude the possibility of Grachev or any subsequent minister building up a position among the armed forces that could challenge Yeltsin. Yet Grachev again is clearly fighting this. He told the press on April 19, 1995 that Russia would not have a civilian MOD or a separate General Staff subordinate to the President because "so much is subordinate to the President already."<sup>27</sup> Thus it is clear that the military will now engage in a bruising battle over its reorganization at a time when it is politicized, fragmented, demoralized, and under severe attack, not to mention drastic fiscal constraints.

If the reform plan and the apparent intention of the law on Defense do prevail, Yeltsin, as the Chief of Staff's direct superior, will thereby further remove the armed forces from legislative accountability and scrutiny, a process that is consonant with the general strengthening of presidential authority beyond any accountability. That would also put the army directly under Yeltsin's command and authority, confirming the notion that by civilian control, Yeltsin means his personal control over the armed forces. Under this structure it is highly likely that the Chief of Staff's position will also become politicized just as Yeltsin has deliberately politicized the Minister of Defense's role. If the Chief of Staff becomes a politicized figure, that would have the same unfortunate consequences as Grachev's tenure as Minister of Defense has had. Finally, in order to counter the possibility of the military's opposition to him, Yeltsin advocates a further increase in the Ministry of Interior forces—the MVD. This even as the army is cut from 1.5 million to 1.2 million, two military districts are dropped, and the Baltic and Black Sea Fleets are eliminated.<sup>28</sup> Given Kulikov's observations about the Internal or MVD Forces duplicating the army's functions, this appears to confirm that Yeltsin is playing a sophisticated military version of divide and rule among his various armed establishments.<sup>29</sup> Like the Tsars and Stalin, he has grasped that the secret of his power is to weaken

and divide all possible governing institutions and while placing them in a constant posture of mutual confrontation.

Yeltsin's consistent upgrading of the MVD and other internal forces for protection of the President and the government at the expense of the armed forces also appears in this intended reform. This particular reform further extends the trend to augment internal security forces and place them on a footing at least equal with, if not above, the military. Furthermore, the reform reflects the fear of internal threats to Russian security rather than external threats. Finally, it indicates that there are not enough resources available to support a large military. Inasmuch as both the armed forces and Ministry of Interior forces (and other internal security forces) are now to be under Yeltsin's direct control, they will all be removed from effective parliamentary scrutiny to become Yeltsin's rather than Russia's forces. Indeed, the new setup resembles nothing so much as the old Tsarist formula by which the Tsar exercised, or sought to exercise, personal authority and control over military policy. As Nicholas II said, "doctrine is whatever I decide it is." For this reason many of these plans' implications, however implicit and unfinished, carry disturbing echoes of autocratic rule.

Perhaps it is because official thinking was already moving in the direction outlined above that this law has a much broader and more sophisticated conception of what military issues entail. This notion of a broader military agenda may well reflect efforts to stem and reverse the critical manpower shortages afflicting the armed forces and to reestablish their prestige. Thus the parliamentary vote in April 1995 to lengthen the basic service period to 2 years and to delay movement toward an all-volunteer army may be part of that mood.<sup>30</sup> This paragraph also shows more concern for framing issues of civilian control in precise language, probably to codify Yeltsin's personal control of those forces for reasons given above.

This concern for more precise formulation of issues of presidential control appears in *Article III*. It adds that legislation on military affairs is based on the new constitution to include federal constitutional and federal laws. Article III has a much broader sweep than before, codifying Yeltsin's virtually unlimited control as established in the constitution. Moreover, *Soviet laws not contradicted or superseded by new laws*



*remain in force.* While this may simply be an administrative continuance, it surely shows a failure to devise a new Russian military code.

More broadly, this paragraph reflects the government's continuing incoherence regarding the nature of law and the idea of rule by law. Federal laws are bills brought to the Duma. If they have fiscal implications for the state budget, they have to be accompanied by a "conclusion" from the government. They are accepted by a simple Duma majority and go to the Federation Council within five days. They subsequently undergo a legislative process of scrutiny in the Council, or may not be examined at all, which leads to their being considered as laws. Federal constitutional laws are bills that Yeltsin apparently cannot veto. But the constitution, not surprisingly, fails to distinguish between presidential decree and orders, merely saying that they may not conflict with the constitution or federal laws. Thus the notion of federal constitutional laws not only includes laws based on parliamentary and presidential understanding of the language of the constitution's provisions, it also comprises presidential decrees.<sup>31</sup> Since officials, in any case, do not believe themselves bound by laws, this language remains unclear and nonbinding unless a dramatic change occurs. In effect, law still remains, to a great degree, the will of the chief executive.

*Article IV* further codifies Yeltsin's position in precise formulations by enumerating the President's very broad powers as CINC and as ratifier of doctrine, but obliges him to report annually to the Federation Council. It should be noted that the law does not hold him accountable to the Council. It merely requires him to present the Council with an annual report. The law expressly specifies his control over nuclear weapons production, negotiations, deployment, and use; and over the appointment of personnel. This statute aims not only to broaden and list expressly presidential powers, but to confirm them and make him, in some cases, above accountability. At the same time it also formalizes a nuclear chain of command.

But this article's most worrisome aspect is the power it gives Yeltsin to declare a state of war, general or partial mobilization, and martial law in Russia or in separate localities. All he has to do is to communicate his intention to

the Federation Council. In Chechnya he did not even do that. This clause provides much latitude for abuse of power. It further ratifies Yeltsin's extra-legal powers by saying he can introduce normative acts in wartime or curtail their operation and lead the government in conjunction with the federal constitutional law or by martial law. This means he can suspend the constitution and govern the country under martial law without answering to anyone, as did Tsars Alexander III and Nicholas II from 1881-1905.

Similarly, he can direct the use of nuclear force in cases of the "appearance of an immediate threat" to the Federation's existence. This ratifies the first strike doctrine promulgated in November 1993 in the new Russian military doctrine. It also strongly hints at a launch on warning, or even preemptive strike posture against *conventional* attack. Nor must Yeltsin go to Parliament to get approval for the use of forces in that, or presumably any other, contingency. Moreover, the laws make no provision for control over strategic systems or the entire military system if Yeltsin cannot perform his duties. What happens then is a mystery.

The effort to enhance presidential power also appears in *Article V*. In its new form it eliminates the legislature's power to define military doctrine and gives it solely to the executive. Now Parliament can only legislate on the basis of the doctrine and Yeltsin's annual message. This provision accords with Grachev's frequent assertion that the doctrine should have force of law. Of course, if the doctrine is legally binding, it becomes the basis for military legislation and provides a constraint on anything Parliament might do. The notion that doctrine equates to law is a former Soviet formulation and a most mischievous proposal. Under that formulation the military would elude day-to-day legislative supervision and parliamentary control of the MOD to make sure it is following a sound policy.<sup>32</sup>

While Parliament is supposed to immediately consider and enact resolutions on a declaration of war and the introduction of martial law, it is clear that presidential power overrides their decision or can preempt it. The Federation Council also has no direct control anymore, as it did before, over the composition and structure of the armed forces. The former powers of the Supreme Soviet are broken up among the two houses of the new Parliament or the President. Thus neither house, as enumerated in

Article V, can declare partial or full mobilization, martial law, or a state of war, but must wait upon presidential initiative in the latter two cases. Neither do they have power over mobilization, or the use of forces abroad. Nor does the legislature any longer determine presidential powers over nuclear issues. And the attempt to invest doctrine with force of law would also legalize the doctrine's rather traditional, almost Soviet, formulation of assessments of threat to Russia.<sup>33</sup>

A further example of this stress upon increased executive powers is the statement in *Article VI* that the government, i.e., not the legislature, has direct responsibility for the condition of the Russian Federation's defense. Another interesting new enumeration of executive power gives the government responsibility not only for negotiating with other states to lower the military and nuclear danger, but also to do so for the creation of collective security, and to subscribe to corresponding intergovernmental agreements. This last formulation is nowhere mentioned as being subject to parliamentary investigation or approval and opens a loophole for secret agreements. It also provides a mechanism for extending the Tashkent Collective Security Treaty of 1992 into a restored military-political union without parliamentary participation.

*Article VIII* reinforces and extends the emphasis on the defense mobilization system. According to its terms, industrial and manufacturing enterprises fulfill measures listed in mobilization plans and agreements. This refers to the old mobilization system and is a means of codifying its remnants into law. This could have disastrous economic-political implications for the country, at least in part because it preserves a key sector of the Soviet economy and also because it vests too much power in the Military Industrial Complex.<sup>34</sup> The new law also charges enterprises to plan to accumulate and preserve mobilization and state resources on a contract basis if not otherwise established by law. Since the first part of the text and earlier language can be construed as establishing the mobilization system by law, this appears to confirm a military industrial sector permanently dependent upon contracted state orders and tied to perpetual readiness.

*Article IX* expressly retains conscription as a civilian obligation. That will have a negative implication for military

reform by perpetuating the brutal practices to institutionalize subordination that were commonplace in the Soviet army. But since the MOD has made clear that a fully professional army is some years away, this appears to be the only way to compel conscription. Even so, everyone knows conscription will not work or satisfy manpower requirements unless it is imposed by coercion.<sup>35</sup> The recent legislation extending the basic term for draftees to 2 years is an example of that trend.<sup>36</sup> Could this law then become the legal justification for further such coercion?

*Article X* reflects the desire to maximize control in Yeltsin's hands and to obstruct paramilitary operations. But it also provides language allowing the use of the army for domestic political purposes. It states that summoning units, subunits, and other formations of the armed forces to fulfill tasks not connected with their original intention of repelling aggression is only tolerable on the basis of the President's decree- *Ukaz*-in agreement with the Federation Council and published in the mass media. This replaces the original language, which specified that this could only be done through a resolution of the Supreme Soviet or passage of a law. The obvious implications are alarming. We need only recall that Yeltsin did not even inform the Federation Council before taking action in Chechnya. Furthermore, this is perfectly legal. Amazingly Russia's government and (if this law is passed as is) public law now state that a presidential decree alone suffices for making military intervention at home legal.

The nature and composition of the actual armed forces in *Article XI* is also much more specific and inclusive than before. It vests control over that structure in the executive branch- President and Government- and control regarding the composition of forces in the General Staff and presidency. This seems to be a way to limit the MOD's operational control over forces, a trend that emerges more explicitly below and is most significant. As noted above this language clearly foreshadows the new military reform plan. This plan decreases the role of the MOD while enhancing that of the General Staff, which becomes operational commander of the armed forces under the President. It is also significant because there are widespread reports that the debacle in Chechnya led Yeltsin to consider taking direct operational control of the General Staff, removing it from the MOD's control.<sup>37</sup> The planned reform calls for this. That move would

further personalize military administration while also substantially curtailing the MOD's power and authority over the armed forces and enhancing that of the General Staff.

Indicating the General Staff's enhanced powers, *Article XII* expressly notes the use of conscription and of volunteers for staffing the armed forces, and states that the peacetime number of military and civilian personnel is determined by the General Staff and ratified into law annually with the Federal Budget. This also means that the annual levy is not subject to authorization on its own merits but is part of the broader budget package. Since Yeltsin can mobilize troops and pay them without legislative authorization based on the peacemaking law and earlier clauses, he can easily get around this language to mobilize the troops.

*Article XIV* takes general leadership of the armed forces from the Supreme Soviet and gives it to the President as CINC. New language makes it much clearer that while general direct leadership is exercised by the MOD, it is the organ of administrative regulation and the General Staff possesses operational leadership. The reform plan spells this out more explicitly and reflects, as well, a return to General Vladimir N. Lobov's 1991 plan for military reform. In so doing, the draft law and the new reform plan weaken Marshal Evgeny I. Shaposhnikov's 1991 idea of centralizing control of the staff in the MOD.<sup>38</sup> These decisions, and the legal language employed, clearly represent a defeat for Grachev and the MOD and signal the elevation of the General Staff. Thus the statute also gives the operational authorities more flexibility in devising command structures on a basis other than functional or territorial command as specified in the earlier law.

The tendency to downgrade the MOD again appears in *Article XV* where its functions are now restricted to realizing *Government* policy, not its own policy (the adjective *Government* is new), and is restricted to participating in the development of presidential proposals on questions of military policy and the charter of the Federation's military doctrine. That is, it does not draw up the doctrine itself but comments on its charter, the public unclassified part of the doctrine that was published in November 1993. It can also only develop proposals for a draft budget for defense spending, not, as in the earlier case, develop drafts for

a defense budget, and present it to the government. It now also must fulfill tasks outlined in both the statute on the MOD and that of the General Staff.

But, as stated in *Article XVI*, the General Staff develops proposals on the composition of the armed forces and their organizational staff structure. It drafts the proposals on the doctrine and tasks, deployment, and supply of force groupings, and provision of weapons and technology. It organizes military intelligence for security and for the deployment of the armed forces as well as for operational and other military mobilization. Thus, its operational control of the armed forces is spelled out in law for the first time in years.

The only new aspect of *Articles XXI-XXIII* is that they state that martial law, mobilization, and civil defense are to be determined by federal constitutional or federal law. These provisos continue the trend toward asserting the primacy of the new constitutional regime in Russia over the order that died in October 1993. But, as we have seen, that federal law amounts to nothing more than Yeltsin's decree. So again we have a law but no means of enforcing it. As in so many instances, the law is a facade behind which the real forces govern on their own.

*Article XXIV*, in referring to diversionary or terrorist actions, adds the word *group* to underscore the danger, or the threat of such actions being carried out in conditions of ethnic conflict in Russia. It displays the heightened danger of those threats, but also implicitly legalizes deploying troops against whole peoples or republics allegedly on ethnic grounds. This implicit pretext for ethnic conflict forebodes a troubled future.

*Article XXVI*, quoted below, reflects the new importance given to claims that Russia acts within international guidelines for peacekeeping operations. This has already been referred to in the law on peacemaking and is no more accurate for being placed here. But the text, cited below, represents an effort to present the image of a legal or rule of law state approach that would justify such actions.

The Russian Federation participates in peacemaking operations to support international peace and security in conformity with its obligations under the UN Charter

and other international treaties and agreements. The Russian Federation independently, in each individual case, determines the advisability of its participation in that operation. The order of the assignment of peacemaking forces and the fulfillment of military-technical assistance is defined by federal laws.

What is noteworthy here, as in the Law on Peacemaking, is the effort to safeguard Russia's freedom or authority to intervene in the CIS while answering to nobody at home or abroad, yet appear not to be conducting objectionable operations.

*Article XXVIII* is entirely new and re-lists all the powers given to the President, thus reconfirming and spelling them out, and confirming the law's basic trends. There do not appear to be any new powers here. But by doing so, the law not only reiterates Yeltsin's powers, presumably it explicitly broadens those powers that are implicit in preceding paragraphs or other laws, thereby actually extending presidential power.

#### **Summation.**

In general these laws do not resolve issues of civilian control. Instead, they represent an effort to concentrate power in the President rather than the legislature. Both draft laws also try to confirm the existence of a new federal constitutional order and make that the basis for law by referring virtually everything to the federal constitution or federal law.

The Draft Law on Defense also reflects a trend towards more enumeration of specific powers and responsibilities for the executive branch and a corresponding diminution of legislative prerogative. It reflects old thinking in its insistence on conscription, implicit threat assessment, nuclear provisions, and economic and industrial mobilization; and it does not resolve nuclear command and control issues, especially if Yeltsin is incapacitated.

Lastly, this particular law reflects, even before the Chechen invasion, an attempt to weaken the MOD and Grachev while imparting a much higher profile to the General Staff. Thus, this law invokes the discredited 1991 Lobov plan as well as earlier Tsarist precepts of military organization. This draft law also

reflects and anticipates the forthcoming reform plan's intention to give more operational authority to the General Staff and less to the MOD and the Minister of Defense. For instance, Marshal Grachev does not appoint the Chief of Staff.

However, there are serious deficiencies in the law or problem areas concerning operations:

- Yeltsin's right to mobilize troops or to declare martial law is not contingent upon legislative approval or the actuality of a threat. The threat need only appear as such (presumably in Yeltsin's mind) to be so defined.

- Yeltsin can declare martial law or war without legislative accountability. He can also commit the country to secret international accords or peacemaking operations, or even reunion of the CIS without first going to the legislature. We have seen the latter precedent in Abkhazia and now in Chechnya.

- The doctrine expressly indicates a nuclear posture that justifies preemptive nuclear strikes, even against purely conventional weapons attack, or a launch on warning posture, should a threat to the Federation's existence appear.

- The law makes no sign of inclining to get rid of conscription. Indeed, it still provides for the draft as an explicit part of the defense program. Furthermore, the Parliament just voted to extend the service length by 6 months to a full 2 years. That decision goes against the intention expressed in earlier documents for the army to become an all-volunteer force. This legislation, therefore, is widely regarded as both a surrender to old-fashioned military notions of compulsory service and to the argument that debacles like Chechnya would not occur if the troops were better trained.<sup>39</sup> Though conscription could become necessary, it should not be there in advance of, or separate from, a declaration of war.

- This law in no way subjects the President, the military establishment, beginning with the MOD, or intelligence agencies to any form of parliamentary scrutiny or control. In effect, none of them are truly accountable or bound by law. Thus, in November 1994, the FSK (Federal Counterintelligence Service) was able to recruit men from the Army's elite, Fourth Kantermir Tank Division



for attempted coups in Chechnya without knowledge of the division commander.<sup>40</sup> This indicates an intelligence and military system that is out of control, which could have disastrous consequences, of which Chechnya may be only the first. For example, the Russian government has been accused of instigating repeated coup attempts in Baku in 1993-95 and Chechnya prior to the invasion in 1994, yet nobody has been held accountable.<sup>41</sup>

Another example of the disasters that either the current policy process or an out of control military and intelligence service could lead to is the announcements in April 1995 by Ground Forces CINC General Vladimir M. Semenov and by Marshal Grachev that they were stationing forces in the Caucasus in defiance of the CFE troops because Russia's security interests overrode the treaty's language.<sup>42</sup> Such unilateral and rash declarations could bring about the greatest disaster for Russia, namely the hardening of an anti-Russian European bloc. This would be a calamity infinitely greater than anything that might happen in the Caucasus.

The absence of effective, civilian, democratic control also manifests itself in another way. It is very clear that all the instruments of military power, the regular forces, Border Troops, and the MVD, are being politicized and are under pressure to be under Yeltsin's personal and unaccountable control. Yet at the same time, these draft laws, the intended military reform plan and public disaffection with the MOD, Grachev, and Yeltsin have led to a situation where an intense bureaucratic struggle is already underway that will further fragment and politicize these forces. This battle, whatever its outcome, will probably weaken further any efforts to install meaningful institutional control over the military and diminish the likelihood of a democratic outcome in the foreseeable future.

- The law often refers to the mobilization system. This suggests Russia will keep or only superficially revise that system which is a fundamental brake on reform and a basis for the military-industrial complex's excessive power. That seriously damages the cause of military, economic, and political reform.

### **Recent Trends.**

The most recent events, laws, and revelations in tandem with

the Chechnya war confirm this trend towards centralization of authority in the presidency, executive branch, and extra-legal procedures. These events and trends include the laws discussed here, the laws concentrating more powers in the President and police, and the military reform plan. For instance, recently the Parliament accepted Yeltsin's law putting modern forms of telecommunications under state control and making the Ministry of Foreign Affairs directly responsible to him alone.<sup>43</sup> The new law on the Intelligence Service also calls for unifying foreign and domestic intelligence and counter-intelligence after the KGB model and permits the use of informers in government agencies, again with insufficient parliamentary accountability.<sup>44</sup> Although there is some sentiment in the Duma for revising the constitution to make the use of military forces inside Russia contingent upon the Federation Council's approval, it is not at all clear that such a law or revision of the constitution could pass and whether it would be enforced.<sup>45</sup>

Nor do either of the laws analyzed here mention the Security Council, the real nerve center of current defense policymaking since 1992. The laws governing its functioning are so nebulous as to be meaningless, and the Council has consistently been able to elude parliamentary scrutiny. Although Yeltsin recently coopted Duma speaker, Ivan Rybkin, and Federation Council leader, Vladimir Shumeiko, to its membership, there is no risk that the Council can check Yeltsin's prerogatives or override them since, by statute, it is merely an advisory body.<sup>46</sup>

Yet this status does not conform to reality since the Council authorized the decisions that led to intervention in Chechnya. In effect it imposed, without any statutory process, a state of siege in Chechnya. At the same time it has become a forum for policymaking that eclipses the regular government ministries.<sup>47</sup> While this may superficially resemble the U.S. National Security Council, the absence of any legal provisions in the draft laws regarding the Russian Security Council's activities is alarming. Moreover, the structure that results from its composition, procedures, and purely consultative relationship to the President, taken in the context of the current scene, resembles the Tsarist autocratic process whereby Yeltsin alone has power to decide and can override his own "kitchen cabinets," the regular government, and Parliament. In effect the President is emancipated from the constraints of the separation of powers

and is himself able to rule by decree.

This trend to concentrate power in the President and in unresponsive executive branch institutions is confirmed by the recent discussion concerning reforming the Ministry of Defense and subordinating the Chief of Staff (and implicitly all combat operations of the forces) directly to the President. This issue has been discussed inconclusively since 1992, and it surfaced again after the military debacle in Chechnya. The reform plan, announced in April 1995 and analyzed here is the direct result of these discussions, which now appear to have predated Chechnya, though that debacle may have proven to be a decisive point in its adoption by the government. Apparently there is some concern that the "power organs" are not sufficiently coordinated in their actions, so some kind of super-coordinating agency is now being proposed which would be directly under the President.<sup>48</sup>

Inasmuch as most telecommunications and high-tech communications, as well as all forms of state spending, foreign affairs, and defense policy are directly responsible to and controlled by Yeltsin (and his mushrooming office), the need for a new super-coordinating organ (perhaps the Security Council) becomes self-evident. But unfortunately the absence of any such organ, and the proliferation of non-intersecting vertical chains of command to the President, perpetuates some of the worst drawbacks of the Russian political tradition. But again none of this analysis or an awareness of its liabilities is explicitly described in these draft laws, although the Draft Law on Defense broadly hints at giving the Chief of Staff the authority to coordinate policy.

Yet, as we have seen, the counteroffensive by Grachev against this plan and the implications of the Draft Law on Defense has begun. Though the final outcome is in doubt since no Russian law or planned law is viable simply because it is issued, this struggle can only further politicize and weaken the various armed forces as professional upholders of the democratic state.

An equally depressing trend for democracy is that the Duma unobtrusively passed the new law, mentioned above, to expand the powers of the FSK. This law is the most sinister of those recently passed and/or discussed. The FSK can now run its own jails, deploy its agents under cover of other government

agencies, and with court permission, read people's mail and tap their telephones. The FSK may recruit, protect, and pay-without prosecutorial and judicial oversight-informants in "contracts of confidential cooperation." Finally the bill would allow the agency to expand its foreign intelligence-gathering capabilities. This is a giant step towards reconstituting the extraordinary powers of the KGB as a domestic and foreign intelligence, counter-intelligence, political police, and quasi-military organization. It also establishes control over internal state communications.<sup>49</sup>

When this bill is taken into a context where 14,000 people of the MOD and Ministry of Interior (MVD), not counting the FSK or the current Foreign Intelligence Service (SVR), are working in various posts and civilian structures the implications become obvious and frightening. This network of assigned military, MVD, and intelligence personnel extends nationwide and a senior officer is attached to every administrative head of every subject of the Federation (i.e., provincial and republican governments), naturally, by decree (number 1390 on September 18, 1993-just as Yeltsin was preparing his coup).<sup>50</sup> The ability of this network of officials to screen out unwelcome news and to guide policy is no less obvious. When added to the new bill on the intelligence agencies, it becomes clear that the government itself is not immunized against the ravages of autocracy. Whatever Yeltsin's personal proclivities are or may be, these laws will clearly make excellent foundations for any future would-be autocrat.

The same trends now are taking place in the realm of government finance. Although the decrees announced on March 1, 1995 reflect Russia's need to placate the International Monetary Fund and get its loans for Russia, they also give Yeltsin unprecedented personal control over government spending and tax exemptions. Notably this control is not vested in any legal agency, but rather in the President.<sup>51</sup> Yeltsin and a credit commission chaired by Vice-Premier Anatoly Chubais will have total control over government agencies' spending decisions that are not mandated by Parliament. That includes the Security Council's spending which often came as an unpleasant surprise to the Finance Ministry (and confirms the unchecked power of the Council).<sup>52</sup>

This new law ostensibly reflects a commitment to continued

economic reform and anti-inflationary policies. But here again we must pay attention to the institutional dimension. This law confirms that, in the past, government agencies like the Security Council could act autocratically regarding the financing of their operations and that regular agencies could not stop them. Thus, security policy could be carried out beyond the law and outside regular governmental oversight (like the Iran-Contra affair). Nor did the legislature have any way to find out what went on or any power to oversee it. This new law effectively confirms that Yeltsin—and not the legislature—will have discretion over a very substantial amount of government spending that is beyond oversight or control.

With the creation of the new Credit Commission and the new law, the enhanced activity of the President is legally sanctioned along with the concept of rule by decree, a renunciation of separation of powers, exemption from parliamentary control, and power over the purse. By setting up two rival super-agencies—the Credit Commission and the Security Council—and arrogating to himself the last word, Yeltsin has not only placed himself and those agencies beyond the law, he has once again duplicated the Tsarist (and in some cases Soviet) structure of policy and decisionmaking. Yeltsin's newly announced desire to oversee army reform personally means that he will control everything.<sup>53</sup> Additionally, the Minister of Defense and high officials of the armed forces will be directly accountable only to the President and they can be selected on the basis of personal loyalty. Personalism, not civilian or legal control, will be the order of the day. Furthermore, this personalism will take place in a legislative and institutional context which bears too many resemblances to the Tsarist and Soviet periods (the reunified KGB, for example). Therefore, on the basis of this evidence we cannot be too sanguine about the current direction of Russian defense or state policy.

### **Conclusion.**

On the basis of these laws it cannot be said that Russia is moving forward. Indeed, Russia is regressing in civil-military affairs and democracy. The failure to establish reliable civilian and institutional legal controls over the armed forces is obvious from the laws considered here. What emerges clearly is a version of civilian control over the military that closely follows Samuel

Huntington's concept or model of subjective control over the military.<sup>54</sup> That concept denotes a system of personalized control resting in one man or group of men with weak structures of accountability. Such control mechanisms are very troubling for the future of a democratic and stable Russia.<sup>55</sup>

The military is already politicized and deliberately invited to extend its political authority into policymaking areas beyond its "constitutional" mandate. These draft laws only ratify and extend those tendencies that can erode both military professionalism and competence on the one hand, and democratic governance on the other. And the Minister of Defense's chief criterion of appointment is loyalty to the President. The military and the executive are, to an alarming degree, not accountable to legislative institutions but to the President, whoever he is. Furthermore, rival organizations to the military are being strengthened, notably the MVD forces, the elite guard forces around Moscow, and the FSK, and all four of these institutions are being readied for possible military intervention at home. In addition, though the new reform plan supposedly calls for reduction of the armed forces and their professionalization, the extension of conscripts' term of service suggests an inability to make the transition to professional, all-volunteer, and depoliticized armed forces. All these attributes fit very well with Huntington's model of subjective control over the military. Moreover, all these attributes are conducive to and reflect the breakdown of systematic control or direction of defense policy and the breakdown of truly effective control as both Grachev and Yeltsin are increasingly compromised by corruption, Chechnya, and massive military dissension. In fact current efforts to institutionalize "subjective control a la Russe" where the government and the MOD cannot make these policies stick invites other contenders to step in and use these laws to achieve a true concentration of undemocratic power at the top. As Lepingwell argues, any progress made in 1992-93 towards effective, democratic, civilian control has eroded due to the vagaries of defense policy since then.<sup>56</sup> If current trends continue, the outlook will not be a happy one.

Another dilemma is the insistence on doctrine as law and the need for super-centralizing agencies. These two demands, taken together, represent above all an attempt to introduce an element of impersonal control into the subjective system and to

simultaneously reinforce it by an omnicompetent organization. The call for binding doctrine appeals to military men who are irked by civilian control and find solace in the confines of a supposedly "professional" doctrine. But a stress on doctrine and on its custodians in the super-agency fosters a bureaucratization and sterility of military thinking that can only weaken effective, civilian, democratic control of the military.<sup>57</sup>

A further challenge is the absence of clearly demarcated political parameters for military action. Absent such restrictions on partisan political activity by the armed forces, the way becomes open for the military to attempt to enter politics, e.g., by having officers as Duma members, or even usurping foreign policymaking as is the case today in Russia. Foreign Minister Kozyrev has consistently claimed he is in a battle with the MOD and intelligence agencies over control of policy and decrees from above are not going to stop that struggle, since it is inevitable given the absence of institutional and legal restraints.<sup>58</sup> In no democracy would a Defense Minister get away with the following quote by Grachev regarding relations with South Korea.

I am willing to exchange opinion and cooperate with all Asian countries and their military leaders on all issues falling under the jurisdiction of our business . . . even in those instances in which politicians and diplomats were at a loss to solve problems between two countries, soldiers were capable of finding common ground within the framework of military cooperation between the two.<sup>59</sup>

It is dismaying, to say the least, that these trends in civilian-military relations mirror broader trends in the body politic. Let us remember that in his annual written report to the Duma in February 1995, Yeltsin stated that state institutions lack sufficient authority to ensure that Moscow does not have to use force to preserve that authority.<sup>60</sup> He further contended that the main obstacle to the military reforms needed to overcome the failures revealed in Chechnya is "the lack of an integral mechanism for making decisions in the sphere of ensuring military security."<sup>61</sup> Furthermore, Chechnya reflects the stagnant and obsolete system for planning both the political and military dimensions of large-scale operations and policy coordination.<sup>62</sup>

All these defects are supposed to be cured, at least in part by passage of these laws. However, as we have seen, they do nothing to overcome the crisis of Russian statehood; rather they both reflect and further intensify that crisis. It is too late to restore the purpose of Lobov's 1991 reform plan because that plan intended to preserve an effective, democratic, and nonpartisan military force for a potential union arising out of the Soviet Union and a force that also met the needs of the emerging independent states arising from the USSR's ashes. Today only part of that design might be realizable. But subordinating the General Staff directly to an authoritarian President and dividing its functions with the MOD, as Lobov intended in 1991, mocks the larger strategic implications of his reform and stands that plan on its head. Essentially, presidential authority, unaccountable to institutions and ruling like the late Tsars did, is the objective enshrined here. And it is far indeed from what General Lobov and other military reformers meant in 1991 when they talked of restoring civilian control and legitimate command authority to the erstwhile Soviet armed forces.

Equally dismaying is that these laws show either a sweeping ignorance of-or disregard for-the principles of the separation of powers and of legislative control and accountability. If these principles are trampled with blithe disregard, as appears to be the case, then democracy has no future in Russia. Rather than celebrate the politicization of the Soviet and now Russian armed forces, we need to understand that the threat to democracy may not be from a would-be Bonaparte in the provinces but from the leader in the center who may use those politicized forces, or attempt to use them to cement his position and to quell opposition. Given the uncertainties that now plague Russian politics, even the smallest possibility of such an event alarms us for we cannot begin to predict how such an episode will ultimately turn out.

The tendency to revert to antidemocratic forms of rule must alarm anyone who has to deal with Russia. It is a recipe for protracted instability and destructive adventurism at home and abroad, and Chechnya is only the first, but probably not the last, of the fruits of such adventurism. In Chechnya, as in Moscow in 1993 and in previous Russian revolutions, we see violence gradually consuming more victims of another failed



revolution. If the current revolution's architects do not recover their sense of purpose and balance, they may well be included among those victims. Failure to institutionalize democratic control of the military is not only an incentive for antidemocratic politics, it is an incentive for war. And Eurasia cannot stand much more violence.

#### ENDNOTES

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1994, pp. 11-14, 258-277.

2. Meyer, pp. 5-38; Taylor, pp. 3-29.

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4. Sophie Shihab, "Who's Calling the Shots in Russia?," *Manchester Guardian Weekly*, December 25, 1994, p. 11, from *Le Monde*, December 16, 1994.

5. Moscow, *Rossiyskie Vesti* in Russian, December 28, 1994 *Foreign Broadcast Information Service Central Eurasia* (Henceforth *FBIS-SOV*), 94-250, December 29, 1994, pp. 19-20; Moscow, *Segodnya*, in Russian, November 29, 1994, *FBIS-SOV*, 94-229, November 30, 1994, pp. 41-42; Moscow, *Komsomolskaya Pravda*, December 20, 1994, in Russian, *FBIS-SOV*, 94-245, December 21, 1994, p. 11, Kronid Lyubarsky, "The Lost War," *New Times*, December 1994, p. 14, Nicolai N. Petro, "Can Decentralization Solve Russia's Ethnic Problems?," Ian M. Cuthbertson and Jane Leibowitz, eds., *Minorities: The New Europe's Old Issues*, New York: Institute for East-West Studies, 1993, p. 189.

6. *Foreign Broadcast Information Service, Central Eurasia, FBIS Report*, (Henceforth *FBIS-USR*), 94-018-L, November 8, 1994, p. 3. This is a special issue devoted to Duma amendments that have been offered to the Law on Defense.

7. Pavel Felgengauer, "The Theory and Practice of Reaching a 'Consensus' in Moscow," Paper Presented to the II Annual Conference on Russian Defense Decision-Making, Monterrey, CA, November 15-16, 1994.

8. *Ibid.*

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10. Moscow, *Segodnya*, in Russian, March 24, 1995, *FBIS-SOV*, 95-058, March 27, 1995, pp. 14-15; Moscow, *Nezavisimaya Gazeta*, in Russian, March 17, 1995, *FBIS-SOV*, 95-053, March 20, 1995, pp. 9-10.

11. Margaret Shapiro, "Yeltsin Faces New Political Risks," *Washington Post*, June 16, 1995, p. 34.

12. Moscow, *Nezavisimaya Gazeta*, December 15, 1994, in Russian, *Joint Publications Research Service, Military Affairs*, (Henceforth *JPRS-UMA*), 95-001, January 11, 1995, pp. 26-29, *Radio Free Europe/ Radio Liberty, Daily Report*, December 5, 1994 which mentions both FSK and the GUO (Main Administration for the Protection of the Russian Federation which is directly subordinate to Yeltsin, not any ministry or other state organization).

13. *Open Market Research Institute* (Henceforth *OMRI*), *Daily Digest*, June 22, 1995.

14. Kulikov, p. 203.

15. *OMRI, Daily Digest*, June 9, 1995.

16. *Ibid.*

17. Richard Boudreaux, "Russian Premier Takes Bold Step in Tackling Crisis," *Los Angeles Times, Washington Edition*, June 20, 1995, p. 1.

18. James Sherr, "Russia: Geopolitics and Crime," *The World Today*, February 1995, p. 34, notes that since the elections of December 1993 the Yeltsin government has taken measures to strengthen the security and intelligence apparatus to insulate the regime against an army whose loyalty to the regime, as expressed in its support for right-wing nationalist, Vladimir Zhirinovskiy, is suspect.

19. The Russian military doctrine of November 1993 explicitly stated that the army could be used to put down domestic unrest, suggesting a willingness to brandish this threat to others beside the Chechens. "Osnovnye Polozheniia Voennoi Doktriny Rossii," *Rossiiskie Vesti*, November 19, 1993, pp. 3-8. More recently, Yeltsin in his annual report to the Parliament (not his annual speech), stated that there was good reason to expect more crises similar to Chechnya; *OMRI, Daily Digest*, February 16, 1995, and *FBIS-SOV*, 95-034-S, February 21, 1995, pp.

7-10. This is the actual text of the report to the Federation Council and the source of the quotation.

20. This was stated by Grachev in his June 1994 address to the Conference of NATO Defense Ministers at NATO Headquarters, "Guidelines of Military Doctrine of the Russian Federation," *Asian Defence Journal*, January 1995, pp. 20-21 and in the Press, Moscow, *Nezavisimaya Gazeta*, in Russian, June 9, 1994, *FBIS-SOV*, 94-112, June 10, 1994, pp. 20-21. There now appears to be a systematic campaign to make this claim stick. Thus, in a statement defending the legality of the Chechen war, the new Minister of Justice Valentin Kovalev (put there to approve of the invasion after his predecessor resigned over it) claimed that there "are no legally based doubts as to the use of the Armed Forces to resolve the Chechen conundrum and there can be no such doubts." (Emphasis is by author.) Kovalev justified the invasion because the Basic Law (Constitution) states the president is the guarantor of Russia's unity, territorial integrity, and stability. Second, the current Law on Security obligates the president to coordinate the activity of the law-enforcement organs and Armed Forces to ensure security. "Finally, the military doctrine, which envisages the participation of the Armed Forces in the elimination of internal sources of military threats, was ratified by a decree of the President dated 2 November 1993." Moscow, *Rossiiskaya Gazeta*, in Russian, January 25, 1995, *FBIS-SOV*, 95-017, January 26, 1995, pp. 43-44. Therefore the doctrine has force of law regardless of Parliament and, as Commander and Chief, Yeltsin can essentially present the country with any number of *faits accomplis*.

21. *OMRI, Daily Digest*, April 12, 1995, Moscow, *Komsomolskaya Pravda*, in Russian, April 11, 1995, *FBIS-SOV*, 95-069, April 11, 1995, pp. 27-28, Moscow, *Rossiyskaya Gazeta* in Russian, March 22, 1995, *Joint Publications Research Service Military Affairs* (Henceforth *JPRS-UMA*), 95-016, April 11, 1995, p. 5.

22. *FBIS-SOV*, 95-069, April 11, 1995, pp. 27-28.

23. *OMRI, Daily Digest*, June 22, 1995.

24. *The Monitor*, July 6, 1995.

25. Igor Tishin, "National Interests and Geopolitics: A Primer on 'The Basic Provisions of the Military Doctrine of the Russian Federation'," *European Security*, Vol. IV, No. 1, Spring, 1995, p. 114.

26. *Ibid.*

27. "Questioning Russia's Military Role in Tajikistan," *Current Digest of the Post-Soviet Press*, (Henceforth CDPP), Vol. XLVII, No. 16, May 17, 1995, p. 12.

28. *FBIS-SOV*, 95-069, April 11, 1995, pp. 27-28.

29. *Ibid.*

30. Kulikov, p. 203.

31. Fred Hiatt, "Russian House Votes Longer Draft Term," *Washington Post*, April 8, 1995, p. A21.

32. John Loewenhardt, "Institutional Dilemmas in the Transition to Democracy: Russia Between Parliamentarism and Presidentialism," *Slavic Eurasia in Transition: Multiple Analyses*, Hokkaido: Slavic Research Center of the University of Hokkaido, 1994, p. 19.

33. *FBIS-SOV*, 95-017, January 26, 1995, pp. 43-44, "Guidelines of Military Doctrine of the Russian Federation," pp. 20-21, *FBIS-SOV*, 94-112, June 10, 1994, pp. 20-21.

34. *Ibidem.*, "Osnovnye Polozheniia," pp. 3-8, which implies a very strong carryover of the traditional threat assessment.

35. Stephen Blank, "Crisis in the Russian Economy," *Jane's Intelligence Review: The World in Conflict 1994/95*, January 1995, pp. 36-39.

36. Charles Dick, "The Russian Army—Present Plight and Future Prospects," *Ibid.*, pp. 40-45 gives a good overview of these problems.

37. Hiatt, p. A21.

38. See the following articles by Inga Saffron, "Russia Throws Fresh Assault Against Sagging Chechen Rebels," *Philadelphia Inquirer*, January 13, 1995, pp. A1, 14; Inga Saffron, "Yeltsin Takes Direct Control of Army Staff," *Philadelphia Inquirer*, January 14, 1995, pp. A1, 6. Actually, Yeltsin reportedly was considering doing this, but no formal announcement has been released as of the time of this writing.

39. For an English language statement of Lobov's and Shaposhnikov's views which were outlined in several press articles in 1991, see the two papers by Major Ronald M. Bonesteel, US Army, "The Dismissal of Lobov" and "The CIS Security System: Stagnating, In Transition, Or On the Way Out?," *Foreign Military Studies Office*, Ft. Leavenworth, KS, January and August 1992, respectively.

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43. Moscow, *Interfax*, in English, April 16, 1995, *FBIS-SOV*, 95-073, April 17, 1995, p. 29.

44. Hiatt, p. 21.

45. *Ibid.*; Lee Hockstader, "Bill Seeks to Extend Former KGB's Powers," *Washington Post*, March 1, 1995, p. A14.

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47. "Just How Powerful Is Russia's Security Council," *Current Digest of the Post-Soviet Press*, Vol. XLVII, No. 3, February 15, 1995, pp. 19-20.

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62. *Ibid.*



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