



Russian Federation: Selection of Targets for Counterterrorist Operations Abroad

December 2006

LL File No. 2007-03492
LRA-D-PUB-000739

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RUSSIAN FEDERATION

SELECTION OF TARGETS FOR COUNTERTERRORIST OPERATIONS ABROAD

After the amended antiterrorist legislation was passed on July 5, 2006, all restrictions limiting the right of the Russian president to order special operations abroad were removed. The law does not indicate explicitly which targets should be selected for those operations, making the President of Russia the sole decision-maker, with all available national Special Forces at his disposal. The expanded prosecution of extremism and reintroduced trial in absentia extend the scope of targeting.

I. Operations Abroad Under July 2006 Amendments.

July 5, 2006 amendments to Russian legislation, analyzed in our prior report, *New Rules for Special Operations Abroad* (LL File 2007-03469), established that the decision regarding the use of special purpose detachments of the Russian Armed Forces and of the Federal Security Service shall be made by the President of the Russian Federation. The amendments also allow the Federal Security Service to conduct special operations abroad.¹ Because the President had requested the Federation Council's approval for the use of Russian Armed Forces abroad immediately after ordering a search for the murderers of the Russian Embassy employees in Iraq in June 2006, there was an understanding that special purpose forces would also be used for retribution operations. The Resolution of the Federation Council, however, in the form as adopted, does not permit special purpose forces to conduct retribution operations.

The title of the Resolution and Paragraph 1 of this document stipulate that armed forces can be used "with the purpose of preventing international terrorist activities." According to this Resolution, the President may order preventive operations only and cannot request conducting acts of revenge. Although all acts of retribution can be viewed as preventive operations, all such actions can be recognized as illegal, according to the language of the legislation. The formula "stopping terrorist activities" in the Resolution was copied from articles 6 and 10 of the Federal Law on Counteracting Terrorism, which allows the use of armed forces outside of the Russian territory to "stop international terrorist activity."² Following this Law expressly, retribution operations conducted abroad by the Armed Forces cannot be legal. However, amendments to the Federal Laws on Federal Security Service (art. 9.1, 13.2.b) and on Counteracting Terrorism (art. 5.1.3), adopted by the State Duma on July 5, 2006, have alternative wording permitting the use of Armed Forces units and special purpose detachments abroad.³ Amendments to the Federal Law on Federal Security Service allow using special purpose detachments of the Federal Security Service "against terrorists and/or their bases." This language can be the ground for preventive operations as well as for acts of retribution.

¹ SOBRANIE ZAKONODATELSTVA ROSSIISKOI FEDERATSII [Collection of laws of the Russian Federation, official gazette, SZ RF] 2006, No. 29, Item 3144.

² ROSSIISKAIA GAZETA [Government owned daily newspaper], Mar. 10, 2006, No. 48.

³ SZ RF 2006, No. 31, Item 3452.

The Law does not say explicitly which activities shall be prevented or stopped by Russian special forces abroad. The Federation Council Resolution uses the definition “international terrorist activity.” This term is used in articles 6 and 10 of the Federal Law on Counteracting Terrorism, but article 3 of this law, which lists the definitions used in this Law, does not include this term. It is not clear, whether “international terrorist activity” includes acts committed outside Russia but related to the conduct of terrorist activities in the Russian Federation, or whether the phrase also includes just any terrorism-related activities without connection to terrorist activities in Russia or against Russian citizens. Because this definition is not explained, it can be interpreted broadly, such as allowing the use of troops to prevent terrorist acts abroad even if such acts of terrorism do not affect Russian citizens.⁴

Paragraph 3 of the Federation Council Resolution states that it will remain in force until the elimination of the threat of terrorist acts against the Russian Federation or Russian citizens outside Russia. It means that the Resolution allows the use of troops abroad as long as the threat of a terrorist act against Russian citizens or the Russian Federation, which can mean Russian property (e.g., embassies) exists. Activities outside Russia aimed at preparation for a terrorist act on Russian territory, such as financing, training, or instructing, are not covered by Paragraph 3 of the Resolution; provisions of Paragraph 1, however, seem to include such types of activities.

II. Prosecution of Extremist Activities

On July 27, 2006, the Federal Law on Amendments to Articles 1 and 15 of the Federal Law on Counteracting Extremist Activities (Antiextremism Law) was adopted.⁵ These amendments modified the definition of extremism given in the original Law of 2002 and included such activities as public justification of terrorism, public slandering of a government official, and public calls encouraging extremist activities or distribution of materials explaining and justifying commitment of acts recognized as extremist. Authors and publishers of such materials are recognized as persons conducting extremist activity. This expanded interpretation of terrorist activity allows the government to prosecute journalists who interview terrorists or an Internet provider who hosts a website containing the writings of Chechen leaders. Court trials under the new definitions were conducted in Russia in the fall of 2006, after the new Antiextremism Law entered into force.⁶

Amendments to the Criminal Code of the Russian Federation, which followed changes to the Antiextremism Law, included provisions which criminalized activities newly recognized as extremism. Punishment for extremist activities also was increased. Under the new law, most of the extremism-related crimes are now punishable by imprisonment for a term of up to twenty years.⁷ Because death sentences cannot be pronounced due to a moratorium on capital punishment, regular extradition procedures shall be applied to those individuals who reside outside Russia and were recognized as extremists by a Russian court. Because, however, the conduct of terrorist activity is recognized as a form of extremism (article 1.1A), special operations against the extremists also can be ordered by the President of Russia.

⁴ Kovalev, Sergei, *Human Rights Day*, HUMAN RIGHTS IN RUSSIA, Internet Portal, available at <http://www.hro.org/ngo/about/2006/12/10-1.php> (last visited Dec. 21, 2006).

⁵ SZ RF 2006, No. 31, Item 3448.

⁶ Levchenko, Aleksei, Kulak Ekstremizma [Fist of Extremism], online publication *Gazeta.ru*, June 28, 2006, available at http://www.gazeta.ru/2006/06/28/oa_205922.shtml.

⁷ SZ RF 2006, No. 31, Item 3452, *supra* note 3.

III. Execution of Sentences Issued In Absentia

Executions of former Soviet citizens abroad were often conducted during the Stalin era. The November 21, 1929, Decree of the Presidium of the USSR Central Executive Committee (then the highest state authority) on Declaring Government Officials who are USSR Citizens, and Deserted to the Camp of the Enemies and Refuse to Return to the Soviet Union From Abroad as Criminals was used to justify the killing of Stalin's enemies outside the country. Later, all victims of special operations abroad were murdered according to death sentences secretly issued by the Soviet Supreme Court in absentia. As reported, KGB instructions permitted the killing of Soviet defectors, but not foreign citizens.⁸ That was the reason that, in 1978, the KGB provided technical assistance to its Bulgarian counterpart in murdering Bulgarian dissident Georgi Markov in London, but was not directly involved in the perpetration of this crime.⁹ Former President of Afghanistan, Hafizullah Amin, was killed, however, in his own palace by a KGB special purpose detachment in December 1978.¹⁰

Trials in absentia were eliminated in Russia on July 1, 2002. Russian military intelligence (GRU) and the Foreign Intelligence Service (SVR) have denied involvement in extraterritorial killings since 1952, when notorious Ukrainian nationalists were murdered in Munich. A former high-positioned Soviet intelligence officer, Oleg Gordievsky, now residing in England, however, stated in June 2005 that all Russian special services have their own units that prepare killings abroad. Recent indirect facts suggest that Russian Special Service officers continue to conduct special operations abroad.¹¹ In 2002, five Russian spies who were monitoring the Chechens were detained in Azerbaijan, and in 2004, in Qatar, two Russian officers blew up the car of the former Chechen President, Zelimkhan Yandarbiev, who was accused of organizing terrorist acts against Russian troops during the course of the Chechnyan conflict. During the trial they acknowledged that they committed this act following a Russian Ministry of Defense order.¹² Although Russia did not officially confirm its participation in the Yandarbiev killing, President Putin's personal involvement secured their transfer to Russia to serve the remaining term of the sentence. After a red carpet receiving ceremony in a Moscow airport for the returned officers, the Russian Ministry of Justice announced that it has no information concerning the officers' whereabouts. Trials in absentia were reintroduced by the July 5, 2006, amendments to the Criminal Procedural Code of the Russian Federation, which permitted Russian courts to sentence those individuals who are accused of committing severe crimes, refuse to stand trial in a Russian court, and reside outside the Russian Federation.¹³

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December 2006

⁸ Soldatov, Andrei, Irina, Borogan, *Likvidatsiia Zarubezhom: Vtoroe Dyhanie* [Termination Abroad: Second Coming], *EZHEDNEVNYI ZHURNAL*, available at <http://www.ej.ru/kgb/entry/2879/>.

⁹ *Ricin and the Umbrella Murder*, CNN.com/World, Oct. 23, 2003, available at <http://www.cnn.com/2003/WORLD/europe/01/07/terror.poison.bulgarian/>.

¹⁰ U.S. Department of State, *The Soviet Invasion*, Background Note: Afghanistan, <http://www.state.gov/r/pa/ei/bgn/5380.htm> (last visited Dec. 29, 2006).

¹¹ Soldatov, *supra* note 8.

¹² Gorshkov, Ivan, *Arestovannykh v Katare Rossiian Pytali* [Russians arrested in Qatar were tortured], *NEZAVISIMAIA GAZETA*, Apr. 27, 2004, available at http://www.ng.ru/events/2004-04-27/9_qatr.html.

¹³ SZ RF 2006, No. 31, Item 3452, *supra* note 3.